2017 IL App (1st) 161354-U
No. 1-16-1354
Order filed October 31, 2017

Second Division

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

DOUGLAS BECK, MARIBEL TORRES, and SHARON THURMAN, Plaintiffs-Appellees and Cross-Appellants, v. ROSELAND COMMUNITY HOSPITAL ASSOCIATION, Defendant-Appellant and Cross-Appellee.	Appeal from the Circuit Court of Cook County. No. 13 CH 20051 The Honorable James E. Snyder, Judge, presiding.

JUSTICE HYMAN delivered the judgment of the court.
Justices Pucinski and Mason concurred in the judgment.

ORDER

¶ 1 *Held*: Trial court's judgment in plaintiffs' favor was not against the manifest weight of the evidence, which supported a finding that hospital agreed to pay plaintiffs 13 severance payments.

¶ 2 Roseland Community Hospital has struggled financially for years. In 2013, while undertaking a due diligence review, the hospital's Board of Directors asked Dian Powell, Roseland's chief executive officer and president, to obtain resignations from its executive team,

including the plaintiffs, Douglas Beck, Maribel Torres, and Sharon Thurman, all vice-presidents. The Board intended to hold on to the resignations pending the outcome of the State's review. Instead of obtaining resignations, however, Powell and the plaintiffs executed agreements for severance pay and continued health coverage after their employment ended. The initial agreements provided for 13 severance payments and then, after further negotiations, their second agreements provided for 26 severance payments.

¶ 3 Roseland refused to honor the agreements and plaintiffs sued alleging, in part, that Roseland breached the 13 payment agreements (count II) and the 26 payment agreements (count III). Roseland claimed Powell had no authority to unilaterally bind the hospital and had not obtained the Board's approval for the severance agreements. Roseland moved for a judgment on the pleadings arguing, in part, that the 26 payment agreements' merger clause superseded all prior agreements, including the 13 payment agreements. The trial court agreed and proceeded to trial solely on the plaintiffs' claim for 26 severance payments.

¶ 4 After the plaintiffs presented their case, the trial court denied Roseland's motion for a directed verdict and after a two-day bench trial, entered judgment for plaintiffs, but awarded them only 13 severance payments. The trial court rejected Roseland's argument that Roseland's CEO, Powell, had no authority to execute the severance agreements. But, the trial court found that plaintiffs failed to prove the parties modified the agreements to provide for 26 severance payments. Plaintiffs amended their complaint to add a claim for breach of the 13 payment agreements.

¶ 5 Roseland appeals contending the trial court erred in (i) denying their motion for a directed verdict, as the plaintiffs failed to prove they had valid severance agreements or that Roseland breached them, (ii) entering judgment in plaintiffs' favor, as they failed to present

sufficient evidence they had agreements for 13 severance payments, and (iii) granting plaintiffs' motion to amend their complaint to conform the pleadings to the proofs, as the dismissal of count II of plaintiffs' complaint was a final adjudication on the merits precluding amendment.

¶ 6 Plaintiffs cross-appeal, arguing the trial court should have entered judgment on the agreements providing for 26 severance payments, as that is what the parties intended and the agreements had a merger clause, which precluded the trial court from considering the parties' earlier negotiations, including the initial agreements for 13 severance payments.

¶ 7 We affirm. The trial court's denial of the directed verdict motion and its judgment in plaintiffs' favor were not against the manifest weight of the evidence, which supported a finding that Roseland, through its CEO, Powell, agreed to pay plaintiffs 13 severance payments. Further, because the dismissal of count II of the complaint was not a final adjudication on the merits, the trial court did not err in permitting plaintiffs to amend their complaint to conform the pleadings to the proof. We deny plaintiffs' cross-appeal, because the trial court's finding that the parties did not have valid agreements for 26 severance payments was not against the manifest weight of the evidence.

¶ 8 Background

¶ 9 Roseland Community Hospital located on the far south side of Chicago is deemed a "safety net hospital," as it serves a disproportionate number of patients who do not have health insurance and are unable to pay their medical bills. In May 2013, while the hospital was undergoing a due diligence review, the state instructed the Board to ask for resignations from all executive team members, which included plaintiffs and Duane Fitch, the hospital's interim chief financial officer. While meeting in executive session on May 23, the Board agreed to ask for the executive team's resignations. Genivee Chapman, the Board chair, called Dian Powell,

Roseland's CEO and president, the next day and asked her to obtain plaintiffs' resignations. (Powell was also a member of the executive team, but the testimony is conflicting as to whether the Board also asked for her resignation.) According to Chapman, the Board intended to hold the resignations pending completion of the due diligence review and its decision about the hospital's future.

¶ 10 Rather than obtain resignations, Powell met with plaintiffs on May 28, and gave them severance agreements providing that (i) their employment would terminate on June 21, 2013, (ii) Roseland would not contest their claims for unemployment benefits; (iii) they would receive 13 severance payments, and (iv) their health insurance coverage would continue for six months. The plaintiffs and Powell signed the agreements that day. The plaintiffs contend Board chair Chapman was at the meeting and, in response to a question from Torres, confirmed that Powell had authority to sign their severance agreements. Chapman acknowledged she was at the meeting, but said she only answered plaintiffs' questions about why the Board was asking for their resignations, and did not discuss the severance agreements or say Powell had authority to sign them.

