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IN THE
COURT OF APPEALS OF INDIANA

KENT LANKFORD,	)	
	)	
Appellant-Plaintiff,	)	
	)	
vs.	)	No. 49A02-0705-CV-390
	)	
CLYDE MCPHAIL,	)	
	)	
Appellee-Defendant.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable S.K. Reid, Judge
Cause No. 49D13-0408-CC-1492

December 11, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-plaintiff Kent Lankford appeals from a judgment entered for appellee-defendant Clyde McPhail regarding his action against McPhail "for effecting an invalid mechanic's lien and then foreclosing on that lien." Appellant's Br. p. 1. Specifically, Lankford argues that the judgment must be set aside because the evidence established that McPhail had no right to acquire a mechanic's lien on Lankford's vehicle, which had been left on McPhail's property. Concluding that the trial court correctly determined that McPhail's lien was valid and that McPhail properly obtained title to the vehicle, we affirm.

FACTS

On June 1, 2001, Lankford took his 1994 Eagle Vision automobile to C & E Automotive in Indianapolis for some repairs. McPhail owned the premises and leased space in the building to various mechanics, including Robert Thomas. McPhail exercised no control over the mechanics' work or the manner in which they conducted business. When Lankford left his vehicle at the facility, he gave Thomas $400 as a down payment for the repairs. On June 9, Lankford paid Thomas an additional $200 for the anticipated repairs.

For a period of approximately four months, Lankford frequently called Thomas to check on the progress of the repairs. However, after nearly five months, when Lankford attempted to call Thomas at C & E, the number had been disconnected. Thereafter, Lankford went to C & E and discovered that the shop was no longer in business. Thomas apparently abandoned the facility after he could no longer pay the rent. Thomas had not repaired Lankford's vehicle, and he left the vehicle in the building. After Lankford was unable to retrieve his vehicle from C & E, he reported the incident to the police.

Sometime in June 2002, McPhail obtained a mechanic's lien on the vehicle because he "had to get the car out of there because it was inside my shop." Appellant's App. p. 72. McPhail hired a firm known as "M-Network" to complete the mechanic's lien paperwork and sell the vehicle. Id. at 25, 38. M-Network attempted to send notice to Lankford on June 14, 2002, informing him that the vehicle was going to be sold on June 27, 2002, because "as of 5-29-02 [the] bill is $2000 plus storage at $15.00 a day." Id. at 28. The notice was sent to Lankford's last known address that was on record with the BMV. However, because Lankford had moved from that address, the notice was returned "unclaimed." Id. at 31.

In May 2004, Lankford saw McPhail driving the vehicle. Lankford confronted McPhail and told him that he was the owner of the vehicle. McPhail replied that he also held a certificate of title to the vehicle and drove away. Lankford subsequently learned that McPhail had perfected the lien on the vehicle and later purchased it at an auction. McPhail ultimately traded the vehicle to another individual for a laptop computer.

The sales certificate that was filed with the BMV on June 27, 2002, listed the charges for the vehicle at $1250 for repair work and labor, $500 for materials, and $250 for storage. The sales certificate further stated that the vehicle had been left in McPhail's custody on March 1, 2002, and that Lankford "failed or refused to claim the . . . vehicle at the expiration of thirty (30) days from the date left." Id. at 25. The certificate also asserted that notice was sent to Lankford by registered mail that the vehicle would be sold at auction. Additionally, the certificate stated that the notice of the auction appeared in the local newspaper. Finally, the sales certificate indicated that McPhail had purchased the vehicle at the auction on June

27, 2002, for $200.

