THIRD DIVISION
March 21, 2018

No. 1-16-2160

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).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

DEANNE BROWN,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 15 M 64345
	)	
HERMAN L. MATTHEWS,	)	Honorable
	)	Robert J. Clifford
Defendant-Appellant.	)	Judge Presiding.

JUSTICE HOWSE delivered the judgment of the court.
Presiding Justice Cobbs and Justice Lavin concurred in the judgment.

ORDER

¶ 1 *Held*: We reverse the judgment of the circuit court of Cook County in favor of plaintiff following a bench trial; the trial judge denied defendant a fair trial by failing to consider evidence defendant submitted in support of his defense.

¶ 2 Defendant, Herman L. Matthews, appeals the order of the circuit court of Cook County entering judgment in favor of plaintiff, Deanne Brown, following a bench trial on plaintiff's complaint against defendant based on her alleged purchase of an automobile from defendant.

Defendant argues the trial court failed to consider his evidence he did not sell plaintiff the automobile in question. We reverse and remand for a new trial.

¶ 3 BACKGROUND

¶ 4 Plaintiff, acting *pro se*, filed an amended complaint against defendant alleging defendant sold her a 2009 Chevrolet Impala without a title. Plaintiff alleged the Illinois Secretary of State "referenced the vehicle [as] being a salvage car," and that defendant "never disclose[d] anything being wrong with the car." Plaintiff sought damages of the cost of the car. The parties appeared for trial. No verbatim transcript of the proceedings was made. Defendant moved to certify a bystander's report pursuant to Illinois Supreme Court Rule 323(c) (eff. Dec. 13, 2005). The trial court granted the motion and certified the bystander's report. The court's order stated the parties agreed to the contents of the motion. The following is taken from the bystander's report.

¶ 5 When the parties appeared for trial, the trial judge referred them to mediation. The mediation was unsuccessful and the trial judge stated the matter would proceed to trial. The trial judge swore in the witnesses. The trial judge then stated: "So here is what is going to happen, you (Plaintiff) are not going to get any money for the vehicle and you (Defendant) are going to pay for the inspections of the vehicle." The judge asked plaintiff the cost of the inspections ($90) and confirmed she needed two inspections. Defendant asked for a continuance to hire an attorney. The judge asked if the attorney was present and defendant responded the attorney had been present but stepped out of the courtroom. The judge asked if the attorney had filed an appearance and defendant responded he had not because defendant would have to pay the attorney first, but doing so would not take long because the attorney was still in the building. The judge responded "Well, I'm going to have to go forward with this case because we need to get it over with—it has been a long time." Defendant then stated "Well, I have documents that I would like to present which prove that I did not sell the vehicle to the Plaintiff." Defendant

tendered the documents to the court and stated: "If you look on page 13, it shows that I sold the vehicle to Carter Auto Sales on July 1, 2014, and then on August 14, 2014, Plaintiff bought the vehicle from Carter and registered it on the same date, which is corroborated by page 8." The judge then stated "I cannot read this," and returned defendant's documents to him. Defendant stated "The evidence is there, I do not understand the reason you cannot read it." Then, without hearing testimony from either party, the trial judge stated "Judgment in favor of the Plaintiff in the amount of $180.00, and you (Defendant) shall cooperate and assist Plaintiff in obtaining title to her vehicle."

¶ 6 The trial judge issued a written order on February 18, 2016 entering judgment in favor of plaintiff for $180. The order further stated defendant was to cooperate with and assist plaintiff in obtaining an Illinois title for the vehicle. On March 17, 2016, defendant filed a motion titled "Defendant's Motion to Vacate the February 18, 2016 Judgment." At a hearing on defendant's March 2016 motion, a different trial judge informed defendant his motion was improperly styled and granted defendant leave to restyle the motion as a motion to reconsider the judgment. At that hearing defendant learned the original trial judge was retiring.