¶ 11 The plaintiffs contend that sometime between May 28 and June 4, 2013, the day Powell was terminated, they continued to negotiate with her the terms of the their severance agreements and ultimately agreed to 26 rather than 13 severance payments. Despite the amendment, both the 13 payment and 26 payment agreements are dated May 28, 2013.

¶ 12 Sometime before June 21, which plaintiffs believed to be their termination date, Chapman told Torres and Thurman they were not terminated and were still hospital employees. They told Chapman they would not return to work unless the Board accepted the severance

agreements. None of the plaintiffs returned to work and the hospital sent them letters stating they had voluntarily resigned their positions effective June 21.

¶ 13 When the hospital refused to pay plaintiffs severance or continue their health insurance coverage, plaintiffs filed a complaint (which was later amended) alleging, in part, (i) breach of the 13 payment severance agreements (count II) and (ii) breach of the 26 payment severance agreements (count III). Plaintiffs sought judgments in the amount of $195,296.92 on behalf of Beck and Torres and $166,097.10 on behalf of Thurman for unpaid severance. They also sought unpaid medical coverage and out of pocket expenses for medical treatments.

¶ 14 Defendant filed a motion for judgment as to the 13 payment agreements arguing that the 26 payment agreements terminated the earlier agreements and thus, the plaintiffs may only seek to enforce the 26 payment agreements. Plaintiffs replied asserting they should be permitted to state alternate theories of recovery and the trial court should determine the validity of both agreements.

¶ 15 The trial court granted defendant's motion for judgment on count II in April 2015, stating that the 26 payment agreements included a merger clause that "supersede[d] all prior Agreements." Thus, the earlier agreements created no material fact issue. The court found that count III could not be dismissed because it raised a genuine issue of material fact as to whether Powell possessed the power to execute the agreements.

¶ 16 A two-day bench trial was held. The testimony at trial includes numerous inconsistencies. Dian Powell testified she was president and CEO of Roseland Hospital from 2011 until June 2013. Before that, she served on Roseland's Board for two or three years starting in 2003 and was Board chair for five years until 2011. From 2003 to 2013, Roseland gave severance agreements to executive team members, including three previous president/CEOs and a former

vice-president, without requiring advance Board approval. Powell said Roseland's Board had approved a "signature matrix" document giving Roseland's president authority to sign checks and enter agreements without Board approval for up to $250,000.

¶ 17 On May 23, the Board asked Powell to obtain resignations from the executive team. Powell said that although she was a member of the executive team, the Board did not ask for her resignation. The next day, Powell asked Carolyn Croswell, Roseland's human resources director, to draft agreements for the plaintiffs providing for 13 severance payments, as well as health insurance coverage for six months. Powell met with the plaintiffs in her office on May 28 to discuss the agreements. Board chair, Genivee Chapman, also was at the meeting. In response to a question from Torres, Chapman told plaintiffs that Powell had authority to sign the severance agreements. Powell also said Chapman talked to plaintiffs about the agreements and did not say that the Board needed to approve them. Powell said Chapman took the signed agreements with her but later testified that Thurman collected them and gave them to Croswell. Powell acknowledged that Croswell also drafted a severance agreement for her, which required Chapman's signature, but the agreement was never signed.

¶ 18 Sometime after the first severance agreements were signed, Torres suggested to Powell that the executive team should receive 26 severance payments. Powell agreed and the agreements were amended. Powell said she told Chapman about the amendment.

¶ 19 Croswell testified that around May 23, Powell told her the Board asked for the resignations of Powell, Thurman, and Torres but had not asked for Beck's resignation. Powell asked Croswell to draft severance agreements for her, Thurman, and Torres, and later called and asked her to also prepare one for Beck. Croswell said Board approval was not required for the

agreements and that other hospital executives had received similar agreements without Board approval.

¶ 20 Croswell drafted four severance agreements, which initially called for Genivee Chapman's signature. Croswell said Powell later told her to replace Chapman's name with Powell's name as the plaintiffs reported to her. Croswell made the changes and brought the agreements to Powell's office. Chapman was in Powell's office and Chapman gave her the agreements. Croswell said Powell's agreement provided for 26 severance payments and the plaintiffs' agreements initially provided for 13 severance payments. Later Croswell received an email from Torres with suggested changes to the agreements, including an additional 13 severance payments. Croswell contacted Powell, who told her to make the changes. After the agreements were amended, Beck told Croswell he thought 26 payments was not fair to the hospital and asked her to change his agreement back to 13 payments. Croswell said she kept copies of the agreements in her files.

