

No. 1-18-1033

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

MOHAMMED ZAKIUDDIN,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Cook County
)	
v.)	No. 14 M2 000850
)	
SIGLER AUTO SALES, INC.,)	Honorable
)	Jeffrey L. Warnick,
Defendant-Appellee.)	Judge, Presiding.

JUSTICE HOFFMAN delivered the judgment of the court.
Justices Hall and Lampkin concurred in the judgment.

ORDER

¶ 1 *Held:* We affirm the circuit court’s judgment entered on a jury’s verdict in favor of the defendant on the plaintiff’s common-law fraud claim over the plaintiff’s argument that the circuit court erred in excluding evidence.

¶ 2 The plaintiff, Mohammed Zakiuddin, appeals from a judgment of the circuit court entered on a jury verdict in favor of the defendant, Sigler Auto Sales, Inc., and from the order denying his post-trial motion seeking a new trial. For the reasons which follow, we affirm.

¶ 3 In May 2014, the plaintiff filed his two-count complaint against the defendant arising out of his purchase of a 2000 Toyota automobile on October 15, 2008. *Zakiuddin v. Siegler Auto Sales, Inc. (Zakiuddin I)*, 2016 IL App (1st) 153488-U, ¶ 3. Count I of that complaint charged the defendant with common-law fraud, and count II charged a violation of the Consumer Fraud and Deceptive Business Practices Act (Consumer Fraud Act) (815 ILCS 505/1 *et seq.* (West 2008)). *Id.* ¶ 2. On the face of the plaintiff's complaint appeared the phrase "JURY OF 12 DEMANDED," and on each page of the complaint was printed the phrase "Jury Demand." *Id.* ¶ 3. When the trial commenced on October 21, 2015, the plaintiff moved for trial by jury. The circuit court denied the motion, and the matter proceeded as a bench trial over the plaintiff's continuing objection. *Id.* Following that trial, the circuit court entered judgment in favor of the defendant on both counts. Thereafter, the plaintiff filed a post-trial motion which the circuit court denied, and the plaintiff appealed (*Zakiuddin I*). *Id.* In *Zakiuddin I*, this court affirmed the circuit court's judgment in favor of the defendant on count II, the Consumer Fraud Act claim; reversed the judgment entered in favor of the defendant on count I, the common-law fraud claim, by reason of the trial court's error in denying the plaintiff's demand for trial by jury on that claim; and remanded the matter to the circuit court for a new trial on the plaintiff's common-law fraud claim only. *Id.* ¶¶ 11, 18.

¶ 4 On remand, the matter proceeded as a jury trial on the plaintiff's common-law fraud claim against the defendant. Following that trial, the jury returned a verdict in favor of the defendant, and the circuit court entered judgment on the verdict. The plaintiff filed a post-trial motion seeking a new trial which the trial court denied, and this appeal followed.

¶ 5 The plaintiff argues that the circuit court erred in refusing to admit into evidence two CarFax reports relating to the 2000 Toyota automobile he purchased from the defendant.

Specifically, he contends that the CarFax reports were “compilations” within the meaning of Illinois Rule of Evidence 803(17) (eff. April 26, 2012) and, as such, admissible in evidence as an exception to the hearsay rule (Ill. R. Evid. 802 (eff. Jan. 1, 2011)). He seeks, therefore, reversal of the judgment entered in favor of the defendant and a remand to the circuit court for a new trial.

¶ 6 The defendant argues that, even if the circuit court abused its discretion in refusing to admit the CarFax reports into evidence, its judgment should, nevertheless, be affirmed as the plaintiff has failed to establish that he was prejudiced by the error. We agree with the defendant.

¶ 7 The circuit court has the responsibility of determining the admissibility of evidence and this determination will not be overturned in the absence of a clear abuse of discretion. *Patch v. Glover*, 248 Ill. App. 3d 562, 567 (1993). Even if the circuit court abuses its discretion by refusing to admit competent evidence, a new trial should be ordered only when the circuit court’s error on the admissibility of evidence appears to have affected the outcome of the trial. *Tzystuck v. Chicago Transit Authority*, 124 Ill. 2d 226, 243 (1988); *Vickers v. Abbott Laboratories*, 308 Ill. App. 3d 393, 412 (1999). That is to say, a new trial is necessary where the exclusion of evidence deprives a party of the opportunity to prove its theory of the case. See *Schmidt v. Ameritech Illinois*, 329 Ill. App. 3d 1020, 1040-41 (2002).

