

NOTICE
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2016 IL App (5th) 150394-U

NO. 5-15-0394

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

NOTICE
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

CAROLYN OATS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Jackson County.
)	
v.)	No. 15-SC-42
)	
POPATLAL PATEL,)	Honorable
)	Christy W. Solverson,
Defendant-Appellant.)	Judge, presiding.

JUSTICE CHAPMAN delivered the order of the court.
Justices Stewart and Cates concurred in the judgment.

ORDER

¶ 1 *Held:* Where the trial court's judgment in favor of Carolyn Oats is not contrary to the manifest weight of the evidence, but the monetary award exceeds the jurisdictional limit of a small claims court, we affirm but modify the judgment.

¶ 2 Defendant, Popatlal Patel, appeals from the trial court's judgment in favor of Carolyn Oats in the amount of \$13,000 for damages resulting from her constructive eviction and loss of property. We affirm the trial court's order finding in favor of Oats, but modify the judgment in keeping with the jurisdictional limit.

¶ 3

FACTS

¶ 4 Oats filed a small claims complaint on January 30, 2015, against Patel, seeking \$9,800 "for taking unlawful possession of Plaintiff's personal property and failing to return said property to plaintiff."

¶ 5 Oats leased a house from Patel.¹ In April 2011, the basement of this house flooded. Patel promised Oats that he would repair the damage. The basement walls had to be shored up in order to keep the walls from collapsing. The gas and electricity were turned off. Sometime in May, Oats was forced to move out of the house and into a hotel. Oats left the majority of her property in the house, and paid rent for May and for June. After Oats had vacated the house, she discovered that someone changed the locks, and thus she no longer had access to the personal property she left there. At trial, Patel

¹We note that the trial court's order filed on August 20, 2015, contained a scrivener's error in the factual background included in paragraph two regarding the year of the residential lease, the June rental payment, and the eviction notice. Elsewhere in the order, the year is listed correctly. The parties do not dispute the error, and are not prejudiced by the error. If either party desires correction of the error, he or she may file a motion to modify the judgment *nunc pro tunc* in the trial court to correct the error so that the judgment conforms to the record. *In re Marriage of Gingras*, 86 Ill. App. 3d 14, 16, 407 N.E.2d 788, 790 (1980); *Dauderman v. Dauderman*, 130 Ill. App. 2d 807, 809, 263 N.E.2d 708, 710 (1970).

denied that he changed the locks. Patel took no legal steps to evict Oats until August 2011, when he served Oats with a Notice to Quit.

¶ 6 On some date in June or July 2011, Milton McDaniel, a man who knew both Oats and Patel, drove by the house and saw Patel and several individuals removing Oats' property from the house. McDaniel testified at trial about what he witnessed. He testified that he stopped and asked Patel what he was doing and that Patel told him he was giving away Oats' property. McDaniel testified that he called Oats to tell her what Patel was doing. Both Carolyn and her husband, Tim Oats, drove to the house. Tim Oats testified that by the time they arrived, most of the furniture was gone, and that strangers were looting their possessions. He also testified that their leather sectional sofa was in the street and splattered with paint.

¶ 7 Patel's daughter testified that she lived in Chicago and helped her father with his rental property business. She went to a yard sale that Oats was holding in August 2011 and took photos of the property that Oats hoped to sell.² Patel's daughter was not present on the date that her father removed Oats' property from the house.

¶ 8 Oats testified about the property she lost and identified each item from photographs. McDaniel confirmed that the items depicted in Oats' photographs were the

²The significance of this testimony cannot be deduced from the record as there is no transcript; however, Patel contends in his brief that the items depicted in the photographs were the same items Oats claimed that Patel previously gave away.

same items Patel and others removed from the house. Oats also testified about the cost and the fair market value of each item.

¶ 9 According to the court's order, Patel testified at trial and did not dispute that Oats had to move because of the conditions of the premises; did not dispute that the house needed repair; and did not dispute that Oats paid rent through June. Patel denied changing the locks on the house and denied removing any of Oats' property from the house or from the garage.

¶ 10 The trial court issued its order on August 20, 2015, finding in favor of Oats and entering judgment against Patel in the amount of \$13,000. The trial court found that Oats was constructively evicted from the house by Patel due to his refusal to enact appropriate repairs despite his knowledge of the problem and claims that he would do so. The trial court awarded Oats \$1,800 representing three months of rent for April through June 2011. The trial court also found that Patel allowed the looting of Oats' property, including a dining room table, eight chairs, a dining room hutch, a curio cabinet, an aquarium, new supplies, a sofa sectional, and a 76-inch television. The trial court awarded Oats \$11,200 representing the value of her property.

¶ 11 Patel appeals from the trial court's judgment.