¶ 21 Beck testified that on May 28, while Chapman was present, plaintiffs signed agreements for 13 severance payments. He said Powell collected the signed agreements and gave them to HR. After the meeting, Torres told Powell that they should get 26 severance payments. Powell agreed and HR inserted a new first page into the document, reflecting 26 payments. On cross-examination, Beck said he did not change his mind and tell Croswell he only wanted 13 payments.

¶ 22 Torres also testified about the meeting at which the parties signed their severance agreements. Torres said Chapman arrived after the meeting started. Torres asked Chapman if Powell had authority to sign the agreements. Chapman said yes. Torres said she was not concerned about Powell's authority to sign the agreements but only as to the monetary limits on

her authority. Torres said they signed the 13 payment agreements and Thurman forwarded them to HR, although Torres earlier testified they agreements were sent to Chapman.

¶ 23 Later, Torres met with Powell to discuss amending the agreements to provide for 26 severance payments and additional insurance coverage. Torres said the conversation continued the next week and Powell agreed to change the severance package from 13 to 26 payments and make some adjustments to the insurance coverage. Torres outlined the changes in an email she sent to Croswell, Beck, Thurman, and Powell. Torres signed only the severance agreement providing for 13 payments and HR made the changes to that document to provide for 26 payments. On June 21, the day plaintiffs believed they were to be terminated, Torres called Chapman, who told her the hospital's attorneys had the severance agreements and she would get back to her the next day. Torres never heard from Chapman.

¶ 24 Thurman testified that Powell called the plaintiffs into her office on the morning of May 24. Powell told them the Board had asked for their resignations and that Croswell was going to draw up severance agreements. Thurman said she assumed this meant Powell was being terminated too. Thurman said Chapman was at the meeting but did not say anything. During another meeting later that day, Powell gave plaintiffs copies of a severance agreement to review. Chapman walked in, and Torres asked her if Powell had authority to sign the agreements. Chapman responded yes. The plaintiffs signed the agreements and Thurman took them to Croswell.

¶ 25 The next week, Torres told Thurman she was still negotiating the terms of her agreement. Around June 4, the plaintiffs met with Powell in her office and Torres announced that Powell had agreed to increase the severance from 13 to 26 payments and to extended health insurance coverage. Thurman said she had an electronic copy of her agreement, and after talking to an HR

consultant, she made three additions to her agreement asking for a letter of recommendation, a non-disparagement clause, and an agreement by Roseland not to contest unemployment. Thurman said she printed out a new agreement and showed it to Powell, who agreed to all three changes. Thurman signed the amended agreement but did not re-date it.

¶ 26 Thurman thought the Board was aware of the severance agreements because Chapman acknowledged that Powell had authority to sign them. On June 22, Chapman called Thurman and told her she was not being fired and could come back to work. Thurman said she asked for that assurance in writing but never received it.

¶ 27 On cross-examination, Thurman changed her testimony and said the plaintiffs signed the 13 payment agreements on May 28, not May 24. She said the agreements were amended on June 4 to provide for 26 payments but only the pages with changes were switched out. She could not recall what happened to the signed agreements, but thought Croswell or Powell may have collected them. She was unable to find her copy of the agreement.

¶ 28 Plaintiffs called Genivee Chapman as an adverse witness. Chapman denied meeting with the plaintiffs or Croswell about plaintiffs' severance agreements. She said that on May 24, at Powell's request, she met with plaintiffs and explained that the State was requiring the hospital to undergo a due diligence review and the Board was asking for their resignations without an acceptance date and without approval until the State completed the review. She did not see any severance agreements and could not recall Torres asking her if Powell had authority to sign them. She did not recall the Board approving a signature authority matrix and had no knowledge about Powell's authority to sign checks. She said the Board did not know about the agreements and that Powell gave her some documents but asked for them back, so she did not have them. Chapman said Powell asked her to sign Powell's severance agreement but she did not because it

had to be approved by the Board and reviewed by the hospital's attorneys. She also said she did not tell Powell that she should sign off on plaintiffs' agreements.

¶ 29 Plaintiffs submitted the evidence deposition of Duane Fitch, Roseland's interim CFO in 2013. Fitch said the Board adopted the signature authority matrix, which he updated in 2012, as the Board wanted to give Powell more discretion and increase her spending limits. The changes were approved by the Finance Committee and the Board. Under the revised document, only the president's signature was required for contracts exceeding $250,000 in annual expenses.

¶ 30 After plaintiffs rested, defendant moved for a directed verdict. The trial court discharged all party defendants except Roseland and denied the request for a directed finding.

¶ 31 Roseland called Chapman as a witness. She said that she was appointed the Roseland Hospital Board in 1996 and became Board chair in 2012. The Board met on May 23, 2013, and while in executive session, decided to request the resignations of all executive team members. After the meeting, Chapman called Powell to inform her of the Board's decision. The next day, Powell asked her to talk to the executive team about why the Board asked for their resignations. Chapman went to Powell's office and told the plaintiffs the Board was undergoing a due diligence review and the State asked for all executive team members resignations without an acceptance date and without it being approved.

