

SUPERIOR COURT  
OF THE  
STATE OF DELAWARE

RICHARD F. STOKES  
JUDGE

SUSSEX COUNTY COURTHOUSE  
1 THE CIRCLE, SUITE 2  
GEORGETOWN, DE 19947  
TELEPHONE (302) 856-5264

Christina Paoli  
P.O. Box 8  
Ocean View, DE 19970

Robert Breese  
400 Midway Drive  
Rehoboth Beach, DE 19971

RE: *Christina Paoli v. Bob Breese*  
S12A-07-001 RFS

Appeal from a Decision of the Court of Common Pleas.  
Decision Affirmed.

Submitted: March 12, 2013

Decided: May 20, 2013

Dear Ms. Paoli and Mr. Breese:

I have received your submissions on Ms. Paoli's ("Paoli") appeal of a decision of the Court of Common Pleas ("CCP") pursuant to CCP Rule 72. Upon review, I find that the trial judge's factual findings are supported by the evidence and that the decision is free from legal error. The decision is affirmed.

**Facts and posture.** Most facts are in high contention. The uncontested facts are sufficient to provide a background for the controversy. In 2009–2010, Paoli

owned a 1984 Coachman Camper. In August and September 2009, the parties had discussions and communications about whether Defendant Robert Breese, who lived across the street, wanted to buy Paoli's camper, and, if so, for what price. At some point, Paoli asked Breese to move the camper from her property because of circumstances occurring at her house, and Defendant did so. Paoli's live-in friend Jere Daum ("Daum") testified about these discussions, as did the parties.

For a short period time, Defendant retained the camper on his own property. He then moved it to the property of Roseanne Cronin ("Cronin"). She testified that Defendant stored the camper on her property in Millsboro, Delaware for 10 or 11 months in 2009 and 2010. She charged him rent in the monthly amount of \$75.

On October 15, 2010, a magistrate in the Justice of the Peace Court granted Paoli's writ of replevin and set the retrieval date as October 21, 2010 with a court constable at hand. The Court noted that the camper was then located at 31036 Vacation Road, Millsboro, Delaware. This is Cronin's address. The magistrate granted Breese's counterclaim for storage fees in the amount of \$975.00. Paoli sold the camper for \$1000 in May 2011.

On appeal to the Court of Common Pleas, a trial *de novo* was conducted and both parties appeared *pro se*. After hearing the evidence, the trial judge denied Paoli's claim for damages and granted Breese's counterclaim for storage fees.

Paoli filed a timely appeal in this Court. Plaintiff seeks judgment in an amount between \$500.00 and \$3500.00 based on Defendant's alleged fraud, intentional deprivation of her camper and depreciation; reversal of the award of storage fees; and punitive damages based on Defendant's alleged lies to her and to the trial judge. Breese rests on the findings and conclusions of the trial judge.

The issue of fraud and Paoli's argument that Breese did not properly file a counterclaim are not properly before the Court because Paoli raises them for the first time on appeal. As to punitive damages, Paoli did not seek them below, and she has not made out a case for punitives on appeal.<sup>1</sup> Paoli submitted documents on appeal that were not offered at trial. Such evidence is not considered on appeal.

**Standard of review.** This Court has authority under 11 *Del.C.* § 5301 to review final decisions from the Court of Common Pleas. The Court's role is to correct errors of law and to review the factual findings of the Court below to determine if they are supported by the record and are the product of an orderly and logical deductive process.<sup>2</sup> Errors of law are reviewed *de novo*.<sup>3</sup> This Court must

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<sup>1</sup>*Farrell v. A.C. & S. Co., Inc.*, 558 A.2d 1078 (Del.Super.1989).

<sup>2</sup>*Disabatino v. State*, 808 A.2d 1216, 1220 (Del.Super.2002).

<sup>3</sup>*Downs v. State*, 570 A.2d 1142, 1144 (Del.1990).

accept factual findings made below if they are supported by substantial evidence,<sup>4</sup> which is such relevant evidence such as a reasonable person might accept as adequate to support a conclusion.<sup>5</sup> This Court does not make its own factual conclusions, weigh evidence or make credibility determinations.<sup>6</sup>

**No compensatory damages.** Paoli argues first that the evidence did not support the verdict because Defendant and Cronin lied about every material aspect of the case. Paoli asserts in her brief that “It’s obvious from the transcript that there are many lies and contradictions about the storage, the payments, checks, cash, etc.”<sup>7</sup>

The trial judge properly resolved contradictions in the testimony and ruled that an award of damages could not be made without evidence of the value of the camper when Breese took possession of it. Further, Paoli did not show that Breese had damaged the camper or present expert testimony as to the value of the camper or the amount of any damage done to it by Breese. The trial judge accepted the testimony that Paoli offered to sell the camper for \$3000, and that Breese countered for \$2000, which Paoli rejected. Although Breese stated that the book value of the camper was

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<sup>4</sup>*Fioro v. State*, 2004 WL 128422205, \*1 (Del.Super.).

