[Cite as *Osborne v. Osborne*, 2015-Ohio-2510.]

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
WASHINGTON COUNTY

STEVEN OSBORNE,	:	
Plaintiff-Appellee,	:	Case No. 13CA49
vs.	:	
STACEY OSBORNE,	:	DECISION AND JUDGMENT ENTRY
Defendant-Appellant.	:	

APPEARANCES:

COUNSEL FOR APPELLANT: Nancy E. Brum, 200 Putnam Street, Suite 600, Marietta, Ohio 45750

CIVIL CASE FROM COMMON PLEAS COURT
DATE JOURNALIZED: 6-15-15
ABELE, J.

{¶ 1} This is an appeal from a Washington County Common Pleas Court judgment. The trial court issued a permanent injunction that prohibited Stacey Osborne, defendant below and appellant herein, from entering any real property owned or occupied by Steven Osborne, plaintiff below and appellee herein.[1] The court also enjoined appellant from (1) interfering with appellant's

[1] Appellee did not file an appellate brief. If an appellee fails to file a brief, App.R. 18(C) authorizes us to accept "the appellant's statement of facts and issues as correct and reverse the judgment if appellant's brief reasonably appears to sustain such action." In other words, an appellate court may reverse a judgment based solely on a consideration of an appellant's brief. Sprouse v. Miller, 4th Dist. Lawrence App. No. 06CA37, 2007-Ohio-4397, fn. 1., citing Helmeci v. Ohio Bur. of Motor Vehicles, 75 Ohio App.3d 172, 174, 598 N.E.2d 1294 (1991). In the case at bar, however, we do not believe

private or business life, (2) threatening appellant, (3) engaging in menacing behavior toward appellant, and (4) causing or attempting to cause physical harm to appellant's property and pets. The court also awarded appellant $2,000 in damages.

{¶ 2} Appellant raises the following assignments of error for review:

> FIRST ASSIGNMENT OF ERROR:
>
> "THE COURT'S JUDGMENT AGAINST DEFENDANT IN THE SUM OF $2000.00 IS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE. THE COURT IN ITS WRITTEN DECISION, BASED THE JUDGMENT AGAINST DEFENDANT ON THE VALUE OF PLAINTIFF'S BUSINESS RECORDS. THERE IS NOTHING WHATSOEVER IN THE RECORD TO SUPPORT THIS CONCLUSION."
>
> SECOND ASSIGNMENT OF ERROR:
>
> "THE TRIAL COURT'S FINDINGS THAT MS. OSBORNE CALLED THE SHERIFF'S OFFICE IN AN ATTEMPT TO HAVE HER MINOR SON ARRESTED FOR BEING UNRULY AND THE COURT'S STATEMENT, 'THIS COURT HAS ABSOLUTELY NO DOUBT THAT THE DEFENDANT RAN OVER THE PLAINTIFF'S DOG AND KILLED IT IN AN OUT OF CONTROL FIT OF RAGE' ARE AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE."

{¶ 3} The parties married in 1997 and divorced in 2002. Before their marriage, they had two daughters, born in 1992 and 1993. In 2001, they had a son. After the parties divorced, appellee built a house and, shortly thereafter, appellant moved into the house. Over the next several years, the parties continued living together, despite experiencing bouts of relationship difficulties.

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that appellant's brief supports a reversal of the trial court's judgment.

{¶ 4} Between December 2012 and August 2013, the parties' relationship became particularly tumultuous. Appellee asked appellant numerous times to move out of the house, but appellant refused.

{¶ 5} On August 14, 2013, appellee filed a complaint against appellant. Appellee requested monetary damages and a preliminary and permanent injunction to prohibit trespass, destruction of property, and theft. Appellee requested the court to award him $2,000 in damages, to prohibit appellant from trespassing on his property, and to prohibit appellant from "other interference, threats, or menacing behavior against" appellee.