¶ 32 Chapman said she had no discussions with executive team members on May 24 about severance agreements and did not authorize Powell to enter agreements with any of the plaintiffs. Powell called Chapman on May 28, and told her she had plaintiffs' resignations. Chapman went to Powell's office and picked up documents she thought were resignations. Later, Powell called Chapman and asked her to bring the documents back because the executive team wanted their

attorneys to review them. Chapman made copies of the documents and returned them to Powell. She said the documents were never submitted to or approved by the Board.

¶ 33 Chapman called Powell on June 3, and told her the Board wanted her immediate resignation. The next day, Chapman and other Board members told Powell that she had to leave the hospital premises. Chapman said that representatives from the State were visiting the hospital to determine if it should be closed and because the State had asked for executive team member resignations, the Board wanted to make sure Powell was gone. Powell left the hospital and did not return. She was paid through June 21. The Board appointed Chapman interim CEO.

¶ 34 Chapman said she first learned of the severance agreements on June 12, when Beck told her and another Board member that the agreements were in plaintiffs' HR files. Chapman told Beck that the Board had not approved the agreements.

¶ 35 Chapman said that before plaintiffs' termination date, she spoke to Torres and Thurman and told them they were not terminated and were still hospital employees. They told her they would not return to work unless the Board accepted the severance agreements. When plaintiffs did not return to work, the hospital sent them letters stating they had voluntarily resigned their positions effective June 21.

¶ 36 After closing arguments, the trial court entered judgment in plaintiffs' favor. The court found the plaintiffs proved, based on the testimony of Croswell, Powell, Beck, Torres, Thurman, and to a lesser extent Chapman, that on May 24, Roseland entered into initial agreements with plaintiffs for 13 severance payments. (The trial court later acknowledged that the agreements were actually signed on May 28.) The trial court noted that Chapman denied she was present for certain meetings but found her testimony "in that regard was not credible." The trial court stated, [t]he May 24th—they would not be supported by any particular consideration. There's no

negotiation. They're at will employees. There isn't any particular reason that these contracts existed in the first place. Nonetheless, Powell had the authority to enter into them on May 24th on behalf of the hospital and she did."

¶ 37 The trial court rejected plaintiffs' claim that the initial agreements were modified a few days later to provide for 26 severance payments. The court said, the "[m]odification the parties attempted to make pursuant to paragraph 9 of the May 24 agreement must be made in writing, signed by the parties. The plaintiffs failed to demonstrate that the modifications were entered into."

¶ 38 The trial court found Roseland did not prove its affirmative defense of lack of authority primarily because the hospital had no particular policy for what a president could do until the signature matrix was created. Powell was the hospital's president at the time the agreements were entered into and the hospital did not limit her authority in any way until firing her. Thus, the court entered judgment for the plaintiffs on the 13 payment agreements. The court also found the plaintiffs proved by a preponderance of the evidence that Roseland violated the agreements to continue medical insurance coverage but failed to prove damages.

¶ 39 Roseland filed a motion to vacate the judgment and asked the court to enter judgment in its favor. Roseland argued, in part, that the trial court had dismissed count II seeking to recover on the 13 payment agreements and thus could not enter judgment on it. Roseland also contended plaintiffs failed to present any documentary evidence of the 13 payment agreements for Thurman and Torres. Plaintiffs moved to refile count II to conform the pleadings to the proof.

¶ 40 During a hearing on the motions, Roseland argued that the trial court's judgment awarding 13 severance payments "doesn't square with the pleading before the court *** [b]ecause the law of the case was defined prior to the trial when you dismissed [count II of

plaintiff's complaint] with prejudice. *** We were at trial on one claim and one claim alone. *** A judgment came down completely contrary to the laws and the facts." Roseland also argued that because plaintiffs decided not to appeal the order entering judgment on count II, which was a final order, plaintiffs should not be permitted to file an untimely amendment to conform their pleadings to the proof.

¶ 41 The trial court expressed concern that Roseland was surprised by its judgment in plaintiffs' favor, noting that most of Roseland's case involved its affirmative defense that Powell did not have authority to enter the agreements and not whether there was sufficient evidence of the agreements. The court asked Roseland's attorney what additional evidence regarding the 13 payment severance agreements it would present. Roseland's attorney said there was no new additional evidence. The trial court entered an order granting Roseland's motion to vacate, but rejecting Roseland's request to enter judgment in its favor. The court granted plaintiffs' request to file amended pleadings to conform to the proof and permitted Roseland to file a reply to plaintiffs' amended pleadings. The court would review the evidence to determine if there was proof of the 13 payment agreements.

¶ 42 Roseland appealed, asking this court to reverse the part of the trial court's order granting plaintiffs' motion to conform the pleadings to the proof and the part denying defendants' request for judgment in its favor. The appellate court dismissed the appeal finding the order was not final.

¶ 43 Plaintiffs then filed a third amended complaint alleging in count I breach of the 13 payment severance agreements and, in the alternative, in count II breach of the 26 payments severance agreements. Roseland filed a motion to strike the amended complaint arguing it did

not conform the pleadings to the proof and exceeded what the trial court allowed by including a count asking for 26 severance payments.