¶ 7 Defendant filed his motion to reconsider the trial court's February 18, 2016 judgment. The motion was not heard by the original trial judge. Defendant argued the original trial judge "failed to review evidence submitted to him, so the evidence Defendant presents is 'newly-discovered' to a judge that reads it." Defendant's motion states the trial court granted his request for discovery and he subpoenaed documents from the Illinois Secretary of State concerning the vehicle at issue. Defendant asserted the documents he received from the Secretary of State "contained contrasting information from the allegations set forth in Plaintiff's original and Amended Complaints." Defendant attached the documents to his motion to reconsider. Defendant stated he tendered the documents to the court at the trial, but the trial judge "took

possession, concluded that he could not read them (and did not read them) and returned them to Defendant." Defendant argued the trial judge thereby "deprived Defendant of the opportunity to be heard under his Fourteenth Amendment right to due process, let alone simple trial procedure." Defendant's motion asserted the documents are legible and establish defendant did not sell the car to plaintiff. He stated the documents show defendant, doing business as Interstate Autos, sold the car to Carter Auto Sales on July 1, 2014, and that Carter Auto Sales sold the car to plaintiff on August 14, 2014. (In a footnote in defendant's motion to reconsider, defendant states, without citation to evidence, that he does not own Carter Auto Sales.) Defendant's motion also stated defendant also testified he did not sell plaintiff the car. Defendant argues the undisputed evidence, including the documents and his own testimony, thus proves he did not sell plaintiff the car. Defendant asked the court to reconsider and vacate the February 18, 2016 judgment and enter judgment in his favor.

¶ 8 At the hearing on defendant's motion to reconsider, plaintiff stated she never did business with Carter Auto Sales. Defendant's attorney began to discuss the documentary evidence, and the trial judge asked defendant if he had submitted his documentary evidence to the original trial judge. Defendant's attorney responded all of the documents were given to the original trial judge, and defendant added that the original trial judge stated he could not read them at the time. The trial judge hearing the motion to reconsider denied defendant's motion on the grounds the evidence had been presented to the original trial judge. The order on the motion to reconsider ordered defendant to pay plaintiff $180 and excused defendant from the requirement in the original order that defendant help plaintiff acquire a title.

¶ 9 This appeal followed.

¶ 10 ANALYSIS

¶ 11 Plaintiff-appellee failed to file a brief on appeal. This court, on its own motion, ordered the case taken on appellant's brief only, and we will decide the merits of the appeal without the benefit of the appellee's brief. *Selective Insurance Co. v. Urbina*, 371 Ill. App. 3d 27, 29 (2007) ("Where the record is simple and the claimed error is such that the court can easily decide it without the aid of an appellee's brief, a reviewing court will decide the merits of the appeal."). Initially, we note that although defendant's notice of appeal asks this court to reverse the order of February 18, 2016, granting judgment in favor of plaintiff, the date of the judgment appealed is the date of the order on defendant's motion to reconsider. Regardless, a notice of appeal from a denial of a motion to reconsider vests the appellate court with jurisdiction to review the underlying judgment. *Heller Financial, Inc. v. Johns-Byrne Co.*, 264 Ill. App. 3d 681, 689-90 (1994).

¶ 12 On appeal defendant argues the trial court denied him his right to procedural due process when it "flatly ignored evidence that was a part of his case-in-chief to refute the allegations made against him by Plaintiff." Defendant also argues the trial court violated Illinois Supreme Court Rule 233 when it did not allow defendant to make opening and closing statements, and that the trial court's judgment is "the product of passion or prejudice because the record is wholly devoid of any evidence which would tend to suggest otherwise" or, alternatively, is arbitrary and unsubstantiated by the evidence. Finally, defendant argues the trial court abused its discretion in its ruling on his motion to reconsider because the court deprived him of the opportunity to demonstrate that the evidence defendant intended to present "was for all practical purposes 'newly discovered' since the trial judge had not read it."

