

2019 IL App (1st) 182419-U

No. 1-18-2419

Order filed August 9, 2019

Fifth Division

**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).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST DISTRICT

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KECIA PORTER,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County.
	)	
v.	)	No. 18 M1 129718
	)	
ELLIS COWART and INFINITY MOVERS,	)	Honorable
	)	James J. Ryan,
Defendants-Appellees.	)	Judge, presiding.

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JUSTICE HALL delivered the judgment of the court.  
Presiding Justice Rochford and Justice Hoffman concurred in the judgment.

**ORDER**

¶ 1 *Held:* In a small claims action for property damage, we affirm the trial court's judgment in favor of defendants where plaintiff failed to provide a sufficient record to show that the trial court erred in entering judgment.

¶ 2 In a small claims action for property damage, plaintiff Kecia Porter appeals from the trial court's order awarding judgment in favor of defendants, Infinity Movers and its owner, Ellis Cowart. On appeal, plaintiff argues the trial court's judgment in favor of defendants violated her

due process and equal protection rights and was “clearly erroneous.” For the following reasons, we affirm.

¶ 3 Although defendants have not filed a brief on appeal, we will consider the appeal pursuant to the principles set forth in *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 131-33 (1976).

¶ 4 The record shows that on September 5, 2018, plaintiff filed a *pro se* complaint against Cowart and his moving company, Infinity Movers, alleging Infinity Movers caused damage to several of plaintiff’s items during her scheduled move.

¶ 5 In her complaint, plaintiff alleged that on June 28, 2018, she signed a written contract with Cowart, in which she hired Infinity Movers to move her from her first floor apartment located on the 2200 block of South May Street to another first floor apartment. Three men arrived at plaintiff’s apartment. One of the men smelled of alcohol and had red eyes. The men “damaged several pieces of furniture and dented, broke, or scratched items.” Plaintiff paid Cowart \$544 “for the move [*sic*] to release [her] belongings off the truck.”

¶ 6 Plaintiff alleged that she asked Cowart to “assess the damage” at her apartment on July 16, 2018, but he never showed up. On August 31, 2018, plaintiff sent Cowart photographs of the damage, and he refused to give plaintiff his insurance information so she could file a claim against him.

¶ 7 Plaintiff further alleged that Infinity Movers “forged the insurance amount on the original contract after [she] had signed it.” Plaintiff requested relief in the amount of \$2,000.93 “to repair, replace items damaged and punitive damages.”

¶ 8 On September 28, 2018, plaintiff filed a *pro se* motion for default judgment, arguing defendants failed to appear or answer the complaint. On October 2, 2018, an order of default was entered, finding defendants defaulted for failing to file an appearance and an answer.

¶ 9 On October 16, 2018, Cowart filed a *pro se* “motion to vacate the default judgment,” alleging he was not properly served and was “out of town [during] the court date.” The motion was file stamped but unsigned.

¶ 10 On October 17, 2018, the trial court entered an “[e]x-parte judgment” for plaintiff for \$2,000.93, against defendants, who were not present in court.

¶ 11 On October 26, 2018, plaintiff filed a *pro se* motion to “dismiss” defendants’ motion to vacate the default judgment. In her motion, plaintiff argued defendants’ motion should be denied because defendants were properly served, yet failed to file appearances, answer the complaint, or appear in court. Plaintiff further alleged that “defendant has no business license since 2009 and should not be doing business.” The motion was not file stamped.

¶ 12 On November 7, 2018, the trial court granted defendants’ motion to vacate the default judgment of October 17, 2018, and denied plaintiff’s motion to “dismiss.” In a separate order on the same date, the trial court entered a judgment in favor of defendants. That order consisted of a one-page preprinted form, stating both plaintiff and “defendant(s)” were “present before the Court.” It further stated: “This matter having come before the Court, the Court having jurisdiction and being fully advised, it is hereby ordered: \*\*\* judgment for Defendant Ellis Cowart, Infinity Movers after trial.”

¶ 13 Plaintiff timely appealed on November 9, 2018. In her notice of appeal, plaintiff stated she was seeking \$2,000.93 for “property damage/breach of contract caused by defendant when

he negligently/fraudulently entered into contract having ‘no’ business license (since 2009) nor insurance” and that “defendant filed no answer or appearance.”

¶ 14 On appeal, plaintiff contests the trial court’s November 7, 2018, judgment in favor of defendants. She argues the trial court “abuse[d] its power” when it vacated the October 17, 2018, default judgment without giving her “the benefit of a trial [or] notice of proceedings,” in violation of plaintiff’s “rights to due process and equal protection.” Plaintiff additionally alleges the court’s order in favor of defendant “is clearly erroneous and not supported by substantive evidence.”

¶ 15 Defendants have not filed a responsive appellees’ brief. This court, however, has elected to consider this appeal on plaintiff’s brief alone under the principles set forth in *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 131-33 (1976).

¶ 16 We initially note that plaintiff has attached to her brief numerous documents that are not included in the record on appeal. We are precluded from considering the information contained in these documents as they are not properly before this court and cannot be used to supplement the record. *Revolution Portfolio, LLC v. Beale*, 341 Ill. App. 3d 1021, 1024 (2003).

¶ 17 More importantly, however, our review of this appeal is hampered by an incomplete record. An appellant has the burden of presenting a sufficiently complete record of the trial court proceedings to support claims of error and, in the absence of such a record, this court will presume that the trial court’s order conformed with the law and had a sufficient factual basis. *Foutch v. O’Bryant*, 99 Ill. 2d 389, 391-92 (1984). Any doubts arising from an incomplete record will be resolved against the appellant. *Id.*

¶ 18 Here, the record does not contain a report of the trial court proceedings, specifically, the November 7, 2018, hearing during which the court entered judgment in favor of defendants. Pursuant to Supreme Court Rule 323 (eff. July 1, 2017), in lieu of a trial court transcript, an appellant may file a bystander's report (Rule 323(c)) or an agreed statement of facts (Rule 323(d)). Plaintiff has filed neither. The record before us consists solely of one volume of common law documents.

¶ 19 Based on the court's November 7, 2018, orders, a trial was held and judgment was entered in favor of defendants. However, without the benefit of a transcript, this court cannot ascertain what documentation or evidence was presented by whom, or what the witnesses' testimony, if any, revealed. Nor do we know what arguments were made, what findings the court made, or the reasoning and rationale that provided the basis for the trial court's judgment. Under these circumstances, this court must presume that the trial court acted in conformity with the law and ruled properly after considering the evidence before it. *Corral v. Mervis Industries, Inc.*, 217 Ill. 2d 144, 156-57 (2005); *Foutch*, 99 Ill. 2d at 391-92.

¶ 20 For these reasons, we affirm the judgment of the circuit court of Cook County.

¶ 21 Affirmed.