

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).

2013 IL App (3d) 120715-U

Order filed May 1, 2013

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2013

KARL ARONSON,)	Appeal from the Circuit Court
)	of the 14th Judicial Circuit,
Plaintiff-Appellant,)	Rock Island County, Illinois,
)	
v.)	Appeal No. 3-12-0715
)	Circuit No. 12-SC-192
RITA ARONSON,)	
)	Honorable
Defendant-Appellee.)	William S. McNeal,
)	Judge, Presiding.
)	

JUSTICE O'BRIEN delivered the judgment of the court.
Justices Carter and McDade concurred in the judgment.

ORDER

¶ 1 *Held:* A judgment in favor of a former wife on a complaint filed by her former husband for conversion of a dog was affirmed on appeal because the husband, at the very least, purchased the dog to share with his daughter, so he could not show the unconditional right to possession required for the tort of conversion.

¶ 2 The plaintiff, Karl Aronson, filed a small claims complaint against the defendant, Rita Aronson, his former wife, alleging trover and conversion of a dog. Rita filed a counterclaim, alleging that Karl gifted the dog to the parties' minor daughter, and seeking to be reimbursed for

defending a frivolous lawsuit. The trial court entered judgment against Rita on the counterclaim, but in her favor on the complaint. Karl appealed.

¶ 3

FACTS

¶ 4 At a bench trial, Rita testified that Karl purchased the dog in the summer of 2008, after the parties were divorced. The dog was immediately given to their daughter as a gift, and the daughter brought the dog home to Rita's house. Rita had to take the dog to the veterinarian within the first few days because it had kennel cough. Rita said that she paid those costs because it was her daughter's dog, and she did not seek reimbursement from Karl.

¶ 5 Thereafter, in January 2009, Rita and the daughter were gone for the day, and they asked Karl to come and walk the dog in the afternoon. Karl came to walk the dog, took the dog home with him, and refused to return the dog. Rita testified that in March 2009, she and her daughter went to Karl's house to return a piano pursuant to a court order, and the dog ran out. The daughter took the dog home with her. Karl requested that the dog be returned, but Rita refused, stating that Karl could have it when their daughter went away to college. Rita testified that the dog belonged to her daughter, but she had never registered as the owner of the dog in their county. She also never paid the annual fee for the dog to the county. She did take the dog to the veterinarian for its annual visits, and to the groomer every three months. She also paid for dog obedience school. The dog wore a collar, with tags that had Rita's telephone number and address.

¶ 6 Karl testified that his daughter was with him when he purchased the dog on July 16, 2008, at the Rock Island Animal Shelter for approximately \$100. At that time, Karl registered the dog with Rock Island County, and he was issued a certificate of ownership. Karl testified

that he told his daughter that he purchased the dog for them to share, but he did not intend it to be a gift. For the first five months, the dog went back and forth with the daughter. The daughter lived with Rita, and Karl had visitation, although he testified that his daughter never slept at his house.

¶ 7 Karl testified that, in January 2009, the dog was left at his home when the daughter went home, and he then took a document entitled “Statement of Ownership” to be signed by Rita. Karl was aware that money was being spent on the dog, and he did not want to be asked to reimburse those costs. However, he was never asked to contribute or reimburse Rita for the dog’s care. Rita refused to sign, and the dog remained with Karl. In later January, there was an incident where the daughter tried to take the dog out of Karl’s car, but he would not allow it. Sometime during this two month period, Karl testified that he took the dog to the veterinarian and had its vaccinations. Karl confirmed that Rita took the dog on the day in March 2009 that she returned the piano. He notified the Rock Island Police Department, who notified the Davenport Police Department. But, he was never successful in retrieving the dog. Almost three years later, in January 2012, Karl filed this action.

¶ 8 The daughter testified that she was about 13 years old when she went with Karl to the pound to pick out the dog. Although Karl never specifically said that the dog was a gift, that was the daughter’s impression. She and her sisters named the dog.

¶ 9 The trial court did not find the lawsuit to be frivolous, so it found that Rita did not prove her counterclaim. With regard to the claims of trover and conversion, the trial court found that Karl did not buy the dog as a gift for his daughter. It found that the dog was Karl’s, but he was sharing it with his daughter. However, the trial court concluded that when the daughter took the

dog back in March 2009, and Karl took no action until January 2012, Karl abandoned the dog. No costs were awarded to either side. Karl's motion to reconsider was denied, and he appealed.

¶ 10

ANALYSIS

¶ 11 First, we must address the fact that Rita did not file an appellee brief in this case. While we are not compelled to serve as her advocate, nor search the record for the purpose of sustaining the trial court's judgment, we may do so if justice so requires. *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128 (1976). In this case, absent the appellee's brief, we chose to decide the merits of the appeal because the record is fairly straightforward. See *First Capitol Mortgage Corp.*, 63 Ill. 2d at 133.

¶ 12 Karl argues that the trial court erred in requiring him to prove his claim for conversion beyond a reasonable doubt, and in finding that he had abandoned the dog.

¶ 13 To prove the tort of conversion, a plaintiff must show that (1) he has a right to the property; (2) he has an absolute and unconditional right to the immediate possession of the property; (3) he made a demand for possession and (4) the defendant wrongfully and without authorization assumed control, dominion, or ownership over its property. *Loman v. Freeman*, 229 Ill. 2d 104 (2008). We review a trial court's ruling following a bench trial to determine whether the trial court's judgment is against the manifest weight of the evidence. *Judgment Services Corp. v. Sullivan*, 321 Ill. App. 3d 151 (2001).

¶ 14 The trial court's conclusion that the evidence established that Karl purchased the dog, and did not gift it to Rita, is supported by the evidence. However, notwithstanding the reasonable doubt standard referenced by the trial court, the finding that the dog was not a gift to the daughter was against the manifest weight of the evidence. The evidence was undisputed that Karl

purchased the dog to share with his daughter. However, his daughter resided with her mother, and did not even sleep at Karl's house when he exercised his visitation. Also, other than the initial purchase, and a possible veterinarian visit in early 2009, Karl did not contribute any money toward the care of the dog. The record establishes that the daughter was at least a co-owner of the dog. See *Papesh v. Matesevac*, 223 Ill. App. 3d 189 (1991) (under section 2.16 of the Animal Control Act, 510 ILCS 5/2.16 (West 2010), the owner of an animal is someone who exercises some level of care, custody, or control over the animal). Since the daughter was an owner of the dog, Karl cannot show the unconditional right to possession required for conversion, and we affirm the judgment in favor of Rita on the complaint. See *Forsberg v. Edward Hospital and Health Services*, 389 Ill. App. 3d 434 (2009) (an appellate court reviews a trial court's judgment, not its reasoning, and may affirm on any basis called for by the record).

¶ 15

CONCLUSION

¶ 16 The judgment of the circuit court of Rock Island County is affirmed.

¶ 17 Affirmed.