

2011 IL App (2d) 110197-U
No. 2-11-0197
Order filed December 5, 2011

NOTICE: This order was filed under Supreme Court Rule 23(c)(2) and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

JOHN LACHER,	)	Appeal from the Circuit Court
	)	of McHenry County.
Plaintiff-Appellee,	)	
	)	
v.	)	No. 10-SC-1339
	)	
NRI, LLC, d/b/a ACM Recovery,	)	Honorable
	)	John D. Bolger,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE BIRKETT delivered the judgment of the court.
Justices Burke and Hudson concurred in the judgment.

ORDER

Held: (1) Having made no assertion of mistake or confusion, plaintiff could not testify in contradiction of an allegation in his complaint, and the trial court's judgment, based on that testimony, was erroneous; (2) plaintiff was not entitled to the release of his towed vehicles upon his demand under section 4-203(f) of the Vehicle Code; that statute requires a demand prior to actual removal or towing, and here the demand came after.

¶ 1 Following a bench trial, the trial court awarded plaintiff, James Lacher, \$510 in damages on his conversion claim against defendant, NRI, LLC, d/b/a ACM Recovery, for towing three of plaintiff's vehicles. Defendant appeals, arguing that the trial court's judgment was against the manifest weight of the evidence. For the reasons that follow, we reverse.

¶ 2 In his amended complaint, plaintiff alleged that on October 2, 2009, defendant improperly towed plaintiff's vehicles from the parking lot of Flowerwood Garden Center after defendant left the Flowerwood parking lot and went to the McDonald's located across the parking lot.

¶ 3 At trial, plaintiff testified that on October 2, 2009, he went to Flowerwood, a store in Crystal Lake, to purchase some auto parts and shrubs. He was driving his pickup truck, towing another vehicle on a trailer behind the truck. Because of the length of his vehicles, he parked parallel to the curb in the Flowerwood parking lot. Before entering Flowerwood, he went to the gas station near Flowerwood to use the restroom. When he returned to the Flowerwood parking lot 5 to 10 minutes later, his vehicles were gone. As plaintiff was walking around the building, a man in a car pulled up and asked if plaintiff was looking for his truck. The man told plaintiff that his vehicles were across the street at another gas station and that plaintiff would have to pay \$510 to get his vehicles back. Plaintiff proceeded to the gas station where his vehicles were and spoke with a tow truck driver employed by defendant. Plaintiff explained to the driver that he was, in fact, a customer of Flowerwood but that he had simply intended to use the gas station restroom before going into Flowerwood. The driver refused to return plaintiff's vehicles and instead towed them to the recovery lot in Wauconda. Plaintiff was able to retrieve his vehicles there after paying \$510.

¶ 4 At trial, Warren Crum, the owner of defendant (Crum was not identified in the record, but is identified in plaintiff's appeal brief), stated that Flowerwood hired defendant to maintain a spotter in the parking lot and to tow anyone who parked in the Flowerwood parking lot and went to the nearby McDonald's. An employee of defendant towed plaintiff's vehicles after plaintiff parked them in the Flowerwood parking lot and proceeded to the nearby McDonald's.

¶ 5 Following arguments by the parties, the trial court awarded plaintiff judgment in the amount of \$510. According to the trial court, the contract between Flowerwood and defendant provided that

defendant was to tow any vehicles parked in Flowerwood's lot and belonging to people who went to the nearby McDonald's. The trial court found that there was no evidence that plaintiff went to the McDonald's, because plaintiff testified that he went to the nearby gas station. The trial court also found that it was plaintiff's intent to go to Flowerwood after he used the restroom.

¶ 6 Defendant brought this timely appeal.

¶ 7 Before addressing the merits of defendant's contention on appeal, we note that defendant has included in the appendix to its brief documents that were not made part of the record in the trial court. Because a party may not use briefs and appendices to supplement the record on appeal, we will disregard the improperly appended documents. *In re Parentage of Melton*, 321 Ill. App. 3d 823, 826 (2001).

