2024 IL App (4th) 240211-U

NO. 4-24-0211

FILED
December 24, 2024
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

KELLY S. McKIBBEN, Plaintiff-Appellee, v. KEVIN M. BOX, Defendant-Appellant.	)	Appeal from the Circuit Court of Boone County No. 23SC350
	)	Honorable C. Robert Tobin III, Judge Presiding.

JUSTICE DeARMOND delivered the judgment of the court.
Justices Steigmann and Lannerd concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court's judgment in favor of plaintiff was not against the manifest weight of the evidence.

¶ 2 In September 2023, plaintiff, Kelly S. McKibben, filed a small claims complaint against defendant, Kevin M. Box, alleging breach of contract for failure to install an air conditioning unit. In January 2024, the trial court awarded judgment in favor of plaintiff for $2500 plus court costs and ordered the purchased air conditioning unit returned to defendant.

¶ 3 On appeal, defendant argues the trial court erred in granting judgment in favor of plaintiff. We affirm.

¶ 4 I. BACKGROUND

¶ 5 In September 2023, plaintiff filed a small claims complaint against defendant, requesting $928.53. According to the complaint, plaintiff had contracted with defendant in

January 2023 to replace a furnace and add central air conditioning to a rental property. Defendant was paid by two personal checks totaling $5500. Defendant did not complete the installation of the air conditioning unit or refund plaintiff for the cost. Attached to the complaint were retrieved text messages between the parties in which defendant quoted $3000 for the furnace and $5250 for both the furnace and air conditioning unit.

¶ 6 Defendant filed a written response to the small claims complaint. Attached to defendant's written response was an accounting of the furnace cost and installation, the cost for the air conditioning unit, and other fees, totaling $5500. Also attached were screenshots of several text messages between the parties.

¶ 7 In January 2024, the trial court held a bench trial on the small claims complaint. Both parties testified.

¶ 8 A. Plaintiff's Testimony

¶ 9 Plaintiff testified he contacted defendant on January 20, 2023, to replace a failed furnace at a rental property he owned. Plaintiff presented text messages to the trial court, which were entered into evidence as plaintiff's exhibit A. (As we later discuss, the exhibits at trial were not included in the record on appeal. We will therefore discuss them only to the extent the parties referenced their contents during the parties' testimony.) Defendant quoted plaintiff a total of $5250 to replace the furnace and add central air conditioning to the property. On January 21, 2023, defendant installed the furnace and an A-coil for the air conditioning unit, which was installed above the furnace. There were no concerns about the furnace installation. The air conditioning unit was put into storage until spring. Plaintiff paid defendant with personal checks made out to defendant, and copies of the cancelled checks were entered as plaintiff's exhibit B. The two checks were for $3000 and $2500, respectively.

¶ 10 On April 9, 2023, the tenant of the rental property, plaintiff's son, contacted defendant about completing the air conditioning installation. Text messages from the exchange were entered as plaintiff's exhibit E. Defendant requested a bush be removed to make room for the air conditioner and sent the tenant a list of tools and required materials, which he had retained as a reminder. The tenant contacted defendant again on April 11 and 13, 2023. Defendant "replied with profanity and made an apparent reference to the Second Amendment" and stated he would "get to it some day."

¶ 11 Plaintiff reached out to defendant on May 18, 2023, and the text messages were entered as plaintiff's exhibit C. Plaintiff stated he was attempting to get the air conditioning unit installed or receive a refund for the incomplete work and materials. Defendant claimed the tenant had threatened him, and he again mentioned he "love[d] the Second Amendment." Defendant also claimed he was only supplying the air conditioning equipment, his company was no longer in operation, he had no labor budget remaining for installing the air conditioning unit, and suggested plaintiff file a small claims case. Defendant sent plaintiff another message stating he had lost his vision and could not complete the work.

¶ 12 Plaintiff provided defendant with a spreadsheet detailing what he believed were the costs of labor and materials based on defendant's notes and online pricing. The spreadsheet was entered as plaintiff's exhibit D. Plaintiff explained he used prices he found on Amazon.com to estimate supply costs. The spreadsheet calculated the amount plaintiff was requesting as a refund: $928.53. The trial court inquired as to the location of the air conditioning unit, and plaintiff explained it was in a box in the garage at the property and confirmed it had not been installed.

