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2017 IL App (3d) 160156-U

Order filed June 21, 2017

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2017

RICHARD THOMPSON,)	Appeal from the Circuit Court
)	of the 13th Judicial Circuit,
Plaintiff-Appellant,)	La Salle County, Illinois,
)	
v.)	Appeal No. 3-16-0156
)	Circuit No. 15-SC-1440
)	
ACCESS CONTROL COMPANY, INC.,)	Honorable
)	Karen C. Eiten,
Defendant-Appellee.)	Judge, Presiding.

JUSTICE WRIGHT delivered the judgment of the court.
Justices Lytton and McDade concurred in the judgment.

ORDER

¶ 1 *Held:* The circuit court's ruling that plaintiff's evidence did not establish a lease agreement existed between plaintiff and defendant was not against the manifest weight of the evidence. The circuit court's ruling that plaintiff failed to meet his burden regarding his claim for damages for the repair of his fence was not against the manifest weight of the evidence. Defendant must challenge the trial court's refusal to deny an inaccurate report of proceedings by initiating a mandamus action in another court.

¶ 2 Plaintiff, Richard Thompson, argues the circuit court erred by refusing to certify his bystander’s report. Plaintiff also contends the court erred by denying his claims for rent and damages against defendant, Access Control Company, Inc. We affirm.

¶ 3 FACTS

¶ 4 Plaintiff filed a small claims complaint in the circuit court seeking a judgment against defendant for past due storage fees and for physical damage to plaintiff’s fence. The circuit court conducted a trial on the merits. However, since a court reporter was not present during trial, the circuit court’s written order contains the only recitation of the evidence presented to the trial court. In its written order, the circuit court summarized the evidence, recited applicable case law, made certain findings of fact, and entered judgment in favor of defendant.

¶ 5 On March 22, 2016, plaintiff filed a notice of appeal. Approximately one week later, plaintiff filed a motion to approve a proposed bystander’s report. However, plaintiff did not attach a copy of his proposed bystander’s report to this motion. On May 23, 2016, plaintiff filed the proposed bystander’s report in the trial court.

¶ 6 On August 5, 2016, defendant filed a “Resistance to Motion to Approve Bystander’s Report,” which alleged that defendant’s counsel did not receive a copy of the proposed bystander’s report until July 25, 2016, after returning from a one-week vacation. Defendant argued that the proposed bystander’s report was not timely served on defendant.

¶ 7 On August 12, 2016, the circuit court conducted a hearing on plaintiff’s motion to approve the proposed bystander’s report. Although no transcript of the trial exists, plaintiff included a transcript of this motion hearing in the record on appeal.

¶ 8 After the motion hearing, the circuit court found plaintiff’s proposed bystander’s report contained a “number of inaccuracies” and gave several examples of inaccuracies contained in the

file their corrections or alternative report.” Plaintiff contends the court improperly rejected his first proposed bystander’s report due to defendant’s failure to respond to the report. Plaintiff requests that we remand the matter to the circuit court for “preparation of a proper record.”

¶ 14 Initially, the record shows that the circuit court refused to approve the proposed bystander’s report on August 12, 2016, because the court found the proposed bystander’s report was not accurate. The trial court also refused to correct the bystander’s report *sua sponte*. However, the court encouraged both sides to develop a cooperative approach to drafting an accurate account of the small claims trial. We note that under Illinois Supreme Court Rule 323(d) (eff. Dec. 13, 2005), the parties could have submitted an agreed statement of facts in lieu of submitting a court-certified report of proceedings, which they did not do.

¶ 15 The case law provides that when a proposed bystander’s report is not accurate, the trial circuit court cannot properly certify the report as an accurate record for the reviewing court to consider. *Allen v. Lin*, 356 Ill. App. 3d 405, 409 (2005); see also *People v. McKee*, 25 Ill. 2d 553, 557 (1962). (“Before a trial judge certifies any transcript, whether it be a bill of exceptions or a bystander’s bill, he must be satisfied that it is an accurate transcript or summary of the evidence at the trial and he is not required to certify an inaccurate summary, even though it may be the only one available.”).

