2022 IL App (4th) 220504-U

NO. 4-22-0504

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
November 30, 2022
Carla Bender
4th District Appellate
Court, IL

LORA M. BENSON,	)	Appeal from the
Plaintiff-Appellant,	)	Circuit Court of
v.	)	Greene County
PATRICIA M. HOGAN and CORY R. DOVER,	)	No. 22LM3
Defendants-Appellees.	)	
	)	Honorable
	)	Zachary A. Schmidt,
	)	Judge Presiding.

JUSTICE DOHERTY delivered the judgment of the court.
Justices Harris and Zenoff concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court's decision in a replevin action to award plaintiff some of the requested property, while denying her request as to other property to which ownership was not established, is not against the manifest weight of the evidence.

¶ 2 In February 2022, plaintiff Lora Benson filed a *pro se* replevin action against her mother, Patricia Hogan, and her son, Cory Dover, seeking possession of certain of plaintiff's personal property left inside a home owned by Hogan following plaintiff's eviction. After three evidentiary hearings on the matter, the trial court entered an order awarding plaintiff possession of eight items of personal property but dismissed her complaint as to the remaining items claimed, finding that plaintiff had failed to provide adequate proof of ownership.

¶ 3 On appeal, plaintiff seeks reversal of the trial court's order denying her replevin action as to certain items or, in the alternative, a remand for further hearings. She also requests a new judge and a change of venue. No appellee brief was filed.

¶ 4 For the reasons that follow, we affirm.

¶ 5 I. BACKGROUND

¶ 6 The items in dispute in this replevin action are located at a three-bedroom ranch-style residential home in Carrollton, Illinois (residence), formerly owned by plaintiff's grandmother, Audrey Jean Martin, who passed away in July 2021. A will designated Hogan as the executor of Martin's estate, but the will did not provide for distribution of personal property. Even so, the parties agree that Hogan inherited the residence, although she resided elsewhere.

¶ 7 Plaintiff lived at the residence until approximately 2012, at which time she moved out and her brother moved in; he continued to reside at the residence until his death in May 2020. Plaintiff moved back into the residence in October 2020, arranged for utilities and garbage removal services and, according to plaintiff, purchased appliances for the residence. Plaintiff paid monthly rent to Hogan, who admitted receipt of the money but denied that it was for rent. Hogan claimed the money was repayment of monies plaintiff owed to her. Plaintiff's son, Dover, also lived at the residence.

¶ 8 In November 2021, plaintiff was evicted from and locked out of the residence, and a "no trespass" order was issued by the police. Plaintiff and Hogan offered different justifications for the eviction; neither those arguments nor the specific nature of the "eviction" are relevant here. It is, however, clear from the record that there is animosity between the two and that they have differing views of the facts.

¶ 9 Upon plaintiff's eviction, certain items remained at the residence, and it is possession of those items that forms the basis of this dispute.

¶ 10 According to Dover, plaintiff was supposed to pick up her items from the residence the Saturday following her eviction; because she failed to do so, Dover moved the items into the

back shed. He said, "[I]t's not thrown away. It's all still in the shed. Nothing's damaged." When asked by the court whether all the items on plaintiff's list were in the shed, Dover said, "Not everything. Just most of the items." He said the appliances were "still in the house but I do not know who owns them." He also said the 55-inch TV that plaintiff claimed was still on the wall in the residence.

¶ 11 At the conclusion of the first hearing, the trial court instructed plaintiff to retrieve those items of hers located in the shed. The court said, "I'm going to set this over for next month. I'm going to ask that any of the items that are in the shed that are Ms. Benson's, that you allow her to examine those and take those but, Ms. Benson, I'm not going to—you're going to have to get those out of there."

¶ 12 During the second hearing, plaintiff acknowledged that she had not yet been able to remove her items from the shed. Plaintiff tendered to the court a revised listing of items she claimed as hers; one list, entitled, "still in shed," contained 15 items and a second list, entitled, "missing items," contained roughly 37 items. The trial judge went through each item listed, questioning the parties as to ownership. Although Hogan admitted that a few of the listed items were plaintiff's, she disputed plaintiff's ownership claim of most items or said she either did not know where the items were or did not know anything about them.

¶ 13 Of the items on plaintiff's "missing" list, six were home appliances; namely, a stove, washer, dryer, dishwasher, refrigerator, and microwave. Although plaintiff presented receipts showing that she had purchased the appliances and arranged for their delivery to the residence in early November 2020, Hogan testified that she had given plaintiff the money for these purchases. Plaintiff disputed Hogan's explanation and offered text messages between herself and her mother to the contrary, and further claimed she had used lottery winnings to buy the appliances.