{¶ 6} On October 15 and 21, 2013, the trial court held a hearing. Both parties testified. Appellee testified that between December 2012 and August 2013, he asked appellant multiple times to move out of the house. Appellee stated that he finally sought court intervention in August. Appellee explained the circumstances leading up to his decision to seek court intervention as follows. Appellant became upset with appellee upon learning that he planned to take the parties' son and one daughter on vacation. On July 27, 2013, the day appellee planned to leave for vacation, he discovered that his car keys were missing and believed that appellant stole them. He thus called the sheriff's office. The sheriff's deputy asked appellant if she had the keys, but she stated that she did not.

{¶ 7} Later that day, appellant called the sheriff's office to complain that the parties' son was being unruly. Appellant requested the deputy to restrain their son from going on vacation with appellee. Appellee then left to pick up his car. As he was driving, appellant sent him a text message explaining that his dog had been "run over." Appellee immediately

returned home to discover that his dog was indeed dead. Appellee stated that appellant attempted "to blame the deputies for running over the dog."

{¶ 8} Appellee further stated that when he returned from vacation, several items of his personal property were missing, including business records, a pool liner, a sweatshirt, a patio set, tables, camping gear, a lighted patio umbrella, an air purifier, a dehumidifier, and curtains. Appellee blamed appellant for removing the property from his house.

{¶ 9} Appellee explained that appellant left his house on August 8 and planned to return on August 11. Appellee sent her a text message to inform her that he had packed her belongings, that she could contact him to obtain them and that she was no longer permitted on his property. He later left the house pursuant to a sheriff's deputy's suggestion.

{¶ 10} When appellee returned to the house on August 12, he noticed that his security system had been damaged. Appellee stated that two cameras, the DVR, and the monitor were missing. Appellee later discovered additional items were missing, including: (1) a photograph from his recent vacation; (2) $30 in change; (3) a drug test kit; (4) a six-foot heavy-duty ladder; (5) a new box of trash bags; (6) a new container of laundry detergent; (7) Carhartt camo bibs; (8) the security system receipt; (9) all of his socks; (10) new underwear; and (11) additional business records. Appellee found no indication that someone had broken into his house, but believed that appellant had taken the items.

{¶ 11} Appellant testified that she started living in appellee's house in August 2004. She stated that on July 27, 2013, before appellee left for vacation, they had a "huge fight" that appellant explained as follows. Shortly before appellee left for vacation, she asked whether they were taking a family vacation. Appellee did not respond. Approximately one week

before appellee left for vacation, he told appellant that he was taking their son, their oldest daughter, and the daughter's boyfriend on vacation.

{¶ 12} Appellant stated that on July 27, she called the sheriff to "assist [her] in making [her] son obey and come home like he was asked to do, from a friend's house." Appellant testified that she asked the sheriff to do what the Juvenile Probation Department advised her, "which was call for their assistance if my son was being unruly–which he was; he was screaming at me, cursing at me, defying me, and would not come home like he was asked to do." She explained that her son "was standing in the neighbor's driveway, screaming at me that Daddy said that he couldn't go on vacation and that he hated me and that I–you know, it was just–at the top of his lungs." When asked whether she called the sheriff because her son was being unruly, appellant stated, "Yes, I did." She denied, however, that she wanted the sheriff to arrest her son.

{¶ 13} Appellant stated that she wanted her son to know "the truth" about appellee's vacation and explained that "the truth" "was that he was being taken and our older daughter was being taken, who [appellee] and our older daughter has done nothing but for the last 20 years, was crucified my other daughter." Appellant stated that she wanted her son to know that appellee "purposely * * * excluded" the other daughter. She believed her son "was being used as a pawn to hurt" the other daughter.

{¶ 14} Appellant also denied that she ran over the dog and stated, "It was not me who ran over that dog." She explained that she and the two deputies were leaving the house at the same time and that she does not know which deputy's car backed over the dog. She stated, however, that no one did it on purpose.

{¶ 15} Appellant stated that she left the house between August 8 and August 11 to stay with her mother and that when she tried to return to the house on August 11, appellee informed her not to return. Appellant testified that appellee told her that she no longer lives there and that she needed to make arrangements to obtain her property from the house. Appellant stated that appellee then called the sheriff and requested the sheriff to meet her at the house. When she arrived at the house, appellee had already departed.