¶ 44 During argument on the motion to amend the pleadings, plaintiffs asked the trial court to vacate its April 2015 order dismissing count II of their amended complaint, asserting they should have been allowed to argue they were entitled to a judgment under either the 13 or 26 payment agreements. Plaintiffs also asked the court to enter judgment on the 26 payment agreements based on the evidence at trial.

¶ 45 Roseland argued the judgment on the pleadings as to count II of plaintiffs' complaint was proper and thus, the court should not have entered judgment for plaintiffs on the 13 payment severance agreements. Roseland also argued the court cannot enter judgment on the 26 payment agreements because the court already stated there was no new consideration for it.

¶ 46 After the hearing, the trial court entered judgment in plaintiffs' favor awarding 13 severance payments. The court denied plaintiffs' request to reconsider its April 2015 order entering judgment on count II of its complaint and their request for 26 severance payments. The court agreed with Roseland that the pleadings "have been less than tidy," but concluded that plaintiffs' third amended complaint conformed to what was proved at trial. The court entered a judgment order in plaintiffs' favor in the amount of $83,048.55 for Thurman, $97,648.96 for Torres, and $72,645.82 for Beck, which amount to 13 severance payments, subject to applicable state and federal taxes.

¶ 47 Analysis

¶ 48 Denial of Motion for Directed Verdict

¶ 49 Roseland first contends the trial court's denial of its motion for a directed finding after the plaintiffs rested was against the manifest weight of the evidence as the plaintiffs failed to establish that agreements existed or that Roseland breached them.

¶ 50 In a bench trial, section 2-1110 of the Code of Civil Procedure (735 ILCS 5/2-1110 (West 2016)) allows a defendant, at the close of the plaintiff's case, to move for a finding or judgment in his or her favor. In ruling on this motion, a court engages in a two-step analysis. *527 S. Clinton, LLC v. Westloop Equities, LLC*, 403 Ill. App. 3d 42, 52 (2010). First, the court determines as a matter of law whether the plaintiff has presented a *prima facie* case, meaning the court must ask whether the plaintiff presented some evidence on each element essential to the cause of action. *Id*. Second, if the plaintiff presented some evidence on each element, the court then considers and weighs the totality of the evidence, including evidence favorable to the defendant, to determine whether the *prima facie* case survives. *Hatchett v. W2X, Inc.*, 2013 IL App (1st) 121758, ¶ 35. Generally, in ruling on a section 2-1110 motion, evidence examined under the second prong must prove the plaintiff's case by a preponderance of the evidence. *Baker v. Jewel Food Stores, Inc.*, 355 Ill. App. 3d 62, 68 (2005).

¶ 51 In a bench trial, the trial court sits as the trier of fact, hearing the witnesses and reviewing the direct presentation of the evidence, and it therefore is in the best position to make credibility determinations and factual findings. *Prignano v. Prignano*, 405 Ill. App. 3d 801, 810 (2010). After weighing all the evidence, the court should determine, applying the standard of proof required for the underlying cause, whether sufficient evidence remains to establish the plaintiff's *prima facie* case. *People ex rel. Sherman v. Cryns*, 203 Ill. 2d 264, 276 (2003). " '[I]f sufficient evidence necessary to establish the plaintiff's *prima facie* case remains following the weighing process, the court should deny the defendant's motion and proceed as if the motion had not been

made.' " *Barnes v. Michalski*, 399 Ill. App. 3d 254, 263 (2010) (quoting *Kokinis v. Kotrich*, 81 Ill. 2d 151, 155 (1980)). The decision of the trial court on a defendant's motion for judgment should not be reversed unless it is contrary to the manifest weight of the evidence. *Cryns*, 203 Ill. 2d at 276.

¶ 52 To succeed on a claim for breach of contract, a plaintiff must plead and prove (i) the existence of a contract, (ii) the performance of its conditions by the plaintiff, (iii) a breach by the defendant, and (iv) damages as a result of the breach. *Roberts v. Adkins*, 397 Ill. App. 3d 858, 866-67 (2010) (citing *Kopley Group V., L.P. v. Sheridan Edgewater Properties, Ltd*., 376 Ill. App. 3d 1006, 1014 (2007)). Roseland contends the plaintiffs failed to present sufficient evidence to establish two elements of a *prima facie* case of breach of contract claim (i) evidence of valid severance agreements and (ii) evidence of a breach, as the plaintiffs were never terminated, which was necessary to trigger the agreements.