<sup>5</sup>*Olney v. Cooch*, 425 A.2d 610, 614 (Del.1981).

<sup>6</sup>*Id.*

<sup>7</sup>The Court does not address Paoli’s allegation that Defendant committed perjury (Op.Br.8) because only the Attorney General has authority to bring criminal charges.

\$800, no agreement as to that amount was reached. The trial court's findings are supported by substantial evidence, and there is no error in the court's acceptance of the testimony of the offers for the camper.

**Plaintiff's right to testify and call witnesses and give a closing argument.**

Paoli argues that she did not take the stand because the trial judge "said I was not allowed to testify as a witness." (Op.Br.15). The transcript shows that no such statement was made. After Paoli called two witnesses, the trial court asked her if she had any more witnesses. Paoli said no, although she now argues that she wanted to testify and that she also wanted to call Cronin on direct.

Paoli's self-representation in this case shows that she knew she could call Cronin, as she had called Breese. Paoli's brief shows that she was also aware of her right to testify: "I know that I am allowed to testify on my own behalf at trial." (Op.Br.15.) Paoli called witnesses, questioned them, and cross-examined Defendant's witnesses.

Moreover, Paoli did offer direct testimony. Near the conclusion of the trial, Paoli testified on direct about admission of certain documents. She also began to assert that Defendant lied to her at various times, prompting the trial judge to inform her that statements about a party is lying is not proper testimony. The Court then directed her to go ahead with her testimony, which she did at some length. (Tr.

255–279.) Paoli’s argument that she was not allowed to testify is denied. Her assertion that the trial judge prevented her from taking the stand is frivolous, at best.

**Unequal treatment by trial judge.** Paoli asserts that the trial judge did not assist her in presenting her case, as the judge did for Breese. The trial court exercised its discretion in giving the parties certain instructions in order to proceed with an orderly trial. Paoli’s argument has no merit and is belied by the above description of the trial judge assisting Paoli give proper testimony.

**Closing argument.** Paoli argues that the trial court did not permit her to give a closing argument and that the result of the trial would have been different if she had given a closing. As the judge stated repeatedly, Paoli presented argument on direct and also when questioning witnesses. Prior to delivering her ruling, the trial judge stated that closings would not be helpful because she had heard both parties’ position during the trial and was familiar with the documents admitted into evidence

The record supports the trial court’s ruling. Both parties made argument at every turn in the trial. The trial court allowed some latitude on this issue because neither party was represented by counsel. The trial court acted within its discretion and committed no legal error by not hearing closing arguments. There is no guarantee of a closing argument in a bench trial. Paoli’s argument that the outcome of the case would have been different if she had given a closing statement has no

merit.

**Counterclaim.** The trial court awarded Breese \$750 for storage fees at a rate of \$75 per month. Paoli seeks reversal of this award based on her assertions that Breese and Cronin were lying and that Breese paid no storage fees whatsoever.

Cronin testified that the camper was stored on her property from October 2009 to August 2010 and that Defendant paid her in a lump sum. Despite Breese's recollection that he made two payments, the Court found that Cronin was credible and persuasive because, as the recipient of the money, she was more likely to remember when and how she got it.

Breese's testimony was also found to be credible. He testified that he did not want to buy the camper and that he wanted it removed from his property. He had complied with Paoli's request to keep it on his property because of difficulties Paoli was experiencing. Breese bought a different camper and had both on his property. When Breese became adamant that he wanted Paoli's camper off his property because of neighborhood complaints, Paoli made no effort to retrieve it. Breese then stored it and preserved it until it was returned under the replevin order in the same condition in which it had come into his hands as a bailment.

The testimony of Breese and Cronin was supported by Cronin's hand-written note to the same effect. In its appellate capacity, this Court will not disturb the trial

judge's finding that Breese and Cronin were credible witnesses and that Breese paid Cronin in full.

Paoli also argues that granting the counterclaim was error because Breese did not make any storage payments to Cronin. This argument has no merit because the trial judge properly concluded that Breese paid his fees.

**Conclusion.** On appeal, as at trial, Paoli focuses on Breese's alleged lies and misrepresentations. This Court finds that the trial judge properly resolved the factual inconsistencies by making logical deductions and assessing the witnesses' credibility. The decision below is supported by substantial evidence and is free from error of law.

The decision of the Court of Common Pleas is **AFFIRMED**.

**IT IS SO ORDERED.**

Very truly yours,

/s/ Richard F. Stokes

Richard F. Stokes

Original to Prothonotary