When questioned further on the purported lottery winnings, plaintiff said she had no tax documents to support her lottery winnings, although she exhibited a photo of the supposed winning ticket to the court.

¶ 14 Plaintiff was also asked by the trial court about her monthly income, rent payment, and other expenses. At this point, the court commented, "[S]o here's what I'm getting at. Absent having the fact that you've won the lottery, I don't know how anyone *** with an excess of $243 a month in their income could afford $5,000 worth of washer and dryer and other items." Plaintiff claimed she had used a debit card.

¶ 15 At the conclusion of the third hearing, the trial court awarded plaintiff possession of eight items—a cedar chest, a memory foam mattress, a desk and chair, lawn chairs, three gas jugs, a shovel, rake, and a sander—but denied her request for the remainder of the listed items, finding she had "failed to provide adequate proof of ownership."

¶ 16 This appeal followed.

¶ 17 II. ANALYSIS

¶ 18 A. Replevin

¶ 19 Replevin is a strict statutory proceeding; the statute must be followed precisely. *Universal Credit Co. v. Antonsen*, 374 Ill. 194, 200 (1940); *Jim's Furniture Mart, Inc. v. Harris*, 42 Ill. App. 3d 488, 490 (1976); see 735 ILCS 5/19-101 *et seq.* (West 2020). The primary purpose of the replevin statute is to test the right of possession of personal property and place the successful party in possession of the property. *S.T. Enterprises, Inc. v. Brunswick Corp.*, 57 Ill. 2d 461, 469 (1974).

¶ 20 Section 19-101 of the Code of Civil Procedure (Code) provides:

> "Whenever any goods or chattels have been wrongfully distrained, or otherwise wrongfully taken or are wrongfully detained, an action of replevin may be brought for the recovery of such goods or chattels, by the owner or person entitled to their possession." 735 ILCS 5/19-101 (West 2020).

¶ 21 A plaintiff commences an action in replevin by filing a verified complaint "which describes the property to be replevied and states that the plaintiff in such action is the owner of the property so described, or that he or she is then lawfully entitled to the possession thereof, and that the property is wrongfully detained by the defendant." 735 ILCS 5/19-104 (West 2020). The trial court then conducts a hearing to review the basis for the plaintiff's alleged claim to possession. 735 ILCS 5/19-107 (West 2020). Following the hearing, an order of replevin shall issue "[i]f the Plaintiff establishes a *prima facie* case to a superior right to possession of the disputed property, and if the plaintiff also demonstrates to the court the probability that the plaintiff will ultimately prevail on the underlying claim to possession." 735 ILCS 5/19-107 (West 2020).

¶ 22 B. Plaintiff's Burden and Standard of Review

¶ 23 A plaintiff in a replevin action bears the burden to "prove that he [or she] is lawfully entitled to possession of the property, that the defendant wrongfully detains the property and refuses to deliver the possession of the property to the plaintiff." (Internal quotation marks omitted.) *Carroll v. Curry*, 392 Ill. App. 3d 511, 513 (2009); *International Harvester Credit Corp. v. Helland*, 130 Ill. App. 3d 836, 838 (1985) (citing *Hanaman v. Davis*, 20 Ill. App. 2d 111 (1959)).

¶ 24 Review of a trial court's factual findings in a replevin action is governed by the manifest weight of the evidence standard of review. See *American National Bank & Trust Company of Chicago v. Mar-K-Z Motors & Leasing Co.*, 57 Ill. 2d 29 (1974); *Country Mutual Insurance Co. v. Aetna Life & Casualty Insurance Co.*, 69 Ill. App. 3d 764 (1979). Because the

trial court is in a superior position to assess the credibility of the parties and weigh the evidence in this respect, its decision must stand unless it is contrary to the manifest weight of the evidence. *Dan Pilson Auto Center, Inc. v. DeMarco*, 156 Ill. App. 3d 617, 620 (1987).

¶ 25 C. Application to this Case

¶ 26 We note that defendants did not file an appellee's brief. However, because the record is straightforward and we can easily address appellant's argument without the aid of an appellee's brief, we will decide the merits of this appeal. See, *e.g.*, *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976) ("[I]f the record is simple and the claimed errors are such that the court can easily decide them without the aid of an appellee's brief, the court of review should decide the merits of the appeal.").

