[Cite as *Keys v. Turner*, 2012-Ohio-4489.]

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

Natalie Keys	Court of Appeals No. L-11-1237
Appellee	Trial Court No. CVF-10-04757
v.	
Marjory Turner	**DECISION AND JUDGMENT**
Appellant	Decided: September 28, 2012

* * * * *

Natalie Keys, pro se.

Robert S. Salem, for appellant.

* * * * *

SINGER, P.J.

{¶ 1} This is an appeal from the Toledo Municipal Court granting appellee, Natalie Keys, a $5,000 judgment against appellant, Marjory Turner. Because we find that there was no valid consideration for a contract between the parties, we reverse.

{¶ 2} This case began when appellant, who was driving appellee's car, was involved in an accident in which appellee's car was totaled. Appellant and appellee were personal friends. On July 20, 2009, they each signed the following agreement:

> I [appellant] hereby agree that I was involved in an accident while driving the 2008 Kia Spectra belonging to [appellee] on April tenth, 2009. I understand in addition for damage to her car, I owe [appellee] personally the sum of $5,000.00. I agree to pay this off in installments per month starting September 2009 of $714.00. I understand that I have until February 1st, 2010 to make my final payment. I also understand that if I miss any payments the full amount will be due immediately.

{¶ 3} On March 15, 2010, appellee filed a breach of contract action against appellant alleging she had failed to make any payments pursuant to the above agreement. She asked for a judgment against appellant in the amount of $5,000. Appellant argued that the contract was void for lack of consideration. At trial, appellee testified that after the accident, her insurance company paid off her car loan. The $5,000 she sought from appellant represented the amount of her down payment on the car. Both parties testified that they entered into the agreement to save their friendship. Appellant testified that after she lost her job, she was unable to make the payments. Following the trial, judgment was granted against appellant in the amount of $5,000. Appellant now appeals setting forth the following assignments of error:

> I. The trial court's decision was against the manifest weight of the evidence because the evidence presented at trial contradicted the Court's holding that there was adequate consideration for a valid contract between the parties.

II. The trial court's decision was an abuse of discretion because it was influenced by the trial judge's personal bias and irrelevant personal experience.

{¶ 4} In her first assignment of error, appellant contends that the court's finding that the contract was valid is against the manifest weight of the evidence. Specifically, appellant contends that the contract was void for lack of consideration.

{¶ 5} If some competent, credible evidence going to all the essential elements of the case supports the trial court's judgment, a reviewing court will not reverse it as being against the manifest weight of the evidence. *C.E. Morris Co. v. Foley Constr. Co*., 54 Ohio St.2d 279, 376 N.E.2d 578 (1978), syllabus.

{¶ 6} A contract is a promise or a set of promises, for the breach of which the law provides a remedy. *Cleveland Builders Supply Co. v. Farmers Ins. Group of Cos*., 102 Ohio App.3d 708, 712, 657 N.E.2d 851 (8th Dist.1995). The elements of a breach of contract claim are the existence of a contract, performance by the plaintiff, breach by the defendant, and damage or loss to the plaintiff. *Doner v. Snapp*, 98 Ohio App.3d 597, 600, 649 N.E.2d 42 (2d Dist.1994). A plaintiff must present evidence on all of these elements to successfully prosecute a breach of contract claim. *Id*. The essential elements of a contract "'include an offer, acceptance, contractual capacity, consideration, * * * a manifestation of mutual assent and legality of object and of consideration.'" *Kostelnik v. Helper*, 96 Ohio St.3d 1, 2002-Ohio-2985, 770 N.E.2d 58, ¶ 16, quoting *Perlmuter Printing Co. v. Strome, Inc.*, 436 F.Supp. 409, 414 (N.D.Ohio 1976).

> Consideration may consist of either a detriment to the promisee or a benefit to the promisor. A benefit may consist of some right, interest, or profit accruing to the promisor, while a detriment may consist of some forbearance, loss, or responsibility given, suffered, or undertaken by the promisee. *Lake Land Employment Group of Akron LLC v. Columber*, 101 Ohio St.3d 242, 2004-Ohio-786 ¶ 16.

{¶ 7} In this case, there was no evidence of detriment to the promisee, appellee. Rather, she was to receive, if anything, a benefit in the form of a monthly payment of $714. Appellant, the promisor, did not accrue a benefit in agreeing to be indebted to appellee. Applying the above definition of consideration, we can only conclude that the agreement at issue is void for lack of consideration and is therefore unenforceable.

{¶ 8} As for the argument that the parties' friendship amounted to consideration, we disagree. Ohio case law does not support this contention. *See Williams v. Ormsby* 131 Ohio St.3d 427, 2012-Ohio-690, 966 N.E.2d 255, *Carlisle v. T & R Excavating*, 123 Ohio App.3d 277, 704 N.E.2d 39 (9th Dist.1997), citing Restatement of the Law 2d, Contracts, Section 71, Comment a (1981) ("in consideration of love and affection" is legally insufficient consideration), and 2 Corbin, Contracts, 90, Section 5.18 (Rev.1995).

{¶ 9} Finding there was no competent, credible evidence presented to prove the essential element of consideration, appellant's first assignment of error is found well-taken. Given our disposition of appellant's first assignment of error, appellant's second assignment of error is moot.

{¶ 10} On consideration whereof, the judgment of the Toledo Municipal Court is reversed. Costs of this appeal are assessed to appellee pursuant to App.R. 24.

Judgment reversed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. *See also* 6th Dist.Loc.App.R. 4.

Arlene Singer, P.J. _____
JUDGE

Thomas J. Osowik, J.
CONCUR. _____
JUDGE

Stephen A. Yarbrough, J. _____
CONCURS AND WRITES JUDGE
SEPARATELY.

YARBROUGH, J., concurring.

{¶ 11} I concur in the court's disposition of the first assigned error, which technically renders the second assigned error moot. App.R. 12(A)(1)(c).

{¶ 12} It is the basis for appellant Turner's second assignment, however, that should not escape a brief comment from this court. I write separately because I would

add the following testimony elicited from trial to clarify how the trial court reached its conclusion that appellant owed $5,000 to appellee:

> I see your argument with the voluntary gratuitous action of your client. What I don't agree with is the compensation issue. I could tell you the story of the 1982 Camaro that I bought in 1984 that had 16,000 miles on it, and I bought it for $14,000. It was promptly stolen, totaled out. My insurance company said well, it's only worth $8,000. I went, appropriately, crazy and said how can you say that? * * * I put $2,000 down, got a loan of $12,000. After much argument, they finally paid off the $12,000 that I owed. If this insurance company, and they do to this day, would tell me, well, you were physically compensated, I would say you were out of your mind because what about my $2,000 that I put down? *Insurance companies are known to try to cheat you anytime they can. So there is no question that there was not compensation here*. The only question is: Do we have a contract or do we not[?] (Emphasis added.)

{¶ 13} The judge's personal bias, based upon his own experience and perception that those insured are almost always undercompensated by insurance companies, led to the court's judgment in an amount the court felt that appellee was undercompensated.