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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Hon. Roger M. Young Sr., Circuit Court Judge

Circuit Court Case No. 2019-CP-10-05392
S.C. Court of Appeals Case No. 2022-001795

Kevin Staveley-O-Carroll,

Appellant,

v.

Fenix Automotive, LLC

Respondent.

REPLY BRIEF OF APPELLANT

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APPELLANT'S REPLY TO RESPONDENT'S ARGUMENT

1. The trial court's findings of fact are not supported by the evidence.

The sole basis for Appellant's appeal of the Order of Judgment is that the trial court based its findings of fact as to the various monetary values of the Mercedes (germane to the proper calculation of damages) on incorrect figures supplied by Respondent purporting to be the figures to which Appellant's expert witness testified. [See Intl. Br. of App. at pp. 4]. Appellant contends the trial court's Order of Judgment clearly shows it intended to rely on the relevant monetary values of the Mercedes as testified to by Appellant's expert witness in its findings of fact, calculation of damages, and judgment award. However, because the trial court substituted erroneous values supplied by Respondent¹ in place of the values to which Appellant's expert witness actually testified, the affected findings of fact in the Order of Judgment are consequently without evidentiary support. Further, the trial court's calculation of damages and judgment award derived from such erroneous values supplied by Respondent are equally without evidentiary support in the Record, and therefore amount to an abuse of discretion. [See *id.* at pp. 7, 11-13].

Respondent's argument on appeal is, in effect, that in finding facts as to the various relevant values of the Mercedes, the trial court measured the weight and credibility of the testimony presented by Appellant and his expert witness in light of Respondent's cross-examination and, in function thereof, deliberately ascribed different relevant values to the vehicle than those to which Mr. Reinert testified. [Intl. Br. of Resp. at 1-4]. Respondent further contends that the trial court's findings of fact in that regard are reasonably supported by the evidence, and therefore should not be disturbed on appeal by this Court.

¹ Following the damages hearing before the trial court, Respondent submitted a proposed order of judgment that included in its finding of fact erroneous monetary values (relevant to the correct calculation of damages) purporting, incorrectly, to be the values provided and testified to by Appellant's expert witness, Mr. Reinert.

Respondent selectively cites to Regions Bank v. Strawn, 399 S.C. 537, 732 S.E.2d 230, 234 (Ct. App. 2012) in support of its position that even where a defendant in default is prohibited from presenting any opposing testimony or evidence in a damages hearing, the trial court, as fact finder, is not required to find facts in accordance with the uncontroverted testimony of witnesses and experts for a plaintiff. While Respondent truncated the citation in its brief to appear to support its position as applicable to the matter at hand: “[t]he trial court shall measure exclusively the credibility and weight of the evidence presented to it, and the appellate court shall ‘construe [this] evidence so as to support [the trial court’s] decision whenever possible,’” reference to the complete citation reveals a slightly different application of the tenant in Regions Bank, which is distinguishable from the present matter.

In Regions Bank, unlike the present matter, the defendants were not in default, and the trial court received evidence and heard testimony from all parties at the non-jury trial. There, the trial court found that the evidence and testimony was conflicting with regard to a central issue to be decided in the case. However, the trial court found facts and decided the issue in function of the credibility it attributed to each witness’s testimony and the weight it accorded the evidence. On appeal, the appellant claimed the issue to be decided by the trial court required a showing by clear and convincing evidence, which it claimed the respondents had not made. The Court of Appeals disagreed and found the trial court made its finding of fact and ruling on the issue based on its evaluation of the testimony and evidence presented, and that some evidence existed in the record to support the trial court’s findings. See Regions Bank, 399 S.C. 537 at 544. In so holding, this Court cited to Sheek v. Crimestoppers Alarm Sys., 297 S.C 375, 377, 377 S.E.2d 132, 133 (Ct. App. 1989) where we find the complete citation referenced by Respondent: “[w]e may not

consider the case based on our view of the preponderance of the evidence, but must construe the evidence presented to the [trial court] so as to support [its] decision wherever reasonably possible.”

Regions Bank is immediately distinguishable from the present case. Here, Respondent was in default for failure to answer or otherwise respond to Appellant’s complaint, and consequently the trial court disallowed it to present any evidence or testimony at the damages hearing in opposition to Appellant’s evidence and testimony. [See Order of Judgment, Hon. Robert M. Young Sr., filed October 7, 2021, p. 2, footnote 1]. As such, the trial court was not tasked with assessing the weight and credibility of conflicting evidence and testimony in order to find facts based on the preponderance of the evidence. Here, as pertains to the trial court’s findings of fact as to the relevant values of the Mercedes for the purpose of calculating damages, Appellant’s qualified expert witness provided the respective values, and his opinions were uncontroverted by any opposing evidence or testimony.