¶ 13 The right to present evidence is a basic element of the fair hearing required by the Due Process Clause. *Certainteed Corp. v. Williams*, 507 F. Supp. 2d 847, 848 (N.E. Ill. 2007) (quoting *Wolff v. McDonnell*, 418 U.S. 539, 566 (1974), *Jenkins v. McKeithen*, 395 U.S. 411,

429 (1969)). "Whether a party has been denied due process presents a question of law which this court reviews *de novo*. [Citation.]" *My Baps Construction Corp. v. City of Chicago*, 2017 IL App (1st) 161020, ¶ 96. In *In re Marriage of Douglas*, 195 Ill. App. 3d 1053, 1057 (1990), "the thrust of each issue raised on appeal concern[ed] the trial court's failure to consider the documentary evidence submitted by the parties." The court found the record was "devoid of any showing that the trial court considered the documentary evidence." *In re Marriage of Douglas*, 195 Ill. App. 3d at 1057. In fact, it was evident "the court did not consider the exhibits in making its decision." *Id.* The court also found that "from the court's comments in the record that the issues and circumstances of this case warranted a review of the exhibits." *Id.* at 1058. The court held as follows:

> "In Illinois, the law is well established that the trial judge, sitting without a jury, has the obligation of weighing the evidence and making findings of fact. [Citation.] A court trying a case without a jury should act on principles which it would direct a jury to follow. [Citation.] The fact finder in either form has a duty to examine evidence presented to it. In this case we find that the trial court erred in not considering all of the evidence before it." *Id.*

See also *People ex rel. Sherman v. Cryns*, 321 Ill. App. 3d 990, 993 (2001) ("the trial court, as the finder of fact, is also obligated to 'consider all of the evidence' ").

¶ 14 We have examined the record and determined that a review of defendant's exhibits was warranted under the facts of this case. *Blackburn v. Johnson*, 187 Ill. App. 3d 557, 562 (1989) ("A party cannot obtain reversal based on the failure to admit evidence without showing what the evidence would be, in order to allow a court of review to assess the prejudice inuring from the exclusion."). We have also determined that defendant's exhibits are legible. The record also

establishes the original trial judge did not consider defendant's exhibits. We hold the trial judge erred in not considering all of the evidence before it.

¶ 15 Nonetheless, "[i]t is well settled that a judgment should be reversed because of error only when it appears that the error affected the result of the trial. [Citations.] *** [T]he court need only determine whether any error occurred which operated to the prejudice of a party or which unduly affected the outcome [citations]. [Citation.]" *Elder on Behalf of Finney v. Finney*, 256 Ill. App. 3d 424, 428 (1993). In this case (unlike *Finney*), the record does not reveal any evidence presented at trial establishing defendant's liability to plaintiff. Therefore, we must conclude defendant was prejudiced by the trial judge's failure to consider his exhibits demonstrating he did not sell plaintiff the car and, therefore, could not be liable to her for its lack of an Illinois title; accordingly, the error was not harmless. Further, we note no issues of admissibility of the documents. See Ill. R. Evid. 803(8) (eff. Apr. 26, 2012); 11 Ill. Prac., Courtroom Handbook on Ill. Evid. § 902:2 (In-State Public Documents); 902:3 (Foreign Public Documents).

¶ 16 We have no need to reach defendant's argument the trial court erred in denying his motion to reconsider because it improperly determined the motion was not based on newly discovered evidence, or any of defendant's other arguments. The trial court's judgment in favor of plaintiff after trial must be reversed and the cause remanded for a new trial. "On remand we further direct the trial court to examine and consider the documentary evidence submitted by [defendant] which, according to the record, was not examined by the court prior to entering final judgment in this matter." *In re Marriage of Douglas*, 195 Ill. App. 3d at 1060.

¶ 17 CONCLUSION

¶ 18 For the foregoing reasons, the judgment of the circuit court of Cook County is reversed, and the cause remanded for a new trial.

¶ 19 Reversed and remanded.