[Cite as *Falls Motor City, Inc. v. Darovich*, 2011-Ohio-914.]

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

FALLS MOTOR CITY INC.	C.A. No. 25488
Appellee	
v.	APPEAL FROM JUDGMENT ENTERED IN THE
TRACEY DAROVICH	COURT OF COMMON PLEAS COUNTY OF SUMMIT, OHIO
Appellant	CASE No. CV 2008-09-6529

DECISION AND JOURNAL ENTRY

Dated: March 2, 2011

WHITMORE, Judge.

{¶1} Defendant-Appellant, Tracey Darovich, appeals from the judgment of the Summit County Court of Common Pleas in favor of Falls Motor City, Inc. dba Falls Chrysler Jeep Dodge ("Falls Motor City"). This Court affirms.

I

{¶2} This Court set forth the factual and procedural history of this case in Darovich's first appeal as follows:

> "In May 2008, Darovich sought to purchase a Lincoln Aviator from Falls Motor City and agreed to tender a $3,819 down payment on the vehicle. Darovich took possession of the vehicle and gave Falls Motor City two checks for the down payment. The first check was for $1,500 and the second check was for $2,319. When Falls Motor City attempted to negotiate the second check, it was returned for insufficient funds. Falls Motor City repeatedly contacted Darovich, but never received the full down payment and was unsuccessful in getting Darovich to return the vehicle. Darovich put approximately 5,000 miles on the vehicle before Falls Motor City recovered it through a court order in November 2008.
>
> "On September 18, 2008, Falls Motor City filed a complaint against Darovich, primarily asserting replevin and breach of contract. The trial court issued an emergency order for possession, ordering Darovich to immediately surrender the

> vehicle. Darovich initially failed to file an answer, and Falls Motor City sought a default judgment. Shortly thereafter, Darovich appeared in the action, and the court permitted her to file an answer and counterclaim. Falls Motor City responded to Darovich's counterclaim.
>
> "Discovery commenced and Falls Motor City requested that Darovich produce certain documents and respond to interrogatories and requests for admissions. Darovich failed to respond. On May 15, 2009, Falls Motor City filed a motion to compel and to deem the requests for admissions admitted because Darovich had not responded to its discovery requests. Darovich also failed to respond to Falls Motor City's motion. On July 24, 2009, the trial court ordered Darovich to respond to discovery and granted Falls Motor City's request to have its request for admissions deemed admitted.
>
> "The matter proceeded to bench trial on August 31, 2009. On September 3, 2009, the trial court issued an order granting judgment in favor of Falls Motor City in the amount of $13,239.59, plus $10,070 in attorney fees. The court's order noted that '[t]he [c]ourt reserves to [Falls Motor City] the right to ask for fees to cover the costs of the trial.'" *Falls Motor City, Inc. v. Darovich*, 9th Dist. No. 25015, 2010-Ohio-2432, at ¶2-5.

This Court ultimately dismissed the appeal for lack of a final judgment because the trial court failed to specify the exact amount of attorney fees due. Id. at ¶9-10.

{¶3} After this Court's dismissal, the trial court issued a judgment entry on June 15, 2010. The court awarded Falls Motor City $13,239.59, plus attorney fees in the amount of $15,631.79.

{¶4} Darovich now appeals from the court's judgment and raises one assignment of error for our review.

II

Assignment of Error

> "THE TRIAL COURT ERRED IN RULING IN FAVOR OF APPELLEE, AS SUCH FINDING WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE."

{¶5} In her sole assignment of error, Darovich argues that the trial court's judgment is against the manifest weight of the evidence. We disagree.