Respondent’s attempt to create an issue of credibility with regard to the testimony of Appellant regarding the condition of the Mercedes at the time Respondent took possession of the vehicle or the level of restoration he sought for the vehicle is a red herring. [See Intl. Br. of Resp. at pp. 1-2]. The same is true for Respondent’s attempt to discredit the testimony of Mr. Reinert as to the relevant values of Mercedes by arguing cross-examination revealed that Mr. Reinert had not “personally inspected” the Mercedes at the time Respondent took possession of the vehicle for the restoration work, and there were no photographs in evidence depicting its condition at that time. [See Intl. Br. of Resp. at p. 2-3]. However, in the hearing, counsel for Appellant objected to the line of cross-examination as Respondent’s attempt to put conflicting testimony and evidence in the record, which objections the trial court sustained. [See Transcript of Damages Hearing, August 25, 2021 at 79:2-80:19]. Furthermore, whether Respondent perceived any slight inconsistency in

testimony as to the running condition of the Mercedes at the time Respondent took possession has no bearing on Mr. Reinert's expert opinion as to the value of the vehicle at that time. In fact, in testifying, Mr. Reinert specifically stated he was able to formulate an opinion regarding the condition of the Mercedes and its commensurate value at the time Respondent took possession of it by reviewing the communication and restoration estimate from Respondent precisely outlining the restoration work to be completed and commenting on the vehicles condition at that time. [See Transcript of Damages Hearing at 41:22-42:18]. Of course, after providing his foundation and basis for his opinion, Mr. Reinert's uncontroverted expert testimony was that the Mercedes had a value of \$42,000 at the time Respondent took possession of it. [See id.]. There was no conflicting evidence or testimony for the trial court to weigh to determine a preponderance of the evidence, as was the case in Regions Bank, and that case is inapposite to the question before the Court.

Further distinguishing the present case from Regions Bank, it is illustrative that the trial court, in the later, provided an analysis and finding of fact with regard to the weight of the evidence and the credibility of the witnesses, themselves in the order appealed from. See Regions Bank, 399 S.C. 537 at 544. Importantly, in the present case, the trial court in no way mentions anywhere in the Order of Judgment that in finding facts it decided to modifying the relevant values of the Mercedes, as testified to by Mr. Reinert, in function of its estimation of the credibility of Mr. Reinert. In fact, the trial court did just the opposite in qualifying Mr. Reinert as an expert, without objection from Respondent.

Respondent's argument that the trial court deliberately modified the relevant values to which Mr. Reinert testified in function of the weight and credibility of the evidence and testimony, is even more unlikely considering the very language of the Order of Judgment with regard to Mr. Reinert's opinions. As opposed to explaining any change or modification based on issues of

weight and credibility, the trial court made its findings of fact specifically stating that they are “based on the testimony of Mr. Reinert” [Order of Judgment at p. 3, para. 6], or “[b]ased on the uncontroverted testimony of Mr. Reinert, the Court finds . . .” [Order of Judgment at p. 5, para. 17]. In fact, the above-referenced language of the Order of Judgment itself demonstrates that the trial court specifically meant to base its findings of fact with regard to the various relevant values of the Mercedes on the expert testimony of Mr. Reinert, as opposed to modifying the values purportedly in function of its estimation of the credibility of the evidence and testimony. Given that the trial court inserted into the Order of Judgment the very incorrect values supplied by Respondent in its proposed order, and then used language indicating that those values were based on Mr. Reinert’s uncontroverted testimony, it appears clear that the trial court simply used the wrong numbers. As to the actual relevant values to which Mr. Reinert actually testified, simple reference to the hearing transcript is sufficient to clear up any doubt.

a. The trial court’s determination of the value of the Mercedes at the time Appellant delivered it to the Respondent is not reasonably supported by the evidence.

