[Cite as *Cooper v. Nadeau*, 2010-Ohio-2150.]

STATE OF OHIO	)	IN THE COURT OF APPEALS
	)ss:	NINTH JUDICIAL DISTRICT
COUNTY OF WAYNE	)	

DAVID D. COOPER	C. A. No. 09CA0032
Appellee	
v.	APPEAL FROM JUDGMENT ENTERED IN THE
IRENE H. NADEAU	WAYNE COUNTY MUNICIPAL COURT COUNTY OF WAYNE, OHIO
Appellant	CASE No. CVI-08-12-1028

DECISION AND JOURNAL ENTRY

Dated: May 17, 2010

DICKINSON, Presiding Judge.

INTRODUCTION

{¶1} After David Cooper and Irene Nadeau stopped dating, he asked her to return some items that he had purchased for her apartment. He also asked her to reimburse him for an airline ticket that he had bought for her. When Ms. Nadeau refused to return the items or reimburse him for the ticket, Mr. Cooper sued her in small claims court. The municipal court determined that she owed him $560 for a bed, couch, and dresser. It further determined that she did not owe him for the airline ticket or a microwave. Ms. Nadeau has appealed from the municipal court's judgment. This Court affirms because the municipal court's decision was not against the manifest weight of the evidence and the court correctly denied Ms. Nadeau's motion for new trial.

FACTS

{¶2} According to Mr. Cooper, when Ms. Nadeau was evicted from her residence, he offered to let her move in with him. They lived together for several months, but she eventually moved into her own apartment. They continued dating even after she moved out. Mr. Cooper said that, after Ms. Nadeau moved out, he would occasionally stay with her. Because she did not have much furniture, he bought some items for her apartment, including a bed, couch, dresser, and microwave. He said that, after they broke-up, she refused to give him the items back. He also said that he had loaned her $500 so she could buy an airline ticket to attend her mother's funeral, which she refused to repay.

{¶3} According to Ms. Nadeau, Mr. Cooper bought the microwave for her as a gift. She said that he gave her the money for the airline ticket as a thank you gift for helping him with a court case. Regarding the bed, couch, and dresser, she said that she had paid at least half the cost of those items. The municipal court found that the microwave and the money for the airline ticket were gifts. It found that Mr. Cooper alone had purchased the other items and that they were not gifts. It, therefore, awarded him $560, which was the cost of the bed, couch, and dresser. Ms. Nadeau moved for a new trial, but the court denied her motion.

MANIFEST WEIGHT

{¶4} Ms. Nadeau's first assignment of error is that the municipal court incorrectly granted Mr. Cooper a judgment for $560. Her argument appears to be that the court's decision was against the manifest weight of the evidence. In *State v. Wilson*, 113 Ohio St. 3d 382, 2007-Ohio-2202, at ¶26, the Ohio Supreme Court held that the test for whether a judgment is against the weight of the evidence in civil cases is different from the test applicable in criminal cases. According to the Supreme Court in *Wilson*, the standard applicable in civil cases "was explained

in *C.E. Morris Co. v. Foley Constr. Co.*, 54 Ohio St.2d 279." *Id*. at ¶24. The "explanation" in *C.E. Morris* was that "[j]udgments supported by some competent, credible evidence going to all the essential elements of the case will not be reversed by a reviewing court as being against the manifest weight of the evidence." *Id*. (quoting *C.E. Morris Co.*, 54 Ohio St. 2d at syllabus); but see *Huntington Nat'l Bank v. Chappell*, 183 Ohio App. 3d 1, 2007-Ohio-4344, at ¶17-75 (Dickinson, J., concurring in judgment only).

{¶5} Ms. Nadeau has argued that the court should have found that she paid Mr. Cooper for the bed, couch, and dresser. She has noted that the receipt for the dresser has an "I owe you" notation written on it next to a value of $54.00. She has argued that the notation is evidence that she paid Mr. Cooper for the dresser. She has also argued that the fact that the receipts for the bed and couch do not have an "I owe you" notation is evidence that she paid her share of those items.