¶ 13 B. Defendant's Testimony

¶ 14 Defendant testified he drove to Naperville, Illinois, to pick up the equipment for the furnace and air conditioning installation. There was a $150 fee to open the store in Naperville, which defendant said was agreed on. When defendant arrived at the house, he inspected the location and realized there was not an existing air conditioning unit or any of the required infrastructure, including a 220-volt electric hookup, refrigeration lines, electrical whip or disconnect, or concrete base to place the air conditioning unit on. Defendant contacted plaintiff, and they agreed to just install the furnace and the A-coil. Defendant compiled a list of materials he would need to install the air conditioning unit and informed plaintiff he would need an electrician to run electricity outside for the unit.

¶ 15 On April 9, 2023, the tenant contacted defendant about returning to install the air conditioning unit. Defendant talked to the tenant about removing a bush. Two days later, the tenant contacted defendant again about installing the air conditioning unit, and he informed the tenant he would prefer to install the unit when temperatures were above 70 degrees for proper charging. Two days later, on April 13, 2023, the tenant sent a text message stating he had contacted another company, who said they only needed temperatures to be 65 degrees to install the unit, and he was using window air conditioning units. According to defendant, the tenant sent a message stating "word spreads fast," which he took as a threat. Defendant informed the tenant he was "a firm believer in the Second Amendment" and was "not scared of him." Defendant testified, "From that point on, I had no more obligations or desires to help [the tenant] as Boone County itself is very familiar with him, his actions and his attitude." Defendant said plaintiff reached out to him to come and install the air conditioning without the tenant present, but defendant stated he was already "done with the situation."

¶ 16 Defendant broke down the payments as follows: $3000 for the furnace and A-coil installation, $2250 for the uninstalled air conditioning unit, $150 for the store opening in Naperville, and $100 for fuel for the trip to Naperville, totaling $5500. Defendant received two checks, one for $3000 and one for $2500. The trial court asked defendant for plaintiff's agreement to the fuel and store opening fees, but defendant only located a message he had sent. The court confirmed the $3000 was for the furnace and installation, which was not in dispute, and defendant agreed. Defendant also explained he called plaintiff on January 21, 2023, to confirm the $2500 check would not cover the installation of the air conditioning unit because of the extra work needed.

¶ 17 C. Plaintiff's Response

¶ 18 The trial court gave plaintiff the opportunity to respond to defendant's testimony. Plaintiff pointed to a text message from himself to defendant, which stated, " 'It's furnace only right now, but it would be a good time considering installing the AC coil for the AC so I guess I'm going to need a quote for the furnace only and one for adding AC.' " Plaintiff argued it was "pretty obvious" the home did not have air conditioning from the conversation.

¶ 19 D. Trial Court's Ruling

¶ 20 The trial court proceeded immediately to its ruling. The court noted the $3000 payment was not at issue, as it was the cost of the furnace and installation, which was complete. The court then turned to the air conditioning and stated:

> "It sounds like the air conditioning unit may not have been a meeting of the minds on that one. What I mean by that is is that you were under the assumption when you quoted it that you were swapping one in, one out. There's a pad. All the electric is there. There's not much that needs to be done. If that had

> all been there, great, you would have done it. You may have had some dispute as to whether or not it should have been done in March or May based upon whatever the common practice is in your business, but that's not the issue because that's not why we're here."

The court determined the parties never had a real agreement on the air conditioning unit, stating, "There was no meeting of the minds as to the total dollar amount for the second project, which was the air conditioning. Based upon that, [defendant] get[s] the unit back." The court ruled $2500 plus court costs be paid to plaintiff and the air conditioning unit, still in its box, be returned to defendant. Defendant argued he could not return the air conditioning unit, but the court stated, "You get to take that, do whatever you want, scrap it or sell it or use it on a different project." The court determined plaintiff would be unjustly enriched by keeping the air conditioning unit. The court concluded:

> "So that's my final decision. I know neither one of you are probably overexcited about that. On the other hand, I just didn't—feel you guys had a real good agreement on the furnace, dollar amount work to be done. It was the air conditioning one that you had one idea in your head of what would be out there, swapping it out, pad, brush removal, proper electric, all that stuff, and you were just going to swap one in, swap out. He had no reason to believe that you had any other—"

Defendant interrupted to complain he was "burdened *** with an air conditioner that does [him] no good." The court responded:

> "You could have easily protected yourself by saying, listen, I'll meet you out at the property, let's walk the property and now I can give you a proper bid.