¶ 8 We will not reverse a judgment entered on a jury verdict because of an error in the exclusion of evidence absent prejudice to the party offering the evidence. The burden is on the party seeking reversal to establish prejudice. See *Smith v. Baker’s Feed & Grain, Inc.*, 213 Ill. App. 3d 950, 952-53 (1991).

¶ 9 As the appellant, it was the plaintiff’s burden to provide this court with a sufficient record to enable us to address his claims of error. *Foutch v. O’Bryant*, 99 Ill. 2d 389, 391-92 (1984); *Landau & Associates, P.C. v. Kennedy*, 262 Ill. App. 3d 89, 92 (1994). On the issue of prejudice

resulting from the circuit court's alleged abuse of discretion in refusing to admit the two CarFax reports into evidence, the plaintiff has failed to meet his burden.

¶ 10 The record before us does not contain a transcript of the proceedings before the circuit court. The record does contain a bystander's report approved by the trial judge. That report states that the plaintiff's expert witness testified that pictures taken both before and after the plaintiff's purchase of the 2000 Toyota automobile from the defendant reflect that the vehicle's frame was bent and that the air bag had been deployed. The witness testified that he reviewed the two CarFax reports which contain alerts that the vehicle had a "branded title" and was a "total loss vehicle." He opined that the vehicle was worth \$800 at the time of the plaintiff's purchase and not the \$4,200 that the plaintiff paid the defendant. According to the bystander's report, the plaintiff's expert witness "testified freely about the contents of the CarFax reports." However, the circuit court refused to admit the two CarFax reports into evidence, finding that they are not compilations within the meaning of Illinois Rule of Evidence 803(17).

¶ 11 Assuming, for the purpose of analysis only, that the circuit court erred in finding that the two CarFax reports were not compilations and abused its discretion in refusing to admit the reports into evidence, the record before us fails to establish that the plaintiff was prejudiced by the alleged error. As noted, the bystander's report states that the plaintiff's expert witness was permitted to testify as to the content of the two reports. However, absent a transcript of the trial proceedings, we have no means of determining the relevance of the two reports to the evidence of fraud adduced by the plaintiff.

¶ 12 In order to recover on a claim of common-law fraud, a plaintiff must prove that: (1) the defendant made a false statement of material fact; (2) the defendant knew or believed the falsity; (3) the defendant made the false statement to induce the plaintiff to act; (4) the plaintiff acted in

reliance on the truth of the statements; and (5) the plaintiff suffered damages resulting from such reliance. See *People ex rel. Hartigan v. E & E Hauling, Inc.*, 153 Ill. 2d 473, 490 (1992). When combined with active concealment, silence can constitute fraud. *Sandy Creek Condominium Ass'n v. Stolt and Egner, Inc.*, 267 Ill. App. 3d 291, 298 (1994).

¶ 13 Absent a transcript of the trial proceedings, we have no means of knowing whether the plaintiff produced evidence that the defendant knew of the two CarFax reports or of the information contained therein and concealed those facts from the plaintiff. In the absence of a record revealing the evidence presented by the plaintiff in support of his common-law fraud claim, we have no means of knowing whether the exclusion of the two CarFax reports affected the outcome of the trial or in any way prejudiced the plaintiff. If the only purpose for introducing the reports was to establish the condition of the vehicle and its value at the time of the plaintiff's purchase, the reports themselves would be cumulative of the testimony of the plaintiff's expert witness as he testified to his opinion as to the condition and value of the vehicle and the content of the two reports. Any error in the exclusion of evidence which is merely cumulative of other evidence is harmless. *Aguinaga v. City of Chicago*, 243 Ill. App. 3d 552, 573 (1993).

¶ 14 The foregoing analysis leads us to conclude that, by reason of the plaintiff's failure to provide this court with a transcript of the trial proceedings, he has failed to meet his burden of establishing that he was prejudiced by the circuit court's alleged abuse of discretion in refusing to admit the two CarFax reports into evidence. Consequently, we affirm the judgment entered in favor of the defendant on the plaintiff's common-law fraud claim and the denial of the plaintiff's post-trial motion. Having resolved this appeal based on a finding that the plaintiff failed to meet his burden of establishing that he was prejudiced by reason of the circuit court's alleged abuse of discretion in refusing to admit the two CarFax reports into evidence, we need not address the

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question of whether the reports constitute compilations within the meaning of Illinois Rule of Evidence 803(17).

¶ 15 Affirmed.