{¶6} Mr. Cooper testified that Ms. Nadeau told him that she would repay him for the couch, but never did. He also said that she did not pay him for the dresser, despite the "I owe you" notation. He further said that she did not give him any money for the bed. The court chose to believe Mr. Cooper over Ms. Nadeau about whether she paid him anything for the bed, couch, and dresser. This Court concludes that there was some competent, credible evidence that Mr. Cooper was the only one who paid for the bed, dresser, and couch. Accordingly, the municipal court's decision was not against the manifest weight of the evidence. Ms. Nadeau's first assignment of error is overruled.

MOTION FOR NEW TRIAL

{¶7} Ms. Nadeau's second, third, and fourth assignments of error are that the municipal court incorrectly denied her motion for new trial. Under Rule 59(A) of the Ohio Rules of Civil Procedure, "[a] new trial may be granted . . . on all or part of the issues upon any of the

following grounds: (1) Irregularity in the proceedings of the court . . . by which the aggrieved party was prevented from having a fair trial; . . . (4) Excessive or inadequate damages, appearing to have been given under the influence of passion or prejudice; . . . (8) Newly discovered evidence, material for the party applying, which with reasonable diligence [s]he could not have discovered and produced at trial; . . . ." If the motion for new trial required the lower court to exercise its discretion, this Court's review of the order granting or denying that motion is limited to determining whether it abused its discretion. *Rohde v. Farmer*, 23 Ohio St. 2d 82, paragraph one of the syllabus (1970). If the grant or denial of a new trial required resolution of a legal question, this Court's review is de novo. *Id.* at paragraph two of the syllabus.

{¶8} Ms. Nadeau's second assignment of error is that the municipal court incorrectly failed to grant her motion for new trial based on "[i]rregularity in the proceedings of the court." She has argued that the court told her that there were only 30 minutes allocated for the trial, making her feel rushed. She has argued that, because of the pressure to keep things moving, she inadvertently forgot to present important evidence in support of her defense. According to her, she had a recording of a telephone conversation that she had with Mr. Cooper in which he admitted that she gave him money for the items he was requesting back from her.

{¶9} Ms. Nadeau represented herself at the trial. During her cross-examination of Mr. Cooper, the municipal court asked her if she had any more questions for him. She said that she did, but then asked "[i]s that okay?" The court responded: "Let's kind of move it along though. I'm not trying to rush you, but I guess I am because we have other cases that are behind us."

{¶10} Although the municipal court may have indicated that it wanted to keep the trial moving, the record does not indicate any irregularities that deprived Ms. Nadeau of a fair trial. The court let Ms. Nadeau cross-examine Mr. Cooper until she said that she had no other

questions for him, at which point the court let him step down. It then let her tell her side of the story until she said she had nothing else to say. Just because Ms. Nadeau forgot to present evidence that might have been helpful to her case does not mean she was deprived of a fair trial. Her second assignment of error is overruled.

{¶11} Ms. Nadeau's third assignment of error is that the municipal court incorrectly failed to grant her motion for new trial based on "[e]xcessive or inadequate damages, appearing to have been given under the influence of passion or prejudice." The court awarded Mr. Cooper $400 for the bed, $100 for the couch, and $60 for the dresser. Ms. Nadeau has argued that there was no evidence that she owed Mr. Cooper for anything besides $54 for the dresser and that he improperly influenced the court by alleging that she "uses men."

{¶12} Mr. Cooper requested $400 for the bed, $100 for the couch, and $64 for the dresser. He presented a receipt for $400 for the bed, a receipt for $145 for the couch and a loveseat, and a receipt for $60 for the dresser. Regarding the bed and dresser, the amount of the court's award is identical to the amount on the receipt. Regarding the couch, Mr. Cooper said that he bought it and a loveseat together, but that he thought the couch was worth $100 while the loveseat was worth $45. Ms. Nadeau did not present any evidence regarding the value of the couch. In the absence of any contrary evidence, the court chose to accept Mr. Cooper's estimate.

