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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

| | | |
|-----------------------|---|-------------------------------|
| KEVIN MORGAN, |) | Appeal from the Circuit Court |
| |) | of Cook County. |
| Plaintiff-Appellee, |) | |
| |) | |
| v. |) | No. 16 M1 100669 |
| |) | |
| T. JAMES HALPIN, JR., |) | |
| |) | The Honorable |
| Defendant-Appellant. |) | Mary Kathleen McHugh, |
| |) | Judge Presiding. |

JUSTICE PUCINSKI delivered the judgment of the court.
Justice Hyman concurred in the judgment.
Presiding Justice Lavin dissented in the judgment.

ORDER

¶ 1 *Held:* Where the trial court’s calculation of the profits earned on the sale of the property did not account for the defendant’s expenditures in purchasing the subject property, the trial court’s determination of plaintiff’s share of the profits was against the manifest weight of the evidence.

¶ 2 Following a bench trial, the trial court entered judgment against defendant, T. James Halpin, Jr., and in favor of plaintiff, Kevin Morgan, on plaintiff’s claim for breach of contract. Defendant appeals, arguing that the trial court misconstrued the definition of the term “profits”

as used in the parties' agreement and, alternatively, if the trial court did not misconstrue the term, its award of damages to plaintiff was against the manifest weight of the evidence. For the reasons that follow, we reverse.

¶ 3

BACKGROUND

¶ 4

The record on appeal does not contain a transcript of the bench trial proceedings. It does, however, contain a certified bystander's report. According to the bystander's report, plaintiff testified that he was acquainted with Tamara Semec, and she told him that she had a property that she wanted to sell ("the property"). Plaintiff approached defendant and informed defendant that he knew someone who had a property she wanted to sell for a bargain price. Plaintiff offered that if defendant would agree to split the profits from the sale of the property with plaintiff 50/50, then plaintiff would introduce defendant to Semec. Thereafter, on April 11, 2008, plaintiff and defendant entered into an agreement that provided as follows:

"T. James Halpin Jr. and Kevin Morgan agree to split 50/50 the profits from the purchase and sale of the property located at 6122 S. Rutherford[,] Ch[icago,] Ill[inois].

T. James Halpin Jr. agrees to obtain use [*sic*] a home equity or other type of loan against the property to advance Kevin Morgan within 20 days after the closing on this property \$20,000 of his share of the profit until the house on Rutherford is sold."

Although the parties' agreement called for an advance to plaintiff of \$20,000, defendant only advanced \$16,000 to plaintiff.

¶ 5

Subsequently, plaintiff learned that the property had been sold for \$160,000. Plaintiff demanded his share of the profits, but did not receive it. According to plaintiff, because the property had been purchased for \$80,000 and sold for \$160,000, he was entitled to half of the \$80,000 profits, minus the \$16,000 that defendant advanced to him. In other words, plaintiff

believed that he was entitled to \$24,000 from defendant ($\$80,000/2 - \$16,000 = \$24,000$). Plaintiff also testified that defendant received \$60,000 from First American Title Company, but did not share any of those funds with plaintiff.

¶ 6 The bystander's report indicates that defendant's trial testimony was largely consistent with plaintiff's testimony. He testified that in 2008, plaintiff approached him and told him that plaintiff knew a woman who wanted to sell a house that she had inherited for a bargain price. Plaintiff proposed that if defendant would agree to give plaintiff half of the profits from the purchase and sale of the property, plaintiff would introduce defendant to the woman. Thereafter, on April 11, 2008, the parties entered into a written agreement, which is quoted above.

¶ 7 On May 21, 2008, defendant purchased the property at 6122 S. Rutherford in Chicago via warranty deed from Semec. According to the closing statement for defendant's purchase of the property, the purchase price was \$80,000, and defendant incurred \$5,623.32 in buyer charges. Although the parties' written agreement called for defendant to advance \$20,000 to plaintiff, he only advanced \$16,000 to plaintiff.

¶ 8 Sometime after his purchase of the property, defendant filed a claim with First American Title Company, claiming fraud in the sale of the property. The details of defendant's fraud claim are not contained in the record. As a result, First American Title Company paid defendant \$60,000. In June 2009, defendant sold the property. Defendant testified that he received \$35,000.75 from the sale of the property, in addition to the \$60,000 he received from First American Title Company, for a total of \$95,000.75.

¶ 9 A disbursement summary report from defendant's sale of the property in June 2009, which was admitted into evidence, confirms that defendant received \$35,000.75 from the sale of the property, and the Estate of Linda L. Ochodnický received \$105,002.28. The relationship

between the Estate of Linda L. Ochodnicky and the property is not explained in the record. A final settlement statement from the sale, also entered into evidence, indicates that the remaining portion of the \$160,000 sales price was used for various closing costs.

¶ 10 Following the presentation of evidence, on June 6, 2018, the trial court entered judgment in favor of plaintiff and against defendant in the amount of \$31,500.00.

¶ 11 According to the bystander's report, on October 17, 2018, the trial court denied a posttrial motion filed by defendant, stating that the trial court "had reviewed [its] trial notes and believed that the judgment order reflected the agreement of the parties and that [the trial court] awarded Plaintiff half of what he [defendant] received from the sale and the title company, less the advance."

