

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

Sonja Brown

Court of Appeals No. L-11-1297

Appellant

Trial Court No. CI0200805662

v.

Lock It Up Self Storage

DECISION AND JUDGMENT

Appellee

Decided: March 15, 2013

* * * * *

Sonja Brown, pro se.

Rollind W. Romanoff, for appellee.

* * * * *

SINGER, P.J.

{¶ 1} Appellant appeals a judgment on a jury verdict in a contract dispute.

Because the verdict was supported by competent, credible evidence and the trial court did not abuse its discretion in denying a motion for a new trial or relief from judgment, we affirm.

{¶ 2} On July 6, 2006, appellant, Sonja Brown, rented a self-storage unit from appellee, Lock-It-Up Self Storage. The agreed monthly rent on the unit was \$116.10 plus tax, payable on or before the first of each month.

{¶ 3} When appellant became delinquent in her payment on the unit, appellee denied her access to the unit, then sent her late notices and attempted to call her. Payment records introduced at trial reveal that appellant on two occasions became caught up, only to miss the following monthly payment. Eventually, appellee sent appellant notice that, if she didn't pay the delinquency, the property stored in the unit would be sold at auction.

{¶ 4} On November 20, 2007, appellant's property was sold and the proceeds applied to her outstanding balance. On July 23, 2008, appellant sued appellee for breach of contract and violation of the self-storage act. Appellee answered, denying appellant's claims and asserting a counterclaim for the unpaid rental balance. Eventually, appellant's claims and appellee's counterclaims were tried to a jury.

{¶ 5} The jury returned a verdict for appellee on both of appellant's claims and awarded appellee \$530.18 on the counterclaim. The trial court entered judgment on the verdict. Subsequently, appellant filed an "Objection to Jury Decision and Court's Agreement Motion 60(B)." The trial court denied the motion. Appellant appealed.

{¶ 6} Appellant sets forth the following three assignments of error:

I. The trial court committed prejudicial error in denying objections to jury verdict and court's agreement.

II. The trial court abused its discretion to the prejudice of appellant by denying Civ. R 60(B) motion for relief.

III. The judgment of the trial court is unsupported by the evidence and contrary to the manifest weight of the evidence.

I. Weight of Evidence

{¶ 7} We shall discuss appellant's third assignment of error first. Appellant maintains that the jury's verdict was against the manifest weight of the evidence.

{¶ 8} Judgments supported by some, meaning any, competent credible evidence will not be overturned on appeal as against the manifest weight of the evidence. *C.E. Morris v. Foley Const. Co.*, 54 Ohio St.2d 279, 376 N.E.2d 578 (1978), syllabus. The determination of the weight and credibility of the evidence presented rests primarily with the trier of fact and will not be disturbed on appeal. *State v. DeHass*, 10 Ohio St.2d 230, 227 N.E.2d 212 (1967), paragraph one of the syllabus. This is a rigorous standard to overcome for a plaintiff, who is charged with the burden of proof. Even a plaintiff who presents arguable evidence has little leave to complain if a finder of fact chooses not to believe some or all of his or her proofs. *In re Scott*, 111 Ohio App.3d 273, 276, 675 N.E.2d 1350 (6th Dist.1996).

{¶ 9} The evidence that appellant presented at trial came almost exclusively from appellee's agents and employees. The testimony adduced from these witnesses was that appellant was consistently in default and repeated telephone calls and letters via ordinary mail failed to bring payment. When it was determined that appellee would exercise its

contractual lien and auction the contents of appellant's unit, appellee sent certified letters to appellant's last known address – which it appears were forwarded to her present address. These were returned unclaimed. Ordinary mail was not returned. Notice of the sale of appellant's property was printed twice in a newspaper of general circulation and a copy was sent by certified mail to appellant, but the letter was returned unclaimed. The proceeds of the sale were properly credited to appellant's account. Appellant did not contest the contract or her default.

{¶ 10} The testimony from appellee's employees was competent and credible. From this evidence and the documentary evidence introduced at trial, a reasonable jury could have found that it was appellant who breached the rental contract and that appellee acted within the statutory requisites of R.C. Chapter 5322 in its disposition of appellant's belongings. Accordingly, appellant's third assignment of error is not well-taken.

II. New Trial

{¶ 11} We shall construe appellant's first assignment of error as contesting the trial court's denial of a motion for a new trial. We do so because appellant complains that the court erred in denying her objection to the jury's verdict. Other than an appeal on the merits or relief from judgment, a Civ.R. 59 motion for a new trial is the only other avenue to attack a jury verdict.