¶ 53 The record shows plaintiffs admitted into evidence an agreement signed by Douglas Beck and Dian Powell and dated May 28, providing for 13 severance payments. Although Torres' and Thurman's agreements were not in evidence, all of the plaintiffs and Powell testified that they signed similar severance agreements on that date in the presence of Board chair Genivee Chapman, who confirmed for the plaintiffs that Powell had authority to sign the agreements. Carolyn Croswell testified that she drafted the agreements, that Chapman told her Powell should sign them because she was plaintiffs' supervisor, and that she later saw signed copies of the 13 payment agreements. Chapman refuted plaintiffs' testimony and denied that she was even aware of the severance agreements on May 28, but the trial court found much of her testimony not credible. Thus, plaintiffs presented sufficient evidence they had valid 13 payment severance agreements. Indeed, although Roseland contends plaintiffs' testimony was contradictory and

inconsistent, the hospital acknowledges as much in its brief stating "[t]he only fact upon which Plaintiffs could agree in their testimony at trial, only after they each changed their stories several times and contradicted prior verified pleadings and affidavits, was that they each signed Agreements on May 28, 2013, giving them each 13 pay periods of severance."

¶ 54 Next, Roseland contends plaintiffs failed to prove breach, as plaintiffs were never terminated, which was necessary to trigger the agreements. This argument is without merit. The severance agreements provided that plaintiffs' employment would terminate on June 21. Moreover, the plaintiffs all received letters from Roseland dated June 28, stating they were no longer employed.

¶ 55 Roseland contends the plaintiffs presented no evidence of the severance agreements and the trial court abused its discretion by admitting into evidence a photocopy of the severance agreement plaintiffs attached to their second amended complaint. The decision to admit or exclude evidence rests within the sound discretion of the trial court, and that decision will not be disturbed in the absence of an abuse of that discretion. *City of Chicago v. St. John's United Church of Christ*, 404 Ill. App. 3d 505, 518-19 (2010) (citing *Wilbourn v. Cavalenes*, 398 Ill. App. 3d 837, 847 (2010)). An abuse of discretion occurs in the admission of evidence when no reasonable person would take the view adopted by the trial court. *United States Bank v. Lindsey*, 397 Ill. App. 3d 437, 456 (2009) (citing *Bauer v. Memorial Hospital*, 377 Ill. App. 3d 895, 912 (2007)).

¶ 56 Defendants maintain there was no foundation for introducing into evidence a photocopy of the severance agreement and the copy should not have been admitted under the best evidence rule. Under the best evidence rule, "to lay a foundation for the admission of a copy of an original writing, the proponent must prove the prior existence of the original, its loss, destruction, or

unavailability, the authenticity of the substitute, and the proponent's own diligence in attempting to procure the original. [Citations.]" *Rybak v. Provenzale*, 181 Ill. App. 3d 884, 890 (1989). A duplicate of a document is admissible in Illinois to the same extent as an original unless a genuine issue is raised as to the authenticity of the original or unless it would be unfair to admit the duplicate as an original under the circumstances of the case. *Law Offices of Colleen M. McLaughlin*, 2011 IL App (1st) 101849, ¶ 30.

¶ 57 We note that any challenge to the admissibility of the severance agreements into evidence has been forfeited because Roseland made no objections at trial. See *Young v. Alden Gardens of Waterford, LLC*, 2015 IL App (1st) 131887, ¶ 71 (failure to raise or renew an objection during the trial "results in forfeiture of the ability to challenge the trial court's consideration of that evidence."). Moreover, plaintiffs could not have offered the original severance agreements because they did not have them in their possession and only had duplicates. Although the testimony about what happened to the original agreements was conflicting, Croswell testified that she kept the agreements and all amendments in a file in her office originals in her office. While other witnesses offered different testimony about what happened to the original agreements after they were signed, there was no contention they were not in Roseland's possession. Plaintiffs requested copies of the agreements in discovery but Roseland never produced them. Thus, because plaintiffs proved the existence of the original agreements, their unavailability, the authenticity of the substitute, and their own due diligence in trying to procure the originals, it was not unfair to the defendant or an abuse of discretion to admit the duplicates.

¶ 58 Judgment for Plaintiffs

¶ 59 Next, Roseland argues the trial court's judgment in plaintiff's favor for 13 severance payments was against the manifest weight of the evidence. Roseland contends the plaintiffs' case

consisted of contradictory testimony about the creation of the severance agreements and no evidence of 13 payment severance agreements. Conversely, Roseland asserts the testimony of Chapman was "clear and concise, and offered a consistent and logical timeline of events, unlike the constantly changing testimony of plaintiffs and their witnesses."

¶ 60 A trial court's judgment after a bench trial will not be reversed unless it is against the manifest weight of the evidence. *Northwestern Memorial Hospital v. Sharif*, 2014 IL App (1st) 133008, ¶ 25. "Against the manifest weight of the evidence" means that, based on the record, the judgment is arbitrary, unreasonable, not based on evidence, or the opposite conclusion is apparent. *Munson v. Rinke*, 395 Ill. App. 3d 789, 795 (2009). We give great deference to the finder's credibility determinations and will not substitute our judgment for the fact finder's. *Samour, Inc. v. Board of Election Commissioners*, 224 Ill. 2d 530, 548 (2007) ("fact finder is in the best position to evaluate the conduct and demeanor of the witnesses"). "[W]e may affirm the judgment of the trial court on any basis in the record, regardless of whether the trial court relied upon that basis or whether the trial court's reasoning was correct." *Alpha School Bus Co. v. Wagner*, 391 Ill. App. 3d 722, 734 (2009). Nevertheless, we may not overturn a judgment on the basis that we disagree with it or that, as the trier of fact, we might have arrived at a different result. *Eychaner v. Gross*, 202 Ill. 2d 228, 271 (2002).

