

AFFIRM; and Opinion Filed September 7, 2017.



**In The
Court of Appeals
Fifth District of Texas at Dallas**

No. 05-16-01266-CV

**WALTER THOMAS, Appellant
V.
FLOYD BAGGS, Appellee**

**On Appeal from the County Court at Law No. 1
Grayson County, Texas
Trial Court Cause No. 2014-1-124CV**

MEMORANDUM OPINION

Before Justices Lang-Miers, Brown, and Boatright
Opinion by Justice Boatright

In this landlord-tenant dispute, Walter Thomas appeals a take-nothing judgment on his claims against Floyd Baggs. In three issues, Thomas contends the trial court erred by allowing the trial to go forward when Baggs did not personally appear on the first day of trial and by finding that Thomas failed to prove his claim against Baggs or his damages. We affirm.

Thomas leased a vacant commercial lot from Baggs but eventually stopped paying rent. Baggs sent a certified letter to Thomas's last known address, informing him that he was behind in his rent and the property needed to be cleaned up. The letter notified Thomas that Baggs intended to sell anything of value on the lot and credit the proceeds to rent owed and the cost of clean-up. Thomas sent Baggs a money order for \$100 about six months later, but did not otherwise respond to the letter. Baggs did not accept the money order and returned it to Thomas.

Two months later, Baggs had all of Thomas's personal property removed by a third party who kept the property as payment for the removal.

Thomas sued Baggs, claiming he violated section 93.002 of the Texas Property Code by wrongfully presuming the premises had been abandoned, failing to provide proper notification, failing to store Thomas's personal property for at least sixty days after removing it from the premises, and disposing of the property. Baggs filed a counterclaim for unpaid rent and attorney's fees. Following a bench trial, the trial court made findings of fact and conclusions of law and rendered a take-nothing judgment as to both parties. Thomas filed this appeal.¹

He did not, however, provide a sufficient record of the proceedings below. An appellate record generally consists of the clerk's record and, if necessary to the appeal, the reporter's record. TEX. R. APP. P. 34.1. On October 27, 2016, we received notice from the court reporter that Thomas had neither requested nor made arrangements to pay for the reporter's record. We sent a letter advising Thomas that the reporter's record had not been filed. We gave him ten days to provide notice that he had requested preparation of the reporter's record as well as written verification he had made arrangements to pay the reporter's fee or had been found to be entitled to proceed without payment of costs. We cautioned Thomas that the appeal could be submitted without a reporter's record if he did not provide the required documentation within the time specified. On November 21, 2016, we ordered this case submitted without a reporter's record.

In his first issue, Thomas complains the trial court erred by allowing the trial to go forward when Baggs did not personally appear on the first day of trial. Thomas argues that Baggs's absence caused him to be inadequately prepared for trial. However, nothing in the record indicates Thomas filed a motion for continuance or asked the trial court to continue proceedings until Baggs could appear in person. And in its findings of fact, the trial court found

¹ Baggs does not appeal the take-nothing judgment on his counter-claims against Thomas for unpaid rent and attorney's fees.

that Baggs appeared through his attorney and both sides announced ready. When confronted with an incomplete record, we presume the evidence supports the trial court's findings of fact, *Travelers Indem. Co. v. Starkey*, 157 S.W.3d 899, 905 (Tex. App.—Dallas 2005, pet. denied), so we resolve Thomas's first issue against him.

In his second and third issues, Thomas argues the trial court erred in finding that he failed to present sufficient evidence to prove that Baggs violated property code section 93.002 and to prove his damages. However, the trial court found that Thomas failed to prove that Baggs's certified letter was not sufficient notice of Baggs's intention to remove Thomas's property under Texas Property Code section 93.002(e). The court also found that Thomas failed to prove that his actions did not constitute probable intent to abandon the property under Texas Property Code section 93.002(d). Finally, the court found that Thomas failed to prove the damages, if any, that he would have sustained had Baggs been found liable. In his appellate brief, Thomas disputes the trial court's findings by referring to testimony and exhibits presented at trial. But this evidence is not included in the record on appeal. Without a reporter's record, we cannot evaluate the evidence or review the trial court's decisions based on that evidence. Because Thomas has presented this Court with nothing to review, we presume the evidence supports the trial court's findings and overrule his second and third issues. *Starkey*, 157 S.W.3d at 905.

CONCLUSION

Having overruled all of Thomas's issues, we affirm the trial court's judgment.

/Jason Boatright/

JASON BOATRIGT
JUSTICE



**Court of Appeals
Fifth District of Texas at Dallas**

JUDGMENT

WALTER THOMAS, Appellant

No. 05-16-01266-CV V.

FLOYD BAGGS, Appellee

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No. 1, Grayson County, Texas
Trial Court Cause No. 2014-1-124CV.
Opinion delivered by Justice Boatright.
Justices Lang-Miers and Brown
participating.

In accordance with this Court's opinion of this date, the judgment of the trial court is **AFFIRMED**.

It is **ORDERED** that appellee FLOYD BAGGS recover his costs of this appeal from appellant WALTER THOMAS.

Judgment entered this 7th day of September, 2017.