¶ 12 Defendant filed his notice of appeal on November 13, 2018.

¶ 13 ANALYSIS

¶ 14 On appeal, defendant argues that the trial court either (1) misinterpreted the term "profits" as used in the parties' agreement, or (2) the trial court failed to take into account the expenses incurred by defendant in the purchase of the property when it calculated the profits realized on the sale of the property. We agree with defendant and, therefore, we reverse.

¶ 15 Defendant's first contention is that the trial court misinterpreted the term "profits" in the parties' agreement, in that it did not interpret it as meaning the amount realized after deducting the expenses in purchasing the property from the total amount defendant received from the subsequent sale of the property. According to defendant, the trial court must have misinterpreted the term "profits" as merely the gross proceeds from the sale, because the trial court did not deduct the expenses defendant incurred in purchasing the property before dividing the sale proceeds between the parties. Plaintiff agrees that the proper understanding of the term "profits"

as used in the parties' agreement is the amount realized after deducting the expenses in purchasing the property from the total amount defendant received from the subsequent sale of the property but disagrees that the trial court did not apply this interpretation. Given that there is no dispute between the parties that the proper interpretation of the term "profits" as used in their written agreement requires the consideration of defendant's purchase expenses, we turn to the question of whether the trial court properly applied this interpretation and whether its ultimate finding that plaintiff's share of the profits was \$31,500 was against the manifest weight of the evidence. See *In re Marriage of Kendra*, 351 Ill. App. 3d 826, 829 (2004) ("The decision of the trial court following a bench trial should be overturned only if it is against the manifest weight of the evidence. [Citation.] A decision is against the manifest weight of the evidence when the opposite conclusion is apparent or when the ruling is unreasonably arbitrary or not based on the evidence.").

¶ 16 Defendant argues that in order to reach a conclusion that plaintiff was entitled to \$31,500 while still properly interpreting the term "profits," the trial court must have concluded that defendant did not pay anything to purchase the property and such a finding would have been against the manifest weight of the evidence. Plaintiff argues in response that such a finding would not have been against the manifest weight of the evidence, because defendant did not present sufficient evidence that he paid the claimed purchase price or that he successfully purchased a full interest in the property. We reject plaintiff's contention that defendant failed to present sufficient evidence that he paid \$80,000 to purchase the property. We also reject the notion that any failure to purchase a complete interest in the property has any impact on the share of profits to which plaintiff was entitled. Instead, we agree with defendant that the trial court's

failure to take into account defendant's purchase expenses when calculating plaintiff's share of profits resulted in an award that was against the manifest weight of the evidence.

¶ 17 The record before us reveals that defendant testified that he purchased the property for \$80,000 and also paid \$5,623.32 in "Buyer Charges." The final settlement statement for the purchase of the property substantiates defendant's testimony. It lists defendant as the buyer of the property and identifies the purchase price of the property as \$80,000 and a total of \$5,623.32 in other buyer charges. It appears that plaintiff agreed with the notion that defendant paid \$80,000 to purchase the property. Although the summary of plaintiff's testimony in the bystander's report does not indicate that plaintiff identified defendant as the purchaser of the property, plaintiff did testify that the property was purchased for \$80,000. Moreover, plaintiff must have believed that it was defendant who paid the \$80,000 purchase price, because plaintiff testified that he believed that the \$80,000 purchase price should be subtracted from the \$160,000 sale price in calculating the total profits to be split between the parties. There is no reason that plaintiff would have advocated subtracting from the sale proceeds a purchase price paid by someone other than defendant. Finally, we note that plaintiff alleged in his verified complaint that "[u]pon information and belief and as a result of the Plaintiff's referral Defendant was able to purchase the property in May of 2008 for \$80,000.00." This allegation constituted a binding judicial admission, which dispensed with the need of presenting any evidence on the issue. See *Zannis v. Lake Shore Radiologists, Ltd.*, 73 Ill. App. 3d 901, 905 (1979) (plaintiff's statements in verified complaint were binding judicial admissions); *Farwell Construction Co. v. Ticktin*, 59 Ill. App. 3d 954, 958-59 (1978) (judicial admissions withdraw a fact from issue and eliminates the need to present proof of the fact).

¶ 18 There is nothing in the record that indicates that any evidence was presented that contradicted or called into question the overwhelming evidence that defendant purchased the property for \$80,000 and paid \$5,623.32 in closing costs. Plaintiff claims that defendant failed to establish that he (defendant) paid the purchase price, but this contention is completely unfounded for all the reasons discussed above.

