

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

Jonathan D. Foreman

Court of Appeals No. L-08-1415

Appellee

Trial Court No. CVE 0600998

v.

Guirguis Ragheb, et al.

DECISION AND JUDGMENT

Appellant

Decided: August 7, 2009

* * * * *

L. Douglass McCrury, for appellee.

Guirguis Ragheb, pro se.

* * * * *

PIETRYKOWSKI, J.

{¶ 1} Defendant-appellant, Guirguis Ragheb, appeals the November 3, 2008 judgment of the Sylvania Municipal Court which, following a bench trial, awarded judgment in favor plaintiff-appellee, Jonathon Foreman, on his conversion claim. For the reasons that follow, we affirm the trial court's judgment.

{¶ 2} On August 24, 2006, appellee filed a complaint against appellant and Charles Sterrett. Appellee alleged that appellant, then operator of a convenience store and an Ohio Lottery agent, and Sterrett converted his \$5,000 Ohio Lottery winnings; appellee requested liquidated damages in the amount of \$15,000.

{¶ 3} On July 7, 2008, appellee's motion for summary judgment was granted as to Sterrett (who did not oppose the motion) and denied as to appellant. On July 11, 2008, a bench trial was held. Appellant, incarcerated on an unrelated matter, was unable to attend.

{¶ 4} Reviewing the trial court's November 3, 2008 judgment entry at trial, it appears that Ohio Lottery Investigator, Carl Ketterer, testified regarding his investigation of appellee's claim. (Ketterer's affidavit had been previously filed with the court.) Co-defendant, Charles Sterrett, also testified. The court, at the request of appellant's attorney, considered his discovery responses.

{¶ 5} Thereafter, on November 3, 2008, the trial court issued its judgment in favor of appellee. The court found that, pursuant to R.C. 2307.61(G)(1), appellant committed a theft offense though he had not been criminally prosecuted. Pursuant to R.C. 2307.61(A)(1)(b)(ii), the court awarded liquidated damages in the amount of \$15,000. This appeal followed.

{¶ 6} Appellant, pro se, raises the following assignment of error for our review:

{¶ 7} "I. Imposition of liquidated damages, of three times the amount of the 'ticket,' is an abuse of the discretion of the court.

{¶ 8} "II. Lack of, true quality of legal advice, violates true integrity of an attorney, and it is a clear case of ineffective assistance of counsel.

{¶ 9} "III. Use of a hostile witness, without the ability to cross-examine, violates the Due Process Clause of the Federal Constitution.

{¶ 10} "IV. Not being served [upon] a claim of suit, does not give a person the time, or ability to defend themselves, this again is violation of a person Due Process Clause."

{¶ 11} In appellant's first assignment of error, he contends that the trial court erred by awarding appellee treble damages under R.C. 2307.61(A)(1)(b)(ii). This section provides:

{¶ 12} "(A) If a property owner brings a civil action pursuant to division (A) of section 2307.60 of the Revised Code to recover damages from any person who willfully damages the owner's property or who commits a theft offense, as defined in section 2913.01 of the Revised Code, involving the owner's property, the property owner may recover as follows:

{¶ 13} "(1) In the civil action, the property owner may elect to recover moneys as described in division (A)(1)(a) or (b) of this section:

{¶ 14} "* * *.

{¶ 15} "(b) Liquidated damages in whichever of the following amounts is greater:

{¶ 16} "* * *.

{¶ 17} "(ii) Three times the value of the property at the time it was willfully damaged or was the subject of a theft offense, irrespective of whether the property is recovered by way of replevin or otherwise, is destroyed or otherwise damaged, is modified or otherwise altered, or is resalable at its full market price. * * *."