{¶ 16} The next morning, appellee called the sheriff because he believed his security cameras had been damaged. Appellant denied that she damaged the cameras.

{¶ 17} Appellant admitted that she removed some of her property from the house while appellee was on vacation, but denied that she wrongfully took or damaged any of appellee's property. Appellant admitted that she took the patio set, but claimed that it belongs to her. To support her claim, she presented a receipt for the patio set. Appellant also admitted that she took family photographs, the pool liner, three tables, camping gear, the lighted patio umbrella, the air purifier, the dehumidifier, curtains, and the curtain rods. Appellant, however, denied taking business records, the drug test kit, the ladder, the trash bags, the laundry detergent, the Carhartt camo bibs, and appellee's socks and underwear. Appellant also denied that she destroyed the security systems or took the cameras, DVR, or monitor.

{¶ 18} Appellant stated that between January and July 2013, appellee asked her multiple times to move out of the house, and, at one point, appellee offered her $500 to leave the house. Appellant admitted that she did not leave the house until August 17, 2013, when the court ordered her to do so.

{¶ 19} Washington County Sheriff's Deputy Jeremiah McConnell testified that on July 27, he visited the appellee's home in response to report of a missing set of car keys that appellee believed that appellant had taken. He called appellant, and appellant stated that she did not have the keys. The deputy left, but returned to the house later that day when appellant called the sheriff's office to request assistance making her son return home. He stated that appellant talked to him "about unruly charges, if there was a possibility of those, because [the son] wouldn't want to come home."

{¶ 20} Deputy McConnell stated that appellee was at a neighbor's house and saw the deputy approach his house. The deputy asked appellee to return home with the parties' son. Deputy McConnell spoke with the son, but did not take any official action. The deputy told appellant that he could not charge the child with being unruly and that the child "didn't want to come home, because of the arguments that w[ere] going on from earlier. He told me that he'd knew [sic] that [appellant] had the keys to the car–whether she did or not, I don't know, but he was just upset."

{¶ 21} Deputy McConnell further explained that appellant was unhappy with his response to her complaint and that she called to speak with his supervisor. Subsequently, the deputy's supervisor arrived at the house and talked with appellant. The supervisor told appellant that "there was nothing we could do about unruly charges and advised her, you know, there's nothing that really that we could do, because of the situation."

{¶ 22} Deputy McConnell testified that as he and his supervisor were leaving, appellant's vehicle backed over the dog. He stated, however, that he did not believe that she did it intentionally.

{¶ 23} Washington County Sheriff's Deputy Sergeant Matthew Anderson testified that on August 12 he responded to appellee's home to investigate appellee's complaint that his security system had been damaged and some items stolen. Sergeant Anderson stated that appellant denied taking the cameras.

{¶ 24} Appellee testified on rebuttal that the receipt that appellant had presented to show that the patio set belonged to her had been stored with the missing business records that had been removed from his home.

{¶ 25} On December 13, 2013, the trial court entered judgment in appellee's favor. The court specifically discredited appellant's testimony, found that she stole items from appellee's home and vandalized his property, and observed that appellant presented a receipt for the patio furniture and stated that the testimony showed "that this receipt could only have come from the records stolen from [appellee]'s home." The court determined that appellant "went to great efforts to interrupt [appellee]'s planned vacation." The court found that appellant called the sheriff's office "in an attempt to have her minor son arrested for being unruly" and that her "sole" reason for doing so "was to keep [her son] from going on vacation."

{¶ 26} The trial court also found that although appellant tried to blame the sheriff's deputies for running over the dog, the deputies saw appellant back over the dog. The court then stated: "This court has absolutely no doubt that [appellant] ran over [appellee]'s dog and killed it in an out of control fit of rage."

{¶ 27} Consequently, the trial court permanently enjoined appellant from entering appellee's property, from interfering with appellee's private or business life, from threatening appellee, from engaging in menacing behavior toward appellee, and from causing or attempting

to cause harm to appellee's property and pets. The court additionally awarded appellee $2,000 in damages. This appeal followed.