> Instead, you guys did all this crap through text messages. It was sloppy, crazy sloppy for contractors to work in this fashion. You would have—you should have been a good business person, went out to the property, met him at the property, went and pointed things out, priced things, and when you felt comfortable about the price, then you put it into a bid. He either accepts that bid or rejects it. If you were unsure about it for time and labor purposes, then let him know that issue and then he can decide whether or not to roll the risk of time and labor or not roll the risk of time and labor. That was sloppy and ultimately that got you here. That's on you."

¶ 21 This appeal followed.

¶ 22 II. ANALYSIS

¶ 23 On appeal, defendant argues the trial court erred by finding in plaintiff's favor and ordering the air conditioning unit returned to defendant. However, our review of defendant's claim is frustrated by his failure to comply with Illinois Supreme Court Rule 341 (eff. Oct. 1, 2020) and his failure to present a complete record for review. Regardless, because the record before us is simple, we address the merits of defendant's appeal and affirm the trial court's judgment.

¶ 24 A. Rule 341

¶ 25 Illinois Supreme Court Rule 341(h) (eff. Oct. 1, 2020) sets forth the necessary requirements which must be met when filing an appellant brief. Defendant's brief fails to comply with Rule 341(h) in a number of particulars. There is no table of contents with authorities, as required by Rule 341(h)(1), no introductory paragraph stating the nature of the action and judgment appealed from, as required by Rule 341(h)(2), no concise statement of the applicable

standard of review, with citation of authority for each issue, as required by Rule 341(h)(3), and no jurisdictional statement, as required by Rule 341(h)(4). See Ill. S. Ct. R. 341(h)(1)-(4) (eff. Oct. 1, 2020). Although defendant's brief contains a statement of facts, it contains no references to the pages of the record on appeal. Ill. S. Ct. R. 341(h)(6) (eff. Oct. 1, 2020). Defendant's argument section does not contain a single citation to an authority, nor does it contain citations to the record on appeal. Ill. S. Ct. R. 341(h)(7) (eff. Oct. 1, 2020). (We additionally note plaintiff's brief also fails to contain any citations to authorities, and only contains citations to the exhibits attached as an appendix. Ill. S. Ct. R. 341(i) (eff. Oct. 1, 2020).) In fact, the only citation to any authority across defendant's appellant brief, plaintiff's appellee brief, and defendant's reply brief is contained at the end of defendant's fact section. There, defendant cites *Kunkel v. P.K. Dependable Construction, LLC*, 387 Ill. App. 3d 1153, 1157, 902 N.E.2d 769, 774 (2009), which notes our standard of review for a bench trial is whether the judgment is against the manifest weight of the evidence.

¶ 26 It is well-established the rules of our supreme court are not aspirational. "They have the force of law, and the presumption must be that they will be obeyed and enforced as written." *Bright v. Dicke*, 166 Ill. 2d 204, 210, 652 N.E.2d 275, 278 (1995).

> "A reviewing court is entitled to have issues clearly defined with pertinent authority cited and coherent arguments presented; arguments inadequately presented on appeal are waived. [Citation.] Statements unsupported by argument or citation of relevant authority do not merit consideration on review. [Citation.] A reviewing court will not become an advocate for, as well as the judge of, points the appellant seeks to raise." *Vernon Hills III Ltd. Partnership v. St. Paul Fire & Marine Insurance Co.*, 287 Ill. App. 3d 303, 311, 678 N.E.2d 374, 379 (1997).

¶ 27 Normally at this point, we would remind *pro se* parties their status as a *pro se* litigant does not relieve them from their obligation to comply with appellate rules. See *Matlock v. Illinois Department of Employment Security*, 2019 IL App (1st) 180645, ¶ 14, 130 N.E.3d 41. However, in this instance, defendant is represented by counsel on appeal, who we are disappointed to find has disregarded the rules for appellate court briefing. "A brief that lacks any substantial conformity to the pertinent supreme court rules may justifiably be stricken." *Hall v. Naper Gold Hospitality LLC*, 2012 IL App (2d) 111151, ¶ 7, 969 N.E.2d 930. Additionally, "[a] contention that is supported by some argument but no authority does not meet the requirements of Rule 341 and is considered forfeited." *Country Preferred Insurance Co. v. Groen*, 2017 IL App (4th) 160028, ¶ 12, 69 N.E.3d 911. Although, for reasons we will discuss, we will reach the merits of defendant's appeal, we caution defendant's counsel any future violations of Rule 341 could result in his brief being stricken.