{¶13} Regarding Mr. Cooper's statement that Ms. Nadeau "uses men," this Court notes that he made that allegation during his closing argument. The court immediately interrupted him and told him that he "[could] only comment on the evidence that is before the Court. Your opinions of what she may or may not be as far as her character is concerned, isn't of any relevance because it wasn't talked about during the testimony." This Court, therefore, concludes that, even if the couch was not worth $100, there is nothing in the record to suggest that the value

assigned to it by the municipal court was the result of passion or prejudice. Ms. Nadeau's third assignment of error is overruled.

{¶14} Ms. Nadeau's fourth assignment of error is that the municipal court incorrectly failed to grant her motion for new trial based on "[n]ewly discovered evidence, material for the party applying, which with reasonable diligence [s]he could not have discovered and produced at trial." Civ. R. 59(A)(8). "[B]efore a new trial may be granted on the basis of newly discovered evidence, the evidence (1) must be such as will probably change the result if a new trial is granted, (2) must have been discovered since the trial, (3) must be such as could not in the exercise of due diligence have been discovered before the trial, (4) must be material to the issues, (5) must not be merely cumulative to former evidence, and (6) must not merely impeach or contradict the former evidence." *In re S.S.*, 9th Dist. No. 04CA0032, 2004-Ohio-5371, at ¶11 (citing *Sheen v. Kubiac*, 131 Ohio St. 52, paragraph three of the syllabus (1936)).

{¶15} Ms. Nadeau said that she was shopping with Mr. Cooper at the time she bought the couch and loveseat. She said that, even though they were her items, he asked to put them on his credit card so that he could earn frequent flier miles on them. She said that she paid him back in cash for the items. During cross-examination, Mr. Cooper asserted that her story could not be true because the store where the couch and loveseat were purchased does not accept credit cards. Ms. Nadeau has argued that, after the trial, she called the store and verified that they do accept credit cards. With her affidavit in support of her motion for new trial, she attached a picture of a sign from the store indicating that there is a handling fee on all credit card transactions. Ms. Nadeau also attached a copy of a "No Trespass Letter" that she alleged Mr. Cooper had altered.

{¶16} The receipt that Mr. Cooper presented regarding the price of the couch and loveseat does not indicate who paid for them or how. Mr. Cooper, however, testified that he paid

for the items and that Ms. Nadeau did not reimburse him for them. Even if Mr. Cooper was mistaken about whether the store accepts credit cards, the court did not have to decide how the buyer paid. It only had to determine whether Mr. Cooper or Ms. Nadeau bought the couch and the loveseat and, if it was Mr. Cooper, whether Ms. Nadeau reimbursed him. Accordingly, Ms. Nadeau's proof that the store accepts credit cards was not evidence that would have "probably change[d] the result if a new trial [was] granted." *In re S.S.*, 9th Dist. No. 04CA0032, 2004-Ohio-5371, at ¶11 (citing *Sheen v. Kubiac*, 131 Ohio St. 52, paragraph three of the syllabus (1936)).

{¶17} Regarding whether Mr. Cooper altered a copy of a "No Trespass Letter," this Court notes that Ms. Nadeau tried to present the altered document at trial, but the municipal court found that it was not relevant. Because it was not discovered after trial, it does not qualify as "newly discovered evidence." *In re S.S.*, 9th Dist. No. 04CA0032, 2004-Ohio-5371, at ¶11 (citing *Sheen v. Kubiac*, 131 Ohio St. 52, paragraph three of the syllabus (1936)). Ms. Nadeau's fourth assignment of error is overruled.

CONCLUSION

{¶18} The municipal court's decision is not against the manifest weight of the evidence, and the court correctly denied Ms. Nadeau's motion for new trial. The judgment of the Wayne County Municipal Court is affirmed.

Judgment affirmed.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Wayne County Municipal Court, County of Wayne, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to appellant.

CLAIR E. DICKINSON
FOR THE COURT

MOORE, J.
BELFANCE, J.
CONCUR

APPEARANCES:

IRENE H. NADEAU, pro se, appellant.

DAVID D. COOPER, pro se, appellee.