IN THE COURT OF APPEALS OF TENNESSEE

JAMES R. BALDWIN,	)	C/A NO. 03A01-9508-CH-00257
	)	KNOX COUNTY CHANCERY COURT
Plaintiff-Appellant,	)	
	)	
	)	
	)	
v.	)	
	)	HONORABLE FREDERICK D. McDONALD,
	)	CHANCELLOR
	)	
	)	
THE KNOX COUNTY BOARD OF EDUCATION,	)	
	)	
	)	
Defendant-Appellee.	)	AFFIRMED AND REMANDED

THOMAS R. HENLEY of LUFKIN & HENLEY, Knoxville, for Appellant

SHARON F. PATTERSON, Deputy Knox County Law Director, Knoxville, for Appellee

O P I N I O N

Susano, J.

James R. Baldwin sued his former employer, The Knox County Board of Education (Board), for salary allegedly due him for the four years prior to his retirement in 1993. He claimed in his complaint that he worked 255 days in each of these four years but was only paid for 200 days of work. He claimed that he was due $32,187. He sought other relief not pertinent to this appeal. The Chancellor heard this matter without a jury, after which he dismissed the plaintiff's complaint. This appeal followed.

The plaintiff, appellant here, argues the following positions in his brief:

> 1. The trial court erred in finding that there was a contract between the parties for 1989 other than the one for 200 days work at $29,635.
>
> 2. The trial court erred in finding that there was a contract for subsequent years 1990, 1991, and 1992 for 255 days work.
>
> 3. The trial court erred in not applying the Teacher Tenure Act of 1980 to the facts in this case and ruling that there was effectively an illegal reduction of pay for appellant since he received pay at the 200-day rate for 255 days work.
>
> 4. This is a classic implied contract case and the Board is obliged to pay for the work done by appellant.

At the conclusion of the appellant's proof, the Board made a motion to dismiss. After the court indicated that it might grant the motion, the Board rested without putting on any proof. The court then dismissed the complaint. Given the posture of this case when the complaint was dismissed, we deem

the court's decision to be on the merits. Therefore, our review of this non-jury case is *de novo* accompanied by a presumption of correctness that we must honor unless the evidence preponderates against the trial court's findings. T.R.A.P. 13(d); ***Leek v. Powell***, 884 S.W.2d 118, 120 (Tenn. App. 1994).

The trial court dismissed the complaint because it found that "the proof fail[ed] to show any agreement binding the [Board] to pay the sum alleged by the [appellant] to be owed."

We do not have a transcript or statement of the evidence heard below; the record before us includes only the pleadings, court orders, exhibits, and the Chancellor's oral comments when he granted the motion to dismiss. This is not enough. We cannot reach the appellant's issues without a transcript of the testimony heard by the Chancellor. Without such a transcript, we cannot review the proof upon which the Chancellor based his findings of fact. We are unable to determine whether the evidence preponderates against those findings. In the absence of a record, we must conclusively presume that the evidence before the Chancellor justified the action he took. ***Sherrod v. Wix***, 849 S.W.2d 780, 783 (Tenn. App. 1992). The presumption of correctness "carries the day" and compels us to affirm the judgment below.

The judgment of the trial court is affirmed. This case is remanded for the collection of costs below pursuant to applicable law. Costs on appeal are taxed to the appellant.

_____
Charles D. Susano, Jr., J.

CONCUR:

_____
Herschel P. Franks, J.

_____
Don T. McMurray, J.