In the Order of Judgment, the trial court made a finding of fact that at the time Respondent took possession of the Mercedes to perform the restoration work, the vehicle had a value of between \$20,000 to \$25,000, “based on the testimony of Mr. Reinert.” [Order of Judgment at pp. 2-3, para. 6.]. However, reference to the transcript of the hearing clearly reveals that Mr. Reinert’s actual uncontroverted testimony was that the Mercedes had a value of \$42,000 at the time Respondent took possession of it. [See Transcript of Hearing, 41:4-42:20]. Because Respondent was in default and not permitted to present any evidence or testimony in opposition to Mr. Reinert’s testimony, no other evidence or testimony on that issue exists in the record. Consequently, there is no evidence whatsoever to support the trial court’s finding that the value of

the Mercedes at that time was between \$20,000 and \$25,000. The trial court, therefore, abused its discretion in making such unsupported finding.

b. The trial court's determination of the value of the Mercedes had it been restored per the contract between Appellant and Respondent is not reasonably supported by the evidence.

In the Order of Judgment, the trial court made a finding of fact that the Mercedes would have had a value of between \$42,000 and 120,000 had Respondent restored the vehicle as agreed in its contract, which finding the trial court “[b]ased on the uncontroverted testimony of Mr. Reinert.” [Order of Judgment at p. 5, para. 17]. Again, reference to the transcript of the hearing clearly reveals that Mr. Reinert's actual uncontroverted testimony was that the Mercedes would have had a value of \$115,000. [See Transcript of Hearing at 47:11- 48:2]. Because Respondent was in default and not permitted to present any evidence or testimony in opposition to Mr. Reinert's testimony, no other evidence or testimony on that issue exists in the record. Consequently, there is no evidence whatsoever to support the trial court's finding that the Mercedes would have had a value of between \$42,000 and \$120,000 had it been restored as agreed. The trial court, therefore, abused its discretion in making such unsupported finding.

c. The trial court's determination of the present value of the Mercedes does not amount to harmless error.

Respondent argues that while the trial court made an unsupported finding of fact with regard to the value of the Mercedes in its present condition, such unsupported fact amounts to harmless error because it claims the trial court used the correct value supplied by Mr. Reinert in its calculation of damages. Again, purportedly based on the uncontroverted testimony of Mr. Reinert, the trial court found the Mercedes has a present value of \$10,000. Reference to the hearing transcript reveals that Mr. Reinert's actual testimony was that the vehicle is worth \$2,500 presently. [See Transcript of Hearing at 73:5-16]. Because Respondent was in default and not

permitted to present any evidence or testimony in opposition to Mr. Reinert's testimony, no other evidence or testimony on that issue exists in the record. Consequently, there is no evidence whatsoever to support the trial court's finding that the Mercedes presently has a value of \$10,000. Furthermore, while the trial court does appear to have used the \$2,500 figure supplied by Mr. Reinert in its calculation of damages, its finding of fact as to that value, which is totally without evidentiary support, is nevertheless an abuse of discretion and error.

d. The trial court's calculation of damages and its judgment award is not proper because it is based on incorrect monetary figures supplied by Respondent for which there is no evidentiary support in the Record.

Because the trial court based its calculation of damages with respect to Appellant's causes of action on findings of fact that are without reasonable evidentiary support, the amount of damages it awarded is inaccurate and equally without evidentiary support. The judgment amount the trial court awarded Appellant therefore amounts to an abuse of discretion, and should be corrected in accordance with the correct values as clearly articulated in the uncontroverted testimony of Mr. Reinert.

CONCLUSION

Because the trial court's findings of fact with regard Mr. Reinert's testimony as to the various values associated with the Mercedes are inconsistent with Mr. Reinert's actual testimony as reflected by the evidence and testimony, those factual conclusions are entirely without evidentiary support in the record and constitute an abuse of discretion. Likewise, as the trial court relied on its erroneous findings of facts as to the various values to which Mr. Reinert in making its conclusions of law, including its calculation of damages, the final amount of the judgment in favor of Appellant is without evidentiary support in the record, and constitutes an abuse of discretion. Appellant respectfully requests this Court remand case to the trial court with instructions to correct

its findings of facts and damages calculations in function of Mr. Reinert's actual testimony, and enter judgment in favor of Appellant in the corrected amount as set out above.

Respectfully submitted,

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PROOF OF SERVICE

I certify that I have served the enclosed Reply Brief of Appellant upon the Respondent, e-mail and by depositing a copy of each of them in the United States Mail, postage prepaid, on August 15, 2023 addressed to Respondent's attorney of record, Damien A. Sobieraj, Esq., Cooper River Legal Services, LLC, P.O. Box 2439, Mt. Pleasant, SC 29465.

[Signature on following page]

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