¶ 12 **LAW AND ANALYSIS**

¶ 13 Patel properly filed a common law record on appeal, but did not file a transcript of the proceedings, stating that there was no court reporter present during the bench trial. However, Patel also did not file a bystander's report pursuant to Supreme Court Rule

323(c). Ill. S. Ct. R. 323(c) (eff. Dec. 13, 2005). Furthermore, there is no agreed-to written statement of facts. Ill. S. Ct. R. 323(d) (eff. Dec. 13, 2005). The burden to prepare a full and complete appellate record falls upon the appellant. *Midstate Siding & Window Co. v. Rogers*, 204 Ill. 2d 314, 319, 789 N.E.2d 1248, 1251 (2003). Without a transcript or an accepted alternative, we must rely upon the facts contained within the pleadings and within the trial court's order.

¶ 14 On appeal from a judgment following a bench trial, we will not reverse the judgment unless the trial court's judgment is clearly contrary to the manifest weight of the evidence, because the trial judge was able to assess each witness's credibility. *Jackson v. Bowers*, 314 Ill. App. 3d 813, 818, 731 N.E.2d 1252, 1257 (2000). A judgment is contrary to the manifest weight of the evidence if a conclusion opposite to the trial judge's decision is clearly evident. *Comm v. Goodman*, 6 Ill. App. 3d 847, 853, 286 N.E.2d 758, 763 (1972). Additionally, when the record on appeal is incomplete, "the reviewing court will presume that the order entered by the trial court was in conformity with the law and had a sufficient factual basis [citations]." *Midstate Siding & Window Co.*, 204 Ill. 2d at 319, 789 N.E.2d at 1252.

¶ 15 On appeal, Patel argues that the trial court's finding that he gave away Oats' property is against the manifest weight of the evidence. Alternatively, he contends that the judgment is ambiguous, arguing that because there was no court reporter, the trial court should have created a better recitation of the evidence upon which the judgment was based. We find that Patel's arguments lack merit. Both arguments are based upon

Patel's personal interpretation of evidence presented to the court during trial. He argues that the August 2011 photographs that he introduced into evidence contradicted Oats' claim that her property was looted prior to that date. He also argues that the trial court's order does not explain this discrepancy. With respect to the ambiguities in the court order, Patel contends that the court's order is flawed because the judge failed to specify if statements in the order were "based upon testimony or offered documents, whether they were objected to, the basis for the objection, and how the trial court ruled on the objection."

¶ 16 Patel completely overlooks his responsibility as the appellant to prepare a full and complete record on appeal. We are unable to assess Patel's arguments regarding foundational failings because there is no transcript or alternative report of proceedings in the record on appeal. Ill. S. Ct. R. 323(a), (c), (d) (eff. Dec. 13, 2005); *Midstate Siding & Window Co.*, 204 Ill. 2d at 319, 789 N.E.2d at 1251. The appellant's duty to present a sufficiently complete record of proceedings to support claims of error is not obviated because the case was a small claims action. *Northern Illinois Gas Co. v. Murphy Excavating*, 212 Ill. App. 3d 486, 489, 571 N.E.2d 228, 229-30 (1991) (citing *Capsonic Group v. Swick*, 181 Ill. App. 3d 988, 992, 537 N.E.2d 1378, 1382 (1989)).

¶ 17 The trial judge was the trier of fact in this case. The judge heard all of the witnesses testify and was able to make credibility determinations based upon the witnesses' testimony, presentation, and temperament. The trial court concluded that Patel was aware of the flooding, that he promised to repair the house, and that he failed to do

so. Witnesses, including McDaniel, Oats, and her husband, testified that Patel was giving away Oats' property. McDaniel testified that Patel told him that he was giving away Oats' property. Patel denied that this occurred. Consequently, the trial court had a credibility determination to make, and the court found that the evidence supported Oats' claims. Having reviewed the complaint, and the record on appeal, we find no basis to conclude that the trial court's judgment is contrary to the manifest weight of the evidence. *Jackson*, 314 Ill. App. 3d at 818, 731 N.E.2d at 1257.

¶ 18 Although we affirm the trial court's judgment in Oats' favor, we modify the judgment pursuant to Supreme Court Rule 366(a)(5) (Ill. S. Ct. R. 366(a)(5) (eff. Feb. 1, 1994)). A small claims suit is defined as a civil action for money not in excess of \$10,000, exclusive of interest and costs. Ill. S. Ct. R. 281 (eff. Jan. 1, 2006). The trial court awarded Oats \$11,200 for the value of her looted property and \$1,800 for reimbursement of rent. As the court's award for the value of Oats' property exceeded the jurisdictional limit of the court, we modify the judgment to the \$10,000 limit, plus costs and statutory interest. 735 ILCS 5/2-1303 (West 2014).

¶ 19 We do not address Patel's argument regarding the trial court's authority to award Oats \$1,800 for three months of rent as we have affirmed the court's award for the loss of Oats' personal property up to the \$10,000 jurisdictional limit.

¶ 20 **CONCLUSION**

¶ 21 For the foregoing reasons, we modify the amount of the judgment of the Jackson County circuit court from \$13,000 to \$10,000.

¶ 22 Judgment modified.