

No. 1-18-1692

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

HAROLD ALDRIDGE,)	
)	Appeal from the Circuit Court of
Plaintiff-Appellant,)	Cook County.
)	
v.)	No. 17 M1 300234
)	
JAMES CARROLL,)	Honorable Brendan A. O'Brien,
)	Judge Presiding
Defendant-Appellee.)	
)	

JUSTICE ELLIS delivered the judgment of the court.
Presiding Justice Fitzgerald Smith and Justice Cobbs concurred in the judgment.

ORDER

- ¶ 1 *Held:* Affirmed. Absent copy of trial transcript or appropriate substitute in record on appeal, appellate court had no basis to reverse circuit court's order granting defendant new trial.
- ¶ 2 Plaintiff Harold Aldridge sued defendant James Carroll for negligence arising from an automobile collision. At some point before trial, the court excused Carroll from attending trial.
- ¶ 3 During the closing argument portion of the jury trial that ensued, Aldridge's attorney made two comments to which the trial court sustained objections. The first comment related to Carroll's absence at trial; the second was that Carroll did not approach Aldridge at the time of the accident to see if he was injured. In addition to objecting, Carroll's attorney requested a

mistrial, but the court denied that relief. The jury ultimately returned a verdict in favor of Aldridge for \$35,000.

¶ 4 Carroll then filed a post-trial motion for a new trial, arguing that he was denied a fair trial by Aldridge's attorney's improper statements during closing argument. In a written order, the court granted the motion, finding that "Plaintiff's counsel's conduct during closing argument was improper, caused actual prejudice to defendant based on the totality of the trial and the court erred in denying defendant's timely motion for a mistrial."

¶ 5 Aldridge appeals that order, claiming the trial court abused its discretion in granting a new trial. Though Carroll did not file a brief before this court, we have taken this appeal on the appellant's brief only. See *First Capitol Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 131-33 (1976); *Direct Auto Insurance Co. v. Koziol*, 2018 IL App (1st) 171931, ¶ 1.

¶ 6 But we face an insurmountable obstacle: The record on appeal in this court contains no report of proceedings (if one ever existed). Nor have we been presented with a bystander's report or a stipulation as to the facts. See Ill. S. Ct. R. 323(c), (d) (eff. July 1, 2017).

¶ 7 So we have no way of reviewing the trial transcript. And without reviewing the testimony and evidence at trial, much less the closing arguments in total, we have no basis to determine whether the trial court abused its discretion in finding prejudicial error and granting a new trial. See *First National Bank of La Grange v. Glen Oaks Hospital*, 357 Ill. App. 3d 828, 833 (2005) (applying abuse-of-discretion standard of review to grant of new trial).

¶ 8 Though Aldridge's brief appeared to detail for us the testimony and evidence at trial, we find no citations to a record (again, perhaps because one does not exist). And while we would not suggest that counsel has been anything but accurate in his recitation of the facts, we may not simply take his word for it. To the contrary, when we are asked to consider an issue that (as here)

requires a review of the transcript of proceedings, and we are not supplied that transcript, we have no choice but to presume “that the order entered by the trial court was in conformity with law and had a sufficient factual basis.” *Foutch v. O’Bryant*, 99 Ill. 2d 389, 391–92 (1984).

¶ 9 We thus cannot meaningfully review the trial court’s order granting a new trial. See *Cardona v. Del Granado*, 377 Ill. App. 3d 379, 386 (2007) (affirming grant of new trial “[d]ue to the inadequate nature of the record in this case,” rendering “meaningful review of the defendant’s contention *** impossible.”); *Hye Ra Han v. Holloway*, 408 Ill. App. 3d 387, 390 (2011) (affirming denial of new trial because “[w]ithout a transcript of plaintiff’s trial testimony, there is no adequate basis for concluding the trial court abused its discretion”). Absent any basis for overturning the trial court’s judgment, we presume it to be supported by the law and facts.

¶ 10 Affirmed.