

Affirmed and Memorandum Opinion filed March 3, 2011.



In The

Fourteenth Court of Appeals

NO. 14-10-00058-CV

RAFAEL PEREZ, Appellant

V.

SPRING BRANCH INDEPENDENT SCHOOL DISTRICT, Appellee

**On Appeal from the 127th District Court
Harris County, Texas
Trial Court Cause No. 2006-75319**

M E M O R A N D U M O P I N I O N

This case arises from an employment dispute. Rafael Perez was an assistant principal employed by Spring Branch Independent School District (“the District”) for almost two years. In June of 2006, after Perez was placed on administrative leave, he resigned. Perez then filed suit alleging discrimination, disability, retaliation, and harassment. Perez, who is *pro se*, brings this appeal from the trial court’s take-nothing judgment.

I. Background

Perez was hired by the District as an assistant principal at Spring Shadows Elementary School for the 2004-05 school year. The principal of that school was Winona Emerson. Emerson prepared a “growth plan” for Perez focusing on his problems with interpersonal relations skills. At the end of the school year, Perez was transferred to Shadow Oaks Elementary School for the following year.

Perez’s performance did not meet the expectations of his new principal, Julie Baggerly. Despite numerous conferences and an updated growth plan, Perez’s performance did not improve. On October 21, 2005, Perez and Baggerly were involved in a verbal confrontation. As a result, Perez was placed on administrative leave with pay. Baggerly recommended that Perez’s contract with the District not be renewed. Perez was notified of the recommendation and advised of his right to request a hearing to challenge the recommendation. Perez requested a hearing before an independent hearing examiner assigned by the Texas Education Agency, and the hearing was scheduled for June 12, 2006. On June 9, 2006, before the hearing, Perez resigned his employment. His resignation was accepted, and the hearing was cancelled. Perez then filed the suit that is the subject of this appeal.

The trial court granted a partial summary judgment that Perez take nothing on his disability claim. The remaining claims were tried to the court. At the conclusion of the trial, the trial court signed a take-nothing judgment in favor of the District.

Perez has raised two issues in this appeal.¹ First he asserts that the trial court improperly excluded testimony necessary to establish his discrimination claim. He asserts that certain witnesses offered “impeachable” testimony that was contradicted by previous discovery filed in the case. He also complains that the trial court made significant evidentiary errors in excluding key witnesses and permitting inadmissible

¹ Perez has not presented an issue challenging the partial summary judgment on his disability claim. He mentioned his objection to the District’s summary judgment evidence, but the objections and any ruling thereon are not part of our record.

hearsay.

II. Preservation of Error and Standard of Review

To preserve error for appellate review, the Texas Rules of Appellate Procedure require parties to make timely and specific objections at the earliest possible opportunity to preserve complaints that relate to a trial court's admission of evidence during a trial. Tex. R. App. P. 33.1; *Schwartz v. Forest Pharm., Inc.*, 127 S.W.3d 118, 123-24 (Tex. App.—Houston [1st Dist.] 2003, pet. denied) (failing to timely object to testimony about the plaintiff's litigious character waived right to complain on appeal of the trial court's admission of the testimony). The complaining party waives error in the admission of evidence if it allows the evidence to be introduced during the trial without objection. *Bay Area Healthcare Group, Ltd. v. McShane*, 239 S.W.3d 231, 235 (Tex. 2007) (per curiam). If the complaint is that evidence has been improperly excluded, to adequately and effectively preserve error, an offer of proof must show the nature of the evidence specifically enough so that the reviewing court can determine its admissibility. *In re N.R.C.*, 94 S.W.3d 799, 806 (Tex. App.—Houston [14th Dist.] 2002, pet. denied).²

We review the trial court's rulings concerning the admission or exclusion of evidence for an abuse of discretion. *In re J.P.B.*, 189 S.W.3d 570, 575 (Tex. 2005). An abuse of discretion occurs only when the court's decision is made without reference to any guiding rules and principles or is arbitrary or unreasonable. *Downer v. Aquamarine Operators, Inc.*, 701 S.W.2d 238, 241-42 (Tex. 1985). We must uphold the trial court's evidentiary ruling if there is any legitimate basis for it. *Owens-Corning Fiberglas Corp. v. Malone*, 972 S.W.2d 35, 43 (Tex. 1998).

For the admission or exclusion of evidence to constitute reversible error, the complaining party must show that the error probably resulted in an improper judgment.

² We recognize that Perez represented himself *pro se* in the trial court proceedings, and he also does so on appeal. Nevertheless, Texas law requires that *pro se* litigants be held to the same standard as licensed attorneys and comply with all applicable rules of procedure. *Canton-Carter v. Baylor College of Med.*, 271 S.W.3d 928, 930 (Tex. App.—Houston [14th Dist.] 2008, no pet.).