Thereafter, Lankford filed a small claims action against Thomas and Auto Max Body Shop d/b/a Clyde L. McPhail d/b/a C & E Automotive. Lankford obtained judgment in the amount of $1740 plus costs and interest on December 16, 2003.[1] Thereafter, on September 2, 2004, Lankford filed a complaint against McPhail[2] alleging that he took the vehicle "and through deceit, transferred the title of said vehicle to himself." Appellee's Br.[3] More specifically, the complaint alleged that McPhail committed fraud and had wrongfully converted the vehicle. As a result, Lankford requested damages for the loss of use of the vehicle and an injunction requiring McPhail to restore the vehicle to him.[4]

Following a bench trial[5] that commenced on January 26, 2007, the trial court issued the following findings of fact and conclusions of law and entered judgment for McPhail:

> 3. That Plaintiff never had a contract with Defendant, Clyde McPhail.
> 4. That Plaintiff abandoned his vehicle in the building leased by Defendant, Clyde McPhail.
> 5. That notice was given to Plaintiff Kent Lankford that he abandoned his vehicle in the building leased by Defendant, Clyde McPhail.
> 6. That notice was given to Plaintiff Kent Lankford, that Defendant, Clyde McPhail would obtain a mechanics lien on Plaintiff vehicle.
> 7. That Plaintiff Kent Lankford['s] vehicle had very little value and Clyde McPhail obtain[ed] a valid mechanic's lien on Plaintiff vehicle.

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[1] The record contains no further details regarding this judgment.

[2] Lankford originally filed this case as a small claim on August 9, 2004. Thereafter, McPhail removed the case to the Marion Superior Court by filing a demand for jury trial. Appellant's App. p. 3.

[3] A copy of Lankford's complaint is attached to the end of McPhail's appellate brief, yet those pages are not numbered.

[4] Lankford's complaint also included a count against Mary DePrez as Commissioner of BMV, which requested the trial court to order DePrez to transfer title of the vehicle from McPhail to Lankford.

[5] McPhail apparently abandoned his request for a jury trial.

Conclusions of Law

1. That there was no contract entered by the parties.
2. That Plaintiff Kent Lankford[’s] vehicle had very little value and Clyde McPhail obtained a valid mechanic’s lien on Plaintiff vehicle.
3. There are no damages under Indiana law.
4. Plaintiff’s complaint should hereby be dismiss[ed] with all costs paid.

Appellant’s App. p. 2. Lankford now appeals.

DISCUSSION AND DECISION

I. Standard of Review

We initially observe that when a trial court enters findings of fact and conclusions of law pursuant to Indiana Trial Rule Rule 52(A), we engage in a two-tiered standard of review. Troutwine Estates Dev. Co., LLC v. Comsub Design and Eng’g, Inc., 854 N.E.2d 890, 896 (Ind. Ct. App. 2006), trans. denied. We first address whether the evidence supports the findings, and then whether the findings support the judgment. Chidester v. City of Hobart, 631 N.E.2d 908, 910 (Ind. 1994). We construe the findings liberally in support of the judgment. OVRS Acquisition Corp. v. Cmty. Health Servs., Inc., 657 N.E.2d 117, 124 (Ind. Ct. App. 1995). When a judgment is not supported by the findings of fact and the conclusions, it is clearly erroneous. DeHaan v. DeHaan, 572 N.E.2d 1315, 1320 (Ind. Ct. App. 1991). The findings are erroneous only when a review of the record indicates to this court that a mistake has been made. Troutwine Estates, 854 N.E.2d at 896. Additionally, we do not reweigh the evidence or reassess witness credibility. Rather, we consider only the evidence favorable to the judgment and must draw all reasonable inferences therefrom. Id.

We also note that Lankford is appealing from a negative judgment. A party appealing

from a negative judgment must show that the evidence points unerringly to a conclusion opposite that reached by the trial court. J.W. v. Hendricks County Office of Family and Children, 697 N.E.2d 480, 481 (Ind. Ct. App. 1998). We will reverse a negative judgment on appeal only if the decision of the trial court is contrary to law. Id. at 482.

II. Lankford's Claim

Lankford argues that the judgment must be set aside because McPhail could not have acquired a valid mechanic's lien. In essence, Lankford argues that the trial court's judgment improperly permitted McPhail to profit from the loss of his vehicle.