¶ 28 B. Record on Review

¶ 29 Aside from the deficiencies in defendant's brief, defendant has not presented a complete record for review. It is defendant's burden as the appellant to provide the reviewing court with a sufficiently complete record. *People v. Lopez*, 229 Ill. 2d 322, 344, 892 N.E.2d 1047, 1060 (2008). Although the record contains the report of proceedings and the common law record, several exhibits submitted at trial are omitted from the record on appeal. The parties relied on a number of documents at trial, particularly text messages exchanged between the parties. Both parties reference these text messages at length in their briefs. However, the exhibits containing the text messages were not included in the record on appeal and only appear in the appendices to the parties' briefs. It is well settled that the record on appeal cannot be supplemented by attaching documents to a brief or including them in a separate appendix. *In re*

Parentage of Melton, 321 Ill. App. 3d 823, 826, 748 N.E.2d 291, 294 (2001); *McGee v. State Farm Fire & Casualty Co.*, 315 Ill. App. 3d 673, 679, 734 N.E.2d 144, 150 (2000); *Pikovsky v. 8440-8460 North Skokie Boulevard Condominium Ass'n*, 2011 IL App (1st) 103742, ¶ 16, 964 N.E.2d 124 ("[A] reviewing court will not supplement the record on appeal with the documents attached to the appellant's brief on appeal as an appendix, where there is no stipulation between the parties to supplement the record and there was no motion in the reviewing court to supplement the record with the material."). Although here, both parties appear to agree on plaintiff's exhibits A, C, D, and E, as each exhibit appears in each party's appendix, there was still no motion for the reviewing court to supplement the record with the materials. Therefore, although we will review the merits of defendant's appeal, we do so without considering the exhibits attached as appendices to the briefs. Because "an appellant has the burden to present a sufficiently complete record of the proceedings at trial" on appeal, "[a]ny doubts which may arise from the incompleteness of the record will be resolved against the appellant." *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92, 459 N.E.2d 958, 959 (1984).

¶ 30 C. The Merits on Appeal

¶ 31 The appellate court has previously explained why, although we find counsel's failures troubling, we choose to address the merits of the appeal:

> "Our common practice is to admonish attorneys for their conduct but to nevertheless address the merits of their appeals. [Citations.] It is important, however, that they understand precisely why we do this. We do so not to relieve them of their deficiency, and certainly not to encourage them to repeat it. Instead, we do so simply to minimize the degree to which their conduct prejudices their clients. Plaintiff is not directly responsible for her attorney's actions. Thus, to the

> extent possible, she should have her day in this court, even though her counsel has done virtually nothing to obtain it. For that reason alone, we will briefly address the merits of plaintiff's contentions." *Pilat v. Loizzo*, 359 Ill. App. 3d 1062, 1064, 835 N.E.2d 942, 944 (2005).

In this instance, the record is extremely simple, totaling less than 70 pages. Further, defendant's claim on appeal, although forfeited by counsel's failure to present authorities, is straightforward: "[T]he judgment was against the manifest weight of the evidence." Forfeiture is a limitation on the parties, not the court, and we may exercise our discretion to review otherwise forfeited issues. *People v. Rajner*, 2021 IL App (4th) 180505, ¶ 23, 189 N.E.3d 472. Therefore, despite counsel's disservice to defendant on appeal, we proceed to the merits.

¶ 32 "Generally, the standard of review in a bench trial is whether the order or judgment is against the manifest weight of the evidence." *Reliable Fire Equipment Co. v. Arredondo*, 2011 IL 111871, ¶ 12, 965 N.E.2d 393. "A decision is against the manifest weight of the evidence only when an opposite conclusion is apparent or when the findings appear to be unreasonable, arbitrary, or not based on the evidence." *Eychaner v. Gross*, 202 Ill. 2d 228, 252, 779 N.E.2d 1115, 1130 (2002).