¶ 19 Plaintiff also argues that defendant's claim of fraud in the sale of the property and the fact that defendant did not receive all the proceeds of the sale (because the Estate of Linda L. Ochodnický received a portion) somehow "clouded" the issue of whether defendant obtained a full interest in the property. Plaintiff fails to explain, however, what effect these contentions have on the determination of the share of the profits to which plaintiff is entitled, and we disagree that the claim of fraud or the Estate's interest in the property have any effect on the issue before us. The parties' agreement did not require that defendant obtain a complete fee simple interest in the property. The agreement also does not provide that plaintiff is entitled to one-half of the *total* proceeds from the sale of the property; rather, plaintiff is entitled to only half (minus his advance) of the profits realized by defendant on the sale of the property. Whether defendant obtained a partial or full ownership interest in the property has no bearing on the calculation of the profits realized from the sale of the property. Even if the record did provide greater detail on defendant's fraud claim or an explanation for the Estate's interest in the property, those reasons would not change the calculation of the proceeds to which plaintiff is entitled. Accordingly, it appears that plaintiff's contention regarding the extent of defendant's interest in the property is simply a red herring, meant to distract us from the real issue at hand.

¶ 20 We observe that plaintiff's contentions in this respect imply that the record on appeal is somehow incomplete because it does not contain greater detail on defendant's claim fraud or the

interest of the Estate in the property. We reject any such implications. The record on appeal in this case contains the common law record and, in lieu of transcripts, a certified bystander's report, which is acceptable under Supreme Court Rule 323(c) (eff. July 1, 2017). Plaintiff does not contend that the record on appeal fails to include any documents or happenings that occurred in the trial court. Instead, plaintiff claims that the record on appeal—although reflecting everything that was filed or occurred in the trial court—does not contain all the detail that he wishes it did. This, however, does not render the record on appeal incomplete, because an appellant cannot include in a record on appeal what was not present in the trial court.

¶ 21 Having concluded that the evidence clearly demonstrated that defendant incurred expenses in the amount of \$85,623.32 in purchasing the property, we turn now to the calculation of the profits realized on the sale of the property. The parties do not dispute that defendant received \$35,000.75 from the sale proceeds on the property and \$60,000 on the fraud claim, for a total of \$95,000.75. The trial court clearly explained, in ruling on defendant's posttrial motion, that it divided the \$95,000.75 in half (\$47,500) and then subtracted plaintiff's advance (\$16,000) from plaintiff's share to reach the amount it awarded to plaintiff ($\$47,500 - \$16,000 = \$31,500$). It is readily apparent that the trial court did not take into account any of the expenses incurred by defendant in purchasing the property. Although the trial court did not explain why it did not consider defendant's expenses in calculating the profits, such a lack of explanation is completely unnecessary to our review. Trial courts generally are not obligated to explain the basis for their rulings, and, in any case, we review a trial court's ruling, not its reasoning. See, e.g., *Rodriguez v. Sheriff's Merit Commission of Kane County*, 218 Ill. 2d 342, 357 (2006) (stating that the trial court's reasons for a judgment are not material to the question of whether the judgment or order itself is incorrect and that the reviewing court is not bound to accept the reasons given by the trial

court); *Vantage Hospitality Group, Inc. v. Q Ill Development, LLC*, 2016 IL App (4th) 160271, ¶ 54 (“This court reviews the determination of the trial court, not its reasoning, and therefore we may affirm on any basis in the record, regardless of whether the trial court relied on that basis or its reasoning was correct.” (Internal quotations and alterations omitted.)); *Makowski v. City of Naperville*, 249 Ill. App. 3d 110, 115 (1993) (explaining that it was unnecessary for the trial court to provide an explanation for its ruling, because it is the judgment and not the trial court’s reasoning that is reviewed on appeal). Such doctrines make sense, because if we were unable to review a trial court’s decision because the reasons for that decision were not stated in the record, a trial court could effectively immunize all of its decisions against appellate review simply by refusing to provide the basis for its decisions.

¶ 22 After subtracting defendant’s expenses of \$85,623.32, the profits realized on the sale of the property actually amounted to \$9,377.43. Plaintiff’s half of those profits totaled \$4,688.72. Plaintiff had, however, already received a \$16,000 advance on his share, which far exceeded his share of the profits. Accordingly, the trial court’s finding that plaintiff was entitled to an additional \$31,500 from defendant was most certainly against the manifest weight of the evidence, and the trial court should have entered judgment in favor of defendant. We therefore reverse the trial court’s judgment.

¶ 23 CONCLUSION

¶ 24 For the foregoing reasons, the judgment of the Circuit Court of Cook County is reversed.

¶ 25 Reversed.

¶ 26 JUSTICE LAVIN, dissenting:

¶ 27 The parties have provided us with a bystander’s report that does not reflect the trial court’s calculations or reasoning in determining that plaintiff was entitled to \$31,500. The

bystander's report does not explain why \$105,002.28 was paid to the Estate of Linda L. Ochodnicky from the sale proceeds. Thus, the record provided does not affirmatively demonstrate how the profits from the sale of the property were, or should have been, calculated by the trial court.

¶ 28 It is well settled that an appellant, in this case defendant, “has the burden to present a sufficiently complete record of the proceedings at trial to support a claim of error, and in the absence of such a record on appeal, it will be presumed 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). Defendant has not satisfied his burden of providing an adequate record and, consequently, we are obligated to presume that the trial court had a sufficient basis to enter an award of \$31,500 in this instance.

¶ 29 I would affirm the trial court’s judgment.