{¶6} In reviewing a manifest weight challenge, this Court will affirm a trial court's judgment if it is "supported by some competent, credible evidence going to all the essential elements of the case[.]" *State v. Wilson*, 113 Ohio St.3d 382, 2007-Ohio-2202, at ¶24, quoting *C.E. Morris Co. v. Foley Constr. Co.* (1978), 54 Ohio St.2d 279, syllabus. In applying the foregoing standard, this Court recognizes its obligation to presume that the trial court's factual findings are correct and that while "[a] finding of an error in law is a legitimate ground for reversal, [] a difference of opinion on credibility of witnesses and evidence is not." *Calame v. Treece*, 9th Dist. No. 07CA0073, 2008-Ohio-4997, at ¶15, quoting *Seasons Coal Co., Inc. v. Cleveland* (1984), 10 Ohio St.3d 77, 81.

{¶7} Civ.R. 36 governs requests for admissions. "The rule provides that a party receiving a request must serve a written answer or objection upon the requesting party within twenty-eight days of being served with the request, or a different period of time if the court provides one." *Cardservice Internatl., Inc. v. Farmer*, 9th Dist. No. 24642, 2009-Ohio-3692, at ¶9, citing Civ.R. 36(A)(1). "[U]nanswered requests for admissions cause the matter requested to be conclusively established for the purpose of the suit[.]" *L.E. Sommer Kidron, Inc. v. Kohler*, 9th Dist. No. 06CA0044, 2007-Ohio-885, at ¶45.

{¶8} The trial court determined that Darovich admitted liability based on the requests for admissions being deemed admitted. The following admissions were deemed admitted, pursuant to Civ.R. 36:

> "1. Admit that you signed a purchase agreement with Falls Motor City[.]
>
> "2. Admit that you read the purchase agreement prior to signing it.
>
> "3. Admit that you understood the terms of the purchase agreement prior to signing it.
>
> "***

> "5. Admit that you retained possession of the vehicle for approximately six months without paying to Falls [Motor City] the $2,319.00 owed for part of the down payment of the vehicle.
>
> "***
>
> "7. Admit that the purchase agreement provided that "PURCHASER AGREES TO PAY THE BALANCE ON THE TERMS SPECIFIED ***[.]"
>
> "8. Admit that the purchase agreement provided that "THIS ORDER COMPRISES THE ENTIRE AGREEMENT BETWEEN THE PARTIES, AND NO OTHER AGREEMENT OR REPRESENTATIONS SHALL BIND THE PARTIES."
>
> "9. Admit that you drove the subject vehicle until such time that it was repossessed via court order.
>
> "10. Admit that you did not respond to Falls Motor City's request for payment of the [non-sufficient funds] check.
>
> "[11.] Admit that the check you provided in the amount of $2,319.00 was returned for non-sufficient funds." (Emphasis in original.)

Accordingly, Darovich admitted that she took possession of a vehicle belonging to Falls Motor City, failed to pay for the vehicle, and used the vehicle until Falls Motor City secured its repossession via court order.

{¶9} Darovich does not take issue with the court's decision to deem the admissions admitted. Indeed, when the court asked the parties at the start of trial whether they agreed that the trial was really "a damages hearing only because the nature of the requests for admission cover[ed] all issues of liability," Darovich's attorney indicated that was his understanding of the situation. Accordingly, Darovich admitted liability in the court below based on the foregoing admissions. *L.E. Sommer Kidron, Inc.* at ¶45.

{¶10} On appeal, Darovich argues that the trial court's judgment is against the manifest weight of the evidence because a former finance manager at Falls Motor City told her that she could submit two separate checks for a down payment and that Falls Motor City would not

negotiate the second check until July 2008. Essentially, Darovich argues she and the finance manager reached an agreement on the side. The admissions, however, specify that the purchase agreement constituted the only agreement between the parties. Therefore, the record contains competent, credible evidence in support of the trial court's determination that Darovich was liable. Darovich's sole assignment of error lacks merit.

III

{¶11} Darovich's sole assignment of error is overruled. The judgment of the Summit County Court of Common Pleas is affirmed.

Judgment affirmed.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Summit, 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.

BETH WHITMORE
FOR THE COURT

CARR, P. J.
DICKINSON, J.
CONCUR

APPEARANCES:

GREGORY L. HAIL, Attorney at Law, for Appellant.

ROBERT A. POKLAR, Attorney at Law, for Appellee.