¶ 16 Importantly, a party may only challenge the circuit court’s refusal to certify a proposed bystander’s report by an action in *mandamus*. *Silverstein v. Grellner*, 15 Ill. App. 3d 695, 698 (1973). See also *Urnoneit v. Purves*, 33 Ill. App. 3d 939, 942 (1975) (“[T]he remedy for failure to certify the report of proceedings would have been *mandamus*.”); *W.E. Mundy Landscaping & Garden Center, Inc. v. Hish*, 187 Ill. App. 3d 164, 167-68 (1989) (Nash, J., specially concurring) (“Defendant’s remedy when the trial court declined to settle and certify a report of proceedings

was in *mandamus*. [Citation.] Defendant might also have sought a supervisory order from our supreme court directing the trial judge to comply with its Rule 323(c).”). In this case, plaintiff did not file a *mandamus* action or request our supreme court to enter a supervisory order with respect to the certification of the bystander’s report submitted by plaintiff.

¶ 17 Consequently, we will consider the somewhat incomplete record plaintiff has submitted for our review consisting of the trial court’s recitation of the evidence as included in the court’s final order following a trial on the merits. We resolve any doubts arising from the incompleteness of the particular record against plaintiff. *Foutch v. O’Bryant*, 99 Ill. 2d 389, 391-92 (1984).

¶ 18 II. Lease Agreement and Claim for Rent

¶ 19 Plaintiff contends the circuit court erred by: (1) finding that no agreement to lease space on plaintiff’s lot existed between plaintiff and defendant and (2) failing to award rent to plaintiff. Specifically, plaintiff contends that his evidence established defendant entered into an oral agreement with plaintiff to pay rent for the storage of defendant’s materials, and defendant offered no evidence to rebut plaintiff’s proof that an oral agreement existed.

¶ 20 Where, as here, “the appeal involves a question of fact, the standard of review is whether the trial court’s order was against the manifest weight of the evidence.” *Vaughn v. City of Carbondale*, 2016 IL 119181, ¶ 23. “A judgment is against the manifest weight of the evidence only when the findings appear to be unreasonable, arbitrary, or not based on evidence ***.” *Id.*

¶ 21 In the instant case, the circuit court’s written order contains a finding that defendant presented sufficient evidence to rebut the alleged oral agreement plaintiff unsuccessfully attempted to prove by a preponderance of the evidence. Specifically, the court found that after “[t]aking into consideration all the evidence,” no agreement for rent existed between plaintiff and

defendant. Based on the limited record before us, we cannot say that this finding was “unreasonable, arbitrary, or not based on evidence.” *Id.* Accordingly, we affirm the circuit court’s decision denying plaintiff’s rent claim.

¶ 22 III. Fence Damages

¶ 23 Next, plaintiff argues the circuit court erred by failing to award monetary damages for the physical damage to an enclosure fence on the storage lot. Specifically, plaintiff contends that defendant agreed to repair the fence after it was damaged as a result of defendant’s storage practices.

¶ 24 The circuit court noted plaintiff testified that he had obtained an estimate or quote for the amount necessary to repair the fence but found this proof was insufficient to establish the amount of factual damages. The case law supports the circuit court’s determination and provides “it was the plaintiff’s burden not only to establish that [he] sustained damages but also to establish a reasonable basis for the computation of those damages.” *Lanterman v. Edwards*, 294 Ill. App. 3d 351, 354 (1998).

¶ 25 In fact, the circuit court found “[b]ased on all of the evidence, and particularly on the lack of evidence regarding the alleged damages, *** plaintiff failed to meet his burden of proof ***.” Based on the limited record before us, we cannot say that this finding was “unreasonable, arbitrary, or not based on evidence.” *Vaughn*, 2016 IL 119181, ¶ 23. Accordingly, the court did not err in denying plaintiff’s fence claim.

¶ 26 CONCLUSION

¶ 27 The judgment of the circuit court of La Salle County is affirmed.

¶ 28 Affirmed.