¶ 61 First, as to Chapman's testimony, the trial court found she was not credible. In issuing its judgment, the court stated, "Chapman denied that she was present at certain meetings. I find her testimony in that regard was not credible." The court also stated that "Chapman's demeanor and testimony were foggy. *** I definitely do not think she lied, but there was a lot she did not know." As noted, the judge in a bench trial is in a better position than the appellate court to

evaluate a witnesses conduct and demeanor. *Samour, Inc.*, 224 Ill. 2d at 548. Thus, we will defer to his credibility determinations.

¶ 62 Moreover, even if Chapman's testimony was credible, it does not refute the validity of the severance agreements or the fundamental issue underlying Roseland's affirmative defense, *i.e.*, whether Powell had authority to enter into the agreements with the plaintiffs. Indeed, Chapman supported plaintiffs' argument that Powell had authority to enter into the agreements at the time they were executed. Specifically, although Chapman testified that she did not authorize Powell to sign the severance agreements, she did not refute the testimony from plaintiffs' witnesses that Powell, Roseland's president and CEO, had authority under the signature matrix to execute the agreements.

¶ 63 Roseland also asserts even if plaintiffs had agreements for 13 severance payments dated May 28, there was no cause of action before the trial court because count II of the second amended complaint had been dismissed with prejudice and plaintiff's attorney acknowledged at the close of the case that they were seeking to enforce the 26 payment agreements. Further, Roseland asserts, plaintiffs did not produce originals or copies of 13 payment severance agreements for Thurman and Torres, and only produced a copy of 13 payment agreement for Beck and copies of 26 payment agreements for Thurman and Torres. Roseland contends that this lack of documentary evidence along with plaintiffs' contradictory pleadings and testimony was insufficient to support the trial court's judgment.

¶ 64 We disagree. Contrary to Roseland's assertion, count II of the second amended complaint was not dismissed *with prejudice.* And, as addressed more fully below, under section 2-616(a) of the Code of Civil Procedure, the trial court may at any time *before* final judgment, permit amendments on just and reasonable terms to enable the plaintiff to sustain the claim brought in

the suit. 735 ILCS 5/2-616(a) (West 2016). Whether to allow an amendment of a complaint is a matter within the sound discretion of the trial court, and will not be overturned on review absent an abuse of that discretion. *Village of Wadsworth v. Kerton*, 311 Ill. App. 3d 829, 842 (2000). After hearing the evidence, the trial court determined that plaintiffs had proven that on May 28, Roseland, through its CEO Powell, and the plaintiffs executed valid agreements providing for 13 severance payments. When Roseland expressed surprise that the trial court had entered judgment on the 13 payments severance agreements as that count had been dismissed, the court permitted Roseland to present additional evidence to support its claim that the 13 payment agreements were not valid. Roseland responded that it had no new additional evidence. The better practice would have been for the trial court to make a specific ruling that it was vacating its order dismissing count II of the amended complaint when it realized the evidence was centering on the 13 payment agreements, and permitting Roseland at that time to present evidence on that count. But, the trial court did not abuse its discretion by instead permitting plaintiffs to amend their complaint to sustain that claim.

¶ 65 Motion to Amend Pleadings

¶ 66 Lastly, Roseland argues the trial court erred in permitting plaintiffs to amend their complaint to conform the pleadings to the proof because the dismissal of count II of the second amended complaint was a final adjudication on the merits, which precluded later amendment.

¶ 67 Section 2-616(a) of the Code provides that at any time *before* final judgment, the court may permit amendments on just and reasonable terms to enable the plaintiff to sustain the claim brought in the suit. 735 ILCS 5/2-616(a) (West 2016). In considering whether a trial court abused its discretion in ruling on a motion for leave to file an amended complaint, the reviewing court considers "(1) whether the proposed amendment would cure the defective pleading; (2)

whether other parties would sustain prejudice or surprise by virtue of the proposed amendment; (3) whether the proposed amendment is timely; and (4) whether previous opportunities to amend the pleadings could be identified." *Compton v. Country Mutual Insurance Co.*, 382 Ill. App. 3d 323, 332 (2008). "Whether to allow an amendment of a complaint is a matter within the sound discretion of the trial court, and, absent an abuse of that discretion, the court's determination will not be overturned on review." *Village of Wadsworth v. Kerton*, 311 Ill. App. 3d 829, 842 (2000). A trial court abuses its discretion when no reasonable person would take the view adopted by the trial court. *Id*. at 331-32.

¶ 68 Roseland contends the trial court's order dismissing count II was a final adjudication on the merits under Illinois Supreme Court Rule 273 (eff. Jan. 1, 1967), which cut off plaintiffs' right to later amend their complaint. We disagree.