¶ 33 The parties do not disagree on the key facts of the case. In January 2023, plaintiff contacted defendant to install a replacement furnace and a new air conditioning unit. Defendant quoted a price for a replacement air conditioning unit. Defendant arrived at the property and discovered the installation was for a new air conditioning system. The furnace was installed, but defendant could not install the air conditioning unit, and the parties decided to store the unit until spring. In April, the tenant contacted defendant about installing the unit. The parties began to quarrel, and the unit was not installed.

¶ 34 "To form a valid contract between two parties, there must be mutual assent by the contracting parties on the essential terms and conditions of the subject about which they are contracting." *Reese v. Forsythe Mergers Group, Inc.*, 288 Ill. App. 3d 972, 979, 682 N.E.2d 208, 213 (1997). "[T]he failure of the parties to agree upon or even discuss an essential term of a contract may indicate that the mutual assent required to make or modify a contract is lacking." *Burkhart v. Wolf Motors of Naperville, Inc.*, 2016 IL App (2d) 151053, ¶ 14, 61 N.E.3d 1155. Here, the parties did not discuss the extent of the work needed and had an entirely different understanding of the work when defendant provided the quote for installing the air conditioning unit. Although defendant agreed to come back in the spring to install the air conditioning unit, there was no evidence presented defendant's intent to return was a contractual agreement. The only agreement presented as a contract to the trial court was the original quote by defendant and the acceptance by plaintiff. It was not against the manifest weight of the evidence for the court to conclude this did not constitute a valid contract and the parties should be returned to the status quo.

¶ 35 Defendant argues the trial court ignored evidence, namely (1) the agreement for time and materials for installation, (2) the warranty on the air conditioning unit, and (3) the tenant's aggressive behavior.

¶ 36 First, as to time and materials, the trial court clarified the costs with defendant. The court pointed to the $3000 payment for the furnace and clarified, "That's the unit, that's everything including labor. That's done." Defendant agreed. Further, despite the court's questions, defendant did not present the court with any statement from plaintiff agreeing to time and materials for the trip to Naperville. Defendant even later agreed the A-coil was part of the

$3000 agreement for the furnace. Thus, it was reasonable to conclude the remaining funds plaintiff paid were related to the air conditioning unit installation.

¶ 37 Second, nothing in the transcript suggests defendant attempted to present the trial court with information about any warranties tied to the unit. Any warranties were only mentioned in passing at the hearing. There was nothing for the court to have ignored.

¶ 38 Finally, the tenant's purportedly aggressive behavior was irrelevant to any agreement to install an air conditioning unit. Whether the tenant threatened defendant in April has no bearing on what the parties understood in January. The trial court did not ignore defendant's evidence, but rather it did not require the evidence in making its decision.

¶ 39 Defendant also argues the trial court erred where plaintiff did not request the $2500 or to return the air conditioning unit to defendant. "Except in the case of default, the remedies requested from the court do not limit the remedies available." 735 ILCS 5/2-604.2(c) (West 2022). In other words, "Illinois law does not limit the plaintiff's possible recovery to the amount of damages stated in its complaint." 23 Ill. L. and Prac. *Judgments* § 16 (Oct. 2024 Update). In this case, the court determined the remedy was to return the parties to their original position. Plaintiff stated his requested $928.53 figure was based on estimating hourly labor costs and pricing materials at consumer rates on the Internet. Further, defendant's original quoted amount did not reflect an understanding of the work necessary, and therefore it could not easily be broken up to show the cost of installation. Therefore, the court reasonably determined the most fair result was to return the parties to the status quo, the position they held prior to any purported agreement. Although the judgment resulted in defendant retaining the air conditioning unit, defendant's decision to purchase the unit without confirming the terms of the agreement was, as the court discussed with him, a poor business decision. This does not mean, however, the

judgment was against the manifest weight of the evidence. See *Eychaner*, 202 Ill. 2d at 252 ("A decision is against the manifest weight of the evidence only when an opposite conclusion is apparent or when the findings appear to be unreasonable, arbitrary, or not based on the evidence.").

¶ 40 III. CONCLUSION

¶ 41 For the reasons stated, we affirm the trial court's judgment.

¶ 42 Affirmed.