¶ 27 We find that the trial court dealt with this case in a practical and logical manner. The court first assessed which items of property the parties did not disagree about. The court attempted to arrive at a method for plaintiff to retrieve those items. Once the matter was narrowed down to the items which were in dispute, the trial court considered the testimony and evidence presented and determined the disposition of the property. The trial judge heard the witnesses testify and considered their credibility and the weight to be afforded the testimony. Hogan admitted the eight items awarded to plaintiff were in fact plaintiff's property, and we find nothing in this record to the contrary. Moreover, Dover acknowledged that one item—a sander—was in his possession and that it belonged to his mother, plaintiff.

¶ 28 As to the remaining items on the two updated lists, the trial court correctly informed plaintiff that it was her burden to establish a superior right of possession. See *Carroll*, 392 Ill. App. 3d at 514 ("[T]he plaintiff bears the burden to 'allege and prove that he [or she] is lawfully entitled

to possession of the property, that the defendant wrongfully detains the property and refuses to deliver the possession of the property to the plaintiff.' ").

¶ 29 Plaintiff failed to satisfy her burden. The trial judge questioned the parties on each listed item and based on his assessments of the witnesses' credibility, determined which of the listed items were rightfully plaintiff's and which were not. As we noted earlier, a trial court's factual assessment as to ownership/possession rights in a replevin action is a question of fact subject to a manifest weight of the evidence standard of review. *Dan Pilson Auto Center*, 156 Ill. App. 3d at 620. We see nothing in the record suggesting that an opposite result is clearly apparent. There was conflicting evidence, which the trial judge necessarily resolved in rendering his decision. Simply because there may have been "some evidence" supporting plaintiff's claim does not mean that the trial court's finding was against the manifest weight of the evidence. See *Scalise v. Board of Trustees of the Westchester Firemen's Pension Fund*, 264 Ill. App. 3d 1029, 1035 (1993) (finding may not be against manifest weight of evidence even if there is "some evidence" contradicting it). Stated another way, "It will not suffice to show that the record will support a contrary decision; rather, if the record contains any evidence to support the trial court's judgment, the judgment should be affirmed." *Department of Transportation Ex rel. People v. 151 Interstate Road Corp.*, 209 Ill. 2d 471, 488, *modified on denial of reh'g* (Apr. 15, 2004).

¶ 30 Plaintiff also contends that the receipts showing that she paid for the appliances should have required the trial court to award them to her. Although plaintiff presented these receipts and testified that she purchased the appliances using monies she won in a lottery, Hogan testified that she had given the money to plaintiff to buy the appliances. The trial judge, as trier of fact, was free to reject that evidence and credit Hogan's testimony. Moreover, as noted by the trial judge, the record was not clear as to what the receipts actually showed. At one point, the trial court

commented about how the receipts "all appear, besides the washer and dryer, to have specific code descriptions but don't have descriptions as to what they actually are."

¶ 31 The judge further asked plaintiff, "[A]ll the other items besides those items of washer, dryer, stove, fridge, dishwasher and the sander, do you have any sort of receipts for that?" Plaintiff answered, "It was my brother's that was left in the house after my mother and step-father got out what they wanted." She added, "And she told me 'When in doubt, throw it out'. I wanted to keep what was my brother's. That was my brother." The judge then asked, "So, just so I'm clear. These items, a great chunk of them, were your brother's," to which plaintiff responded, "[Y]es."

¶ 32 It is well settled that "the credibility of the witnesses, the weight to be given their testimony, and the inferences to be drawn therefrom are for the trial judge who saw and heard the witnesses testify." *People v. Gilkey*, 21 Ill. 2d 422, 424 (1961). Moreover, the trial judge is in the best position to resolve conflicts in testimony. *Flynn v. Cohn*, 154 Ill. 2d 160, 169 (1992). Under the manifest weight standard, "a trial court's credibility decision is subject to great deference in a bench trial" (*Samour, Inc. v. Board of Election Commissioners of the City of Chicago*, 224 Ill. 2d 530, 548 (2007)), and a reviewing court must not substitute its judgment for that of the trier of fact. *Id*; *In re Z.L.*, 2021 IL 126931, ¶ 82. We will not disturb the trial court's assessment of the weight given to the evidence in this case absent a showing that the conclusions reached were against the manifest weight of the evidence.

¶ 33 III. CONCLUSION

¶ 34 For the reasons stated, we affirm the trial court's judgment.

¶ 35 Affirmed.