¶ 69 Rule 273 provides that "[u]nless the order of dismissal or a statute of this State otherwise specifies, an involuntary dismissal of an action, other than a dismissal for lack of jurisdiction, for improper venue or for failure to join an indispensible party operates as an adjudication on the merits." Ill. S. Ct. R. 273 (eff. Jan. 1, 1967).

¶ 70 First, the dismissal of count II was not an adjudication "on the merits" of that claim. The trial court dismissed that count because it determined that the merger clause in the 26 payment severance agreements made it unnecessary for the court to consider the validity of 13 payment severance agreements.

¶ 71 Moreover, the trial court's order dismissing count II of the complaint was based on the court's determination that the merger clause in the 26 payment severance agreements made it unnecessary to consider earlier agreements. The court stated there remained a genuine issue of material fact as to whether Powell possessed authority to sign the agreements, and therefore, the

entire complaint could not be dismissed. Significantly, the order did not include Rule 304 language or findings regarding finality or appealability. Ill. S.Ct. R. 304(a) (eff. Feb. 26, 2010) (Rule requires "an express written finding" that there is no just reason for delaying enforcement or appeal of the order). Because the dismissal of count II was not a final judgment on the merits, the trial court could exercise its authority under section 2-616(a) of the Code to permit amendments before a final judgment was entered, on just and reasonable terms, to enable the plaintiffs to sustain the claim brought in the suit.

¶ 72 Cross-Appeal for 26 Severance Payments

¶ 73 Plaintiffs cross-appeal, arguing the trial court should have entered judgment on the agreements providing for 26 severance payments because that is what the parties intended and the agreements had a merger clause, which precluded the court from considering the parties' earlier negotiations, including the initial agreements for 13 severance payments.

¶ 74 As noted, we apply a deferential standard of review and will not substitute our judgment for that of the trial court in a bench trial unless the judgment is against the manifest weight of the evidence. *Chicago's Pizza, Inc. v. Chicago's Pizza Franchise Ltd. USA*, 384 Ill. App. 3d 849, 859 (2008). "[W]e may only conclude that the trial court's determination was against the manifest weight of the evidence where, upon review of all the evidence in the light most favorable to *** the prevailing party, 'an opposite conclusion is clearly apparent or the [trial court's] finding is palpably erroneous and wholly unwarranted, is clearly the result of passion or prejudice, or appears to be arbitrary and unsubstantiated by the evidence.' " *Bernstein & Grazien, P.C. v. Grazian & Volpe, P.C.*, 402 Ill. App. 3d 961, 976 (2010) (quoting *Joel R. v. Board of Education of Mannheim School District 83*, 292 Ill. App. 3d 607, 613 (1997)).

¶ 75 In a bench trial, the trial court is "responsible for resolving any factual disputes, judging the credibility of the witnesses, determining the weight to afford their testimony and deciphering contradicting evidence." *Bernstein & Grazien, P.C.*, 402 Ill. App. 3d at 976. We will not conclude that its findings are against the manifest weight of the evidence "merely because the record might support a contrary decision [citations] and we are not to overturn these simply because we may disagree with them [citation.]." *Id.*

¶ 76 Traditional principles of contract interpretation require a court, when construing a contract, to ascertain and give effect to the intent of the parties. *Eichengreen v. Rollins, Inc.*, 325 Ill. App. 3d 517, 521 (2001). A written contract is presumed to speak the intention of the parties who signed it, and their intentions must be determined from the language used. *Air Safety, Inc. v. Teachers Realty Corp.*, 185 Ill. 2d 457, 462 (1999) (quoting *Western Illinois Oil Co. v. Thompson*, 26 Ill. 2d 287, 291 (1962)). The parol evidence rule generally precludes evidence of understandings not reflected in the contract, reached before or at the time of its execution, which would vary or modify its terms. *Eichengreen*, 325 Ill. App. 3d at 521. Further, a court will not consider parol evidence of prior negotiations to create an "extrinsic ambiguity" where the parties to a contract have included an integration clause. *Air Safety, Inc.*, 185 Ill. 2d at 464-65.

¶ 77 Plaintiffs contend the trial court should not have considered the first agreements providing for 13 severance payments because the integration clause in the second severance agreements merged all prior agreements and precluded the court from considering earlier negotiations. But, the trial court determined that the plaintiffs failed to present evidence of valid and enforceable agreements for 26 severance payments. The trial court was responsible for resolving factual disputes, judging witness credibility, determining the weight to afford their testimony, and deciphering contradicting evidence. *Bernstein & Grazien, P.C.*, 402 Ill. App. 3d

at 976. We cannot find that the trial court's finding, based on its evaluation of the evidence and the witnesses, that the plaintiffs did not have enforceable 26 payment severance agreements is contrary to the manifest weight of the evidence. Absent enforceable agreements, there was no integration clause that would preclude the court from entering a judgment for plaintiffs for 13 rather than 26 severance payments.

¶ 78 Affirmed.