In support of his contention, Lankford directs us to our Mechanic's Lien statute, Indiana Code section 9-22-5-15(a), which provides:

> An individual, a firm, a limited liability company, or a corporation that performs labor, furnishes materials or storage, or does repair work on a motor vehicle . . . at the request of the person who owns the vehicle has a lien on the vehicle to the reasonable value of the charges for the labor, materials, storage, or repairs.

(Emphasis added).

Lankford correctly asserts that the undisputed evidence established that he and McPhail had no business relationship, and that McPhail was never hired to do any work on the vehicle. Appellant's App. p. 71-73. Lankford is also correct that he never requested McPhail to store his vehicle. However, Lankford failed to argue at the trial court level that McPhail did not satisfy the requirements of our Mechanic's Lien statute. Indeed, the bases of Lankford's complaint were that McPhail committed fraud and conversion. Hence, Lankford has waived this issue on appeal. Stainbrook v. Low, 842 N.E.2d 386, 396 (Ind. Ct. App.

2006), trans. denied.

Waiver notwithstanding, we note that Indiana Code section 9-22-1-4 provides in relevant part that "the person who owns an abandoned vehicle or parts is: (1) responsible for the abandonment; and (2) liable for all of the costs incidental to the removal, storage, and disposal; of the vehicle or the parts under this chapter." Also, the lien statute that pertains to vehicles states:

> (a) A person who finds a vehicle believed to be abandoned on private property that the person owns or controls, including rental property, may:
>
> (1) obtain the assistance of an officer under section 18 of this chapter to have the vehicle removed; or
> (2) personally arrange for the removal of the vehicle by complying with subsection (b) and section 16 of this chapter.
>
> (b) If the person wishes to personally arrange for the removal of the vehicle, the person shall attach in a prominent place a notice tag containing the following information:
>
> (1) The date, time, name, and address of the person who owns or controls the private property and a telephone number to contact for information.
> (2) That the vehicle is considered abandoned.
> (3) That the vehicle will be removed after seventy-two (72) hours.
> (4) That the person who owns the vehicle will be held responsible for all costs incidental to the removal, storage, and disposal of the vehicle.
> (5) That the person who owns the vehicle may avoid costs by removal of the vehicle or parts within seventy-two (72) hours.

Indiana Code § 9-22-1-15. In light of these provisions, Lankford argues that McPhail should have complied with the notice requirements of Indiana Code section 32-33-10-6, which states:

> (a) A person seeking to acquire a lien upon a motor vehicle . . . whether the claim to be secured by the lien is then due or not, must file in the recorder's office of the county where:

(1) the towing, repair, service, or maintenance work was performed; or
(2) the storage, supplies, or accessories were furnished;

a notice in writing of the intention to hold the lien upon the motor vehicle . . . for the amount of the person's claim.

(b) A notice filed under subsection (a) must specifically state the amount claimed and give a substantial description of the . . . vehicle . . . upon which the lien is asserted.

(c) Any description in a notice of intention to hold a lien filed under subsection (a) is sufficient if by the description the motor vehicle . . . can be identified.

(d) A notice under subsection (a) must be filed in the recorder's office not later than sixty (60) days after the:

(1) performance of the towing or work; or
(2) furnishing of the storage, supplies, accessories, or materials.

(Emphasis added).

Regardless of Lankford's contention that McPhail's lien necessarily failed because the notice was not filed in accordance with the sixty-day requirement, we note that this statute did not become effective until 2002, and Lankford asserted that McPhail took possession of the vehicle in 2001. Moreover, Lankford has made no argument that McPhail failed to fulfill the remaining requirements of the vehicle lien statute. Thus, he cannot successfully claim that the judgment must be set aside on this basis. See Stallings v. State, 508 N.E.2d 550, 552 (Ind. 1987) (observing that the defendant waives an issue when he fails to present an adequate record to clearly show an alleged error). As a result, the evidence established that Lankford abandoned the vehicle in the building that McPhail had leased to Thomas. Hence, McPhail held a valid possessory lien over the vehicle, and the trial court properly entered judgment for McPhail. I.C. § 9-22-1-4.

The judgment of the trial court is affirmed.

DARDEN, J., and BRADFORD, J., concur.