{¶ 12} Civ.R. 59 permits a court, within its discretion, to grant a new trial of part or all of the issues that were tried, but only for certain specific reasons:

(1) Irregularity in the proceedings of the court, jury, magistrate, or prevailing party, or any order of the court or magistrate, or abuse of discretion, by which an aggrieved party was prevented from having a fair trial;

(2) Misconduct of the jury or prevailing party;

(3) Accident or surprise which ordinary prudence could not have guarded against;

(4) Excessive or inadequate damages, appearing to have been given under the influence of passion or prejudice;

(5) Error in the amount of recovery, whether too large or too small, when the action is upon a contract or for the injury or detention of property;

(6) The judgment is not sustained by the weight of the evidence; however, only one new trial may be granted on the weight of the evidence in the same case;

(7) The judgment is contrary to law;

(8) Newly discovered evidence, material for the party applying, which with reasonable diligence he could not have discovered and produced at trial;

(9) Error of law occurring at the trial and brought to the attention of the trial court by the party making the application. Civ.R. 59(A)(1)-(9).

Appellant's rationale in support of her objection to the verdict was:

Plaintiff/Defendant overlooked presenting the **physical proof** of the actual event/evidence to the jury, therefore not allowing the jury the opportunity to see the tangible proof of allegations presented. (Emphasis sic.)

{¶ 13} This statement is the sum of appellant's argument to the trial court in support of her motion. In her appellate brief, she suggests that, as a pro se litigant, she should have been treated differently by the court. This is not the law of Ohio.

{¶ 14} While a pro se litigant should be granted reasonable accommodation so that motions and pleadings are construed to determine a claim on its merits, nevertheless, pro se litigants are presumed to have knowledge of the law and legal procedures. A pro se litigant is subject to the same rules and procedures as a litigant who is represented by counsel. *Kilroy v. B.H. Lakeshore Co.*, 111 Ohio App.3d 357, 363, 676 N.E.2d 171(8th Dist.1996). She is not given greater rights than a represented party and must bear the consequences of her mistakes. *Sherlock v. Myers*, 9th Dist. No. 22071, 2004-Ohio-5178, ¶ 3.

{¶ 15} Appellant was granted extraordinary latitude throughout the proceedings in the trial court. During trial, the court exhibited remarkable patience and restraint. Nevertheless, the court must apply the same standard to appellant as to a represented party. The latitude afforded her does not extend to granting motions that are wholly unsupported. The circumstance appellant articulated to justify her motion for a new trial

is simply outside any of those reasons allowed by rule. Accordingly, the trial court was within its discretion in denying her motion for a new trial. Appellant's first assignment of error is not well-taken.

III. Relief from Judgment

{¶ 16} In her remaining assignment of error, appellant suggests that the trial court abused its discretion in denying her motion for relief from judgment.

{¶ 17} Civ.R. 60(B) provides that on motion a trial court may relieve a party from a final judgment for the following reasons;

(1) mistake, inadvertence, surprise or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(B); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation or other misconduct of an adverse party; (4) the judgment has been satisfied, released or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (5) any other reason justifying relief from the judgment. The motion shall be made within a reasonable time, and for reasons (1), (2) and (3) not more than one year after the judgment, order or proceeding was entered or taken.

{¶ 18} In order to prevail on a motion for relief from judgment, the moving party must show that,

(1) the party has a meritorious defense or claim to present if relief is granted; (2) the party is entitled to relief under one of the grounds stated in Civ.R. 60(B)(1) through (5); and (3) the motion is made within a reasonable time, and, where the grounds of relief are Civ.R. 60(B)(1), (2) or (3), not more than one year after the judgment, order or proceeding was entered or taken. *GTE Automatic Electric, Inc. v. ARC Industries, Inc.*, 47 Ohio St.2d 146, 351 N.E.2d 113 (1976), paragraph two of the syllabus.

{¶ 19} If any one of the GTE requirements is not met, the motion should not be granted. *Rose Chevrolet, Inc. v. Adams*, 36 Ohio St.3d 17, 20, 520 N.E.2d 564 (1988).

{¶ 20} Appellant fails to articulate any of the Civ.R. 60(B)(1) through (5) reasons for relief from judgment. Moreover, she fails to show that her claim would be meritorious if relief were to be granted, or at least any more meritorious than the case she presented at trial. Consequently, we can only conclude that the trial court acted within its discretion in denying her motion for relief from judgment. Appellant's second assignment of error is not well-taken.

{¶ 21} On consideration whereof, the judgment of the Lucas County Court of Common Pleas is affirmed. It is ordered that appellant pay the court costs of this appeal pursuant to App.R. 24.

Judgment Affirmed.

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, P.

JUDGE

Stephen A. Yarbrough, J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
<http://www.sconet.state.oh.us/rod/newpdf/?source=6>.