¶ 8 On appeal, defendant argues that the trial court erred in finding in favor of plaintiff, because plaintiff alleged in his amended complaint that he left the Flowerwood parking lot to go to the nearby McDonald's. A trial court's rulings following a bench trial will be disturbed on appeal only if they are against the manifest weight of the evidence. *Dargis v. Paradise Park, Inc.*, 354 Ill. App. 3d 171, 177 (2004). We agree with defendant.

¶ 9 "Judicial admissions are formal admissions in the pleadings that have the effect of withdrawing a fact from issue and dispensing wholly with the need for proof of the fact." *Konstant Products, Inc. v. Liberty Mutual Fire Insurance Co.*, 401 Ill. App. 3d 83, 86 (2010). Allegations in a complaint constitute judicial admissions and are conclusive against the pleader. *Calloway v. Allstate Insurance Co.*, 138 Ill. App. 3d 545, 549 (1985). Once a judicial admission is made, absent mistake or confusion, it may not be contradicted at trial. *In re Estate of Rennick*, 181 Ill. 2d 395, 406 (1998); *Konstant Products*, 401 Ill. App. 3d at 86.

¶ 10 Plaintiff alleged in his verified original complaint and his amended complaint that, after parking his vehicles in the Flowerwood parking lot, he went to McDonald's. He made no claim at trial that this allegation was the result of mistake or confusion, and he has made no such claim on appeal. Therefore, the allegation that he left the Flowerwood parking lot to go to McDonald's constitutes a judicial admission that bound plaintiff during trial. *Konstant Products*, 401 Ill. App. 3d at 86 (because there was no evidence or assertion of mistake or confusion, allegation in the verified complaint constituted a binding judicial admission); see also *Konstant Products*, 401 Ill. App. 3d at 86 ("A party's admissions contained in an original verified pleading are judicial admissions that still bind the pleader even after the filing of an amended pleading that supercedes the original."); *State Security Insurance Co. v. Linton*, 67 Ill. App. 3d 480, 484 (1978) ("When the admission is made in an unverified pleading signed by an attorney, it is binding on his client."). Any evidence, including plaintiff's testimony that he left Flowerwood's parking lot to go to a gas station, contradicting this admission should not have been permitted. *Rennick*, 181 Ill. 2d at 406. Because the trial court found that the contract between Flowerwood and defendant provided that defendant was to tow anyone who left the Flowerwood parking lot to go to McDonald's, and because plaintiff was bound by the admission that he left the Flowerwood parking lot to go to McDonald's, the trial court erred in finding that defendant acted improperly in towing plaintiff's vehicles.

¶ 11 Plaintiff contends that, in any case, defendant was required to release plaintiff's vehicles upon plaintiff's demand to the tow truck driver. Under section 4-203(f) of the Illinois Vehicle Code (Code) (625 ILCS 5/4-203(f) (West 2008)), property owners may have unauthorized vehicles towed from their property. The statute further provides, however:

"If the registered owner or legally authorized person entitled to possession of the vehicle shall arrive at the scene prior to actual removal or towing of the vehicle, the vehicle shall be

disconnected from the tow truck and that person shall be allowed to remove the vehicle without interference, upon the payment of a reasonable service fee of not more than one half the posted rate of the towing service ***.” 625 ILCS 5/4-203(f)(3) (West 2008).

According to plaintiff, pursuant to this provision of the Code, defendant was required to return his vehicles when he demanded their return from the tow truck driver. Plaintiff’s contention is without merit. This provision of the Code clearly provides that the vehicle needs to be removed from the tow truck only if the person entitled to possession arrives at the scene *prior* to actual removal or towing of the vehicle. In this case, plaintiff did not return to the scene until after his vehicles had been towed from the Flowerwood parking lot. Accordingly, defendant was not required to return plaintiff’s vehicles upon plaintiff’s demand.

¶ 12 The judgment of the circuit court of McHenry County is reversed.

¶ 13 Reversed.