{¶ 18} It is within a trial court's discretion whether or not to award liquidated damages pursuant to R.C. 2307.61. See *Justice v. Justice*, 12th Dist. Nos. CA2004-03-074, CA2004-04-084, 2005-Ohio-1802, ¶ 19. See, also, *Red Ferris Chevrolet, Inc. v. Aylsworth*, 9th Dist. No. 07CA0072, 2008-Ohio-4950. Thus, a reviewing court will not reverse the trial court's judgment awarding such damages absent an abuse of that discretion. An abuse of discretion connotes an unreasonable, arbitrary, or unconscionable decision. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219.

{¶ 19} Appellant, as the party challenging the trial court's decision has the duty to file the transcript to ensure that an appellate court can properly evaluate the lower court's decision. *Chambers v. Chambers*, 12th Dist. No. CA2001-06-014, 2002-Ohio-869, citing *Knapp v. Edwards Laboratories* (1980), 61 Ohio St.2d 197, 199.

{¶ 20} Absent a transcript to review, we must presume the validity and regularity of the proceedings below with respect to the trial court's determination. *Knapp*. Further, because the trier of fact sees and hears the witnesses and is particularly competent to decide "whether, and to what extent, to credit the testimony of particular witnesses" we must afford substantial deference to its determinations of credibility. *State v. Lawson* (Aug. 27, 1997), 2d Dist. No. 16288.

{¶ 21} In its November 3, 2008 judgment entry, the trial court summarized the trial testimony it found credible. It also found Sterrett's testimony to be inconsistent and that it implicated appellant. The court then specifically found that appellant committed a theft offense. Based on the foregoing, we find that the trial court did not abuse its discretion when it awarded treble damages. Appellant's first assignment of error is not well-taken.

{¶ 22} In appellant's second assignment of error, he argues that he was denied the effective assistance of trial counsel. This court has previously held:

{¶ 23} "The Sixth Amendment to the United States Constitution provides a right to effective assistance of counsel in a criminal proceeding. *Strickland v. Washington* (1984), 466 U.S. 668, 686, 104 S.Ct. 2052, 2063, 80 L.Ed.2d 674, 692. The right to be represented by counsel in a civil proceeding where the state seeks to take the defendant's life, liberty, or property is guaranteed by the Fifth Amendment to the United States Constitution as applied to the states by the Fourteenth Amendment. However, in a civil case between individual litigants, there is no constitutional right to representation. The state does provide a forum, via the judicial system, in which litigants can resolve disputes. * * *. [A]ny complaint of ineffective assistance of counsel may only be resolved in a malpractice action." *Roth v. Roth* (1989), 65 Ohio App.3d 768, 776.

{¶ 24} Accord *Luna-Corona v. Esquivel-Parrales*, 12th Dist. No. CA2008-07-175, 2009-Ohio-2628; *Dantzig v. Biron*, 4th Dist. No. 07CA1, 2008-Ohio-209. Upon review, we find that appellant's second assignment of error is not well-taken.

{¶ 25} In appellant's third assignment of error he argues that he was not able to cross-examine "hostile witness," Charles Sterrett. As set forth in our discussion of appellant's first assignment of error, absent a trial transcript we must presume the regularity of the proceedings. Accordingly, because appellant has provided no evidence that Sterrett was not properly cross-examined, his third assignment of error is not well-taken.

{¶ 26} In appellant's fourth and final assignment of error, he contends that he was not properly served with the complaint and summons. The record shows that on September 8, 2006, service was made at appellant's address. Further, any error as to service is waived if it is not timely raised in the trial court. Civ.R. 12(H). Accordingly, we find that appellant's fourth assignment of error is not well-taken.

{¶ 27} On consideration whereof, we find that substantial justice was done the party complaining, and the judgment of the Sylvania Municipal Court is affirmed. Pursuant to App.R. 24, costs of this appeal are assessed to appellant.

JUDGMENT AFFIRMED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

Foreman v. Ragheb
C.A. No. L-08-1415

Peter M. Handwork, P.J.

JUDGE

Mark L. Pietrykowski, J.

JUDGE

Thomas J. Osowik, J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
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