I

{¶ 28} In her first assignment of error, appellant contends that the trial court's $2,000 judgment is against the manifest weight of the evidence. In particular, appellant argues that the record does not contain any evidence to support the court's finding that appellee's "business records have been stolen in excess of $2,000 in value."

{¶ 29} Appellate courts generally will uphold trial court judgments so long as the manifest weight of the evidence supports it. When an appellate court reviews whether a trial court's decision is against the manifest weight of the evidence, the court "'"weighs the evidence and all reasonable inferences, considers the credibility of witnesses and determines whether in resolving conflicts in the evidence, the [fact-finder] clearly lost its way and created such a manifest miscarriage of justice that the [judgment] must be reversed * * *."'" Eastley v. Volkman, 132 Ohio St.3d 328, 2012–Ohio–2179, 972 N.E.2d 517, ¶20, quoting Tewarson v. Simon, 141 Ohio App.3d 103, 115, 750 N.E.2d 176 (9th Dist.2001); State v. Thompkins, 78 Ohio St.3d 380, 387, 678 N.E.2d 541 (1997). A reviewing court may find a trial court's decision against the manifest weight of the evidence only in the "'exceptional case in which the evidence weighs heavily against the [decision].'" Thompkins, 78 Ohio St.3d at 387, quoting State v. Martin, 20 Ohio App.3d 172, 175, 485 N.E.2d 717 (1st Dist. 1983); accord State v. Lindsey, 87 Ohio St.3d 479, 483, 721 N.E.2d 995 (2000). Moreover, when reviewing evidence under the manifest weight of the evidence standard, an appellate court generally must

defer to the fact-finder's credibility determinations. Eastley at ¶21. As the Eastley court explained:

> "'[I]n determining whether the judgment below is manifestly against the weight of the evidence, every reasonable intendment must be made in favor of the judgment and the finding of facts. * * *
> If the evidence is susceptible of more than one construction, the reviewing court is bound to give it that interpretation which is consistent with the verdict and judgment, most favorable to sustaining the verdict and judgment.'"

Id., quoting Seasons Coal Co., Inc. v. Cleveland, 10 Ohio St.3d 77, 80, 461 N.E.2d 1273 (1984), fn.3, quoting 5 Ohio Jurisprudence 3d, Appellate Review, Section 60, at 191–192 (1978).

{¶ 30} In the case at bar, we agree with appellant that the record does not contain evidence to support a finding that appellee's business records were valued at $2,000. Appellee did not present any evidence or testimony that the stolen business records carried a monetary value. This does not mean, however, that we must reverse the trial court's judgment. "[I]t is the definitely established law of this state that where the judgment is correct, a reviewing court is not authorized to reverse such judgment merely because erroneous reasons were assigned as the basis thereof." Agricultural Ins. Co. v. Constantine, 144 Ohio St. 275, 284, 58 N.E.2d 658 (1944); accord Stammco, L.L.C. v. United Tel. Co. of Ohio, 136 Ohio St.3d 231, 2013–Ohio–3019, 994 N.E.2d 408, ¶51 ("a reviewing court should not reverse a correct judgment merely because it is based on erroneous reasons"); State ex rel. Carter v. Schotten, 70 Ohio St.3d 89, 92, 637 N.E.2d 306 (1994); Joyce v. General Motors Corp., 49 Ohio St.3d 93, 96, 551 N.E.2d 172 (1990). Thus, when a trial court has stated an erroneous basis for its judgment, an appellate court must nevertheless affirm the judgment if it is legally correct on other grounds. Reynolds v. Budzik, 134 Ohio App.3d 844, 846, 732 N.E.2d 485, fn. 3 (6th

Dist. 1999); Newcomb v. Dredge, 105 Ohio App. 417, 424, 152 N.E.2d 801 (2nd Dist. 1957) ("It is the duty of the reviewing court to affirm the judgment if it can be supported on any theory, although a different theory from that of the trial court.").