See Tex. R. App. P. 44.1; *City of Brownsville v. Alvarado*, 897 S.W.2d 750, 753 (Tex. 1995). Thus, a successful challenge to a trial court’s evidentiary rulings requires the complaining party to demonstrate that the judgment turns on the particular evidence excluded or admitted. *Nissan Motor Co. v. Armstrong*, 145 S.W.3d 131, 144 (Tex. 2004). In making this determination, we review the entire record. *Reliance Steel & Aluminum Co. v. Sevcik*, 267 S.W.3d 867, 871 (Tex. 2008).

III. The Record

This appeal is before the court without a reporter’s record from the bench trial. The reporter’s record in this case was originally due March 8, 2010. Perez requested and was granted an extension of time to file the record. On May 17, 2010, the official court reporter advised this court that Perez had not made arrangements to pay for preparation of the record. On May 19, 2010, this court notified Perez that the reporter’s record had not been filed, and that, unless he made arrangements to pay for the record, this court would consider and decide only those issues not requiring a reporter’s record. *See* Tex. R. App. P. 37.3(c). Perez again requested and was granted additional time to pay for the record, but the record was not filed. On July 28, 2010, Perez requested preparation of a partial reporter’s record. In response to another notice from the court reporter that payment had not been made, the court again advised Perez that unless he made arrangements to pay for the record by September 13, 2010, this court would consider and decide only those issues not requiring a reporter’s record. When Perez did not provide proof of payment, the court ordered him to file his brief. Perez then filed an original brief and an amended brief.³

³ In an additional document entitled “Amended Brief of Appellant,” Perez added a complaint that he was improperly denied a jury trial. Perez has not demonstrated that he preserved this complaint for our review, and he has not supported his complaint with any authority.

IV. Analysis

Both of Perez's issues concern evidentiary rulings by the trial court during the bench trial.⁴ Thus, they require reference to the evidence admitted at trial and the trial court's rulings thereon. Perez failed to file a reporter's record from the bench trial, however. Unless an appellant arranges for the filing of a complete reporter's record (or partial reporter's record and accompanying statement of issues),⁵ we must presume that the proceedings support the trial court's judgment. *See Bennett v. Cochran*, 96 S.W.3d 227, 229 (Tex.2002); *Sam Houston Hotel, L.P. v. Mockingbird Restaurant, Inc.*, 191 S.W.3d 720, 721 (Tex. App.—Houston [14th Dist.] 2006, no pet.). Because we have no record of what that evidence at trial was, we have no basis to review the trial court's decisions based on that evidence. *Sam Houston Hotel*, 191 S.W.3d at 721.

Because Perez did not elect to file a reporter's record, his issues challenging the trial court's decisions based on the proceedings at trial afford no basis for relief. This court cannot review claims regarding trial testimony in the absence of a reporter's record. *Mansell v. Villa Del Rey Realty, Inc.*, No. 14-01-01114-CV, 2003 WL 1088447, * 1 (Tex. App.—Houston [14th Dist.] 2003, no pet.) (mem. op.). Without a reporter's record, an appellate court cannot determine whether error was properly preserved.⁶ Moreover, in the absence of a reporter's record, we cannot review a trial court's order for an abuse of discretion. *See Willms v. Americas Tire Co*, 190 S.W.3d 796, 803 (Tex. App.—Dallas 2006, pet. denied).

In addition, because there is no transcription of the trial testimony, most of the

⁴ Included in Perez's complaints about the admission of evidence are challenges to the credibility of the testimony from the District's witnesses, who he claims were biased. We are unable to review a challenge to the credibility of witnesses. *See Maritime Overseas Corp. v. Ellis*, 971 S.W.2d 402, 406-07 (Tex. 1998) (explaining that appellate court may not pass upon a witness's credibility or substitute its judgment for that of the fact-finder).

⁵ *See* Tex. R. App. P. 34.6(c).

⁶ Perez makes reference to a motion in *limine*, which is not part of our record. Furthermore, a trial court's ruling on a motion in *limine* is not a final ruling on the evidence and preserves no error for appellate review. *Ulogo v. Villanueva*, 177 S.W.3d 496, 500 -01 (Tex. App.—Houston [1st Dist.] 2005, no pet.).

factual assertions in Perez’s brief are not supported by the record. *See* Tex. R. App. P. 38.1(g), (i). We also may not consider the documents that Perez attached as an appendix to his brief. *See Mitchison v. Houston Indep. Sch. Dist.*, 803 S.W.2d 769, 771 (Tex. App.—Houston [14th Dist.] 1991, writ denied) (holding that an appellate court cannot consider documents attached to briefs that do not appear in the appellate record).

Perez’s appeal presents nothing for review. Accordingly, Perez’s issues are overruled. The judgment of the trial court is affirmed.

PER CURIAM

Panel consists of Justices Anderson, Seymore and McCally.