{¶ 31} In the case at bar, we believe that the trial court's judgment awarding appellee $2,000 is correct on other grounds. Appellee presented an exhibit that listed the personal property items that he claims appellant removed from the residence and assigned a value to almost each item. The total value of the items is over $3,500. Thus, even though the trial court wrongly determined that appellee's business records were valued at $2,000, the record contains evidence to show that appellant removed at least $2,000 worth of appellee's personal property. Consequently, the trial court's ultimate decision to award appellee $2,000 is not against the manifest weight of the evidence.

{¶ 32} Accordingly, based upon the foregoing reasons, we hereby overrule appellant's first assignment of error.

II

{¶ 33} In her second assignment of error, appellant challenges two of the court's factual findings: (1) that she called the sheriff's office to have her minor son arrested for being unruly; and (2) that she ran over appellee's dog in a fit of rage.

{¶ 34} An appellate court "has an obligation to presume that the findings of the trier of fact are correct. This presumption arises because the trial judge had an opportunity 'to view the witnesses and observe their demeanor, gestures and voice inflections, and use these observations in weighing the credibility of the proffered testimony.'" State v. Wilson, 113 Ohio St.3d 382, 2007–Ohio–2202, 865 N.E.2d 1264, ¶24, quoting Seasons Coal Co., Inc. v.

Cleveland, 10 Ohio St.3d 77, 80, 461 N.E.2d 1273 (1984). Furthermore, "'[a] reviewing court should not reverse a decision simply because it holds a different opinion concerning the credibility of witnesses and evidence submitted before the trial court.'" Id., quoting Seasons Coal, 10 Ohio St.3d at 81. Instead, the factfinder "'is best able to view the witnesses and observe their demeanor, gestures and voice inflections, and use these observations in weighing the credibility of the proffered testimony.'" In re Jane Doe I, 57 Ohio St.3d 135, 138, 566 N.E.2d 1181 (1991), quoting Seasons Coal, 10 Ohio St.3d at 80. Thus, we will not reverse a finding of fact so long as some competent, credible evidence supports the finding. See, e.g., Lovett v. Carlisle, 179 Ohio App.3d 182, 2008–Ohio–5852, 901 N.E.2d 255, (4th Dist.), ¶16, citing Sec. Pacific Natl. Bank v. Roulette, 24 Ohio St.3d 17, 20, 24 OBR 14, 492 N.E.2d 438 (1986).

{¶ 35} In the case at bar, even if we could conclude that the trial court's factual findings are against the manifest weight of the evidence, appellant cannot demonstrate how the court's allegedly erroneous findings affected her substantial rights. Civ.R. 61 provides:

> No error in either the admission or the exclusion of evidence and no error or defect in any ruling or order or in anything done or omitted by the court or by any of the parties is ground for granting a new trial or for setting aside a verdict or for vacating, modifying or otherwise disturbing a judgment or order, unless refusal to take such action appears to the court inconsistent with substantial justice. The court at every stage of the proceeding must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties.

"To find that substantial justice has not been done, a court must find (1) errors and (2) that without those errors, the [factfinder] probably would not have arrived at the same [decision]." Hayward v. Summa Health Sys./Akron City Hosp., 139 Ohio St.3d 238, 2014-Ohio-1913, 11

N.E.3d 243, ¶25, citing Hallworth v. Republic Steel Corp., 153 Ohio St. 349, 91 N.E.2d 690 (1950), paragraph three of the syllabus.

{¶ 36} In the case sub judice, we do not believe that appellant can show that absent the allegedly erroneous factual findings, the trial court probably would not have arrived at the same decision. In other words, appellant cannot show that the allegedly erroneous findings affected the court's decision to enter judgment in appellee's favor. We believe the court most likely would have entered the same judgment even without the allegedly erroneous factual findings. Consequently, any error with the court's findings constitutes harmless error that we must disregard.

{¶ 37} Accordingly, based upon the foregoing reasons, we hereby overrule appellant's second assignment of error and affirm the trial court's judgment.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the judgment be affirmed and that appellee recover of appellant the costs herein taxed.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Washington County Common Pleas Court to carry this judgment into execution.

A certified copy of this entry shall constitute that mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

Hoover, P.J.: Concurs in Judgment & Opinion
Harsha, J.: Concurs in Judgment Only

For the Court

BY: _____
Peter B. Abele, Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.