[Cite as *Beaumont v. Albert*, 2009-Ohio-6176.]

IN THE COURT OF APPEALS

TWELFTH APPELLATE DISTRICT OF OHIO

PREBLE COUNTY

NEIL BEAUMONT,	:	
Plaintiff-Appellee,	:	CASE NO. CA2009-03-006
	:	O P I N I O N
- vs -		11/23/2009
	:	
KARYN SUE ALBERT nka TEMPLE,	:	
Defendant-Appellant.	:	

CIVIL APPEAL FROM PREBLE COUNTY COURT OF COMMON PLEAS
Case No. 07-CV-26512

Mark Florence, 144 East Mulberry Street, P.O. Box 280, Lebanon, OH 45036, for plaintiff-appellee

Michael T. Columbus, 2100 First National Plaza, 130 West Second Street, Dayton, OH 45402, for defendant-appellant

POWELL, P.J.

{¶1} Defendant-appellant, Karyn Sue Albert, appeals from the decision of the Preble County Court of Common Pleas granting judgment in favor of plaintiff-appellee, Neil Beaumont, in an action involving the repayment of money she

allegedly owed after entering into a purported loan agreement.[1] We affirm.

{¶2} In late 2000, Beaumont met Albert through an internet dating website. The pair, who started out as friends, quickly became "boyfriend-girlfriend." However, their romantic relationship, which eventually turned "platonic," ended in 2004. The events that occurred during their courtship are in dispute, and the subject of this appeal.

{¶3} During the bench trial, the trial court heard testimony indicating the following:

{¶4} In August of 2001, Beaumont, an airline pilot with Airborne Express, entered into an agreement with Albert, who was in need of financial assistance due to her impending divorce, to loan her $125,000. In describing their agreement, Beaumont testified that he intended to purchase Albert's house as "security against the loan."

{¶5} Later that month, and as per the terms of their agreement, Beaumont, who was not represented by an attorney, provided Albert with a $125,000 cashier's check. In response, Albert executed a "survivorship deed" that Beaumont believed transferred full ownership in the property to him. As Beaumont testified, "[Albert] claimed that [the deed] gave me full ownership of that property as per the contract which we had signed." However, unbeknownst to him, and despite Albert's assurances to the contrary, the deed only conveyed Beaumont a one-half interest in the property.

{¶6} In March of 2002, and while still under the impression that he was the sole owner of the property, Beaumont loaned Albert an additional $24,000, thereby

1. Albert, who has since married, is now known as Karyn Sue Temple.

increasing the total amount owed to $149,000. When asked if the $149,000 was a gift, Beaumont testified that "it was made very, very clear to [Albert] that the money was for the house," and that "[t]here was no way that [it] could be construed as being a gift."

{¶7} Approximately two years later, and while Albert was living in the Preble County residence, a quitclaim deed was executed. The deed, which appeared to be signed by Beaumont, and which was subsequently recorded, conveyed Beaumont's one-half interest in the property back to Albert. Although his alleged signature appeared on the deed, Beaumont testified that "under no circumstances would [he] sign a quitclaim deed," he "did not sign this one," and that he never gave anyone authority to sign his name.

{¶8} Regardless, after regaining Beaumont's one-half interest in the property, Albert sold the Preble County residence to a local couple for $188,000. Albert did not provide Beaumont with any of the sale proceeds.

{¶9} Sometime later, but after discovering the quitclaim deed bearing his signature had been recorded, Beaumont testified that he confronted Albert who claimed that she had been diagnosed with cancer, needed money for medical treatments, and admitted to "cook[ing] up a fraudulent quitclaim deed * * * and sign[ing] the deed on [his] behalf." In support of his claims, Beaumont provided the trial court with a transcript of a taped telephone conversation between himself and Albert, who, while describing how she was able to convince her daughter-in-law to file the forged quitclaim deed, stated the following:

{¶10} "You know, it had your signature on it and that was – you know, she never – never assumed that that wasn't your signature."

{¶11} After Beaumont discovered Albert's scheme, the parties attempted to enter into two settlement agreements. However, when their dispute went unresolved, Beaumont filed a suit against Albert alleging breach of contract. Following a bench trial, the trial court granted judgment in favor of Beaumont, ordered Albert to repay the entire $149,000 loaned to her, and imposed an award of $20,000 as punitive damages.

{¶12} Albert now appeals, raising four assignments of error. For ease of discussion, Albert's assignments of error will be addressed out of order.

{¶13} Assignment of Error No. 2:

{¶14} "THE JUDGMENT OF THE TRIAL COURT WAS AGAINST THE MANIFEST WEIGHT AND SUFFICIENCY OF THE EVIDENCE."

{¶15} In her second assignment of error, Albert claims that the trial court's decision granting judgment in Beaumont's favor was against the manifest weight of the evidence as "there [was] simply insufficient evidence to support the trial court's determination that a contract for repayment between the parties existed." In support of her argument, Albert insists that the money Beaumont transferred to her was merely a gift, and not, as the trial court found, a loan. This argument lacks merit.

{¶16} An appellate court will not reverse a judgment as being against the manifest weight of the evidence where the judgment is supported by some competent, credible evidence going to all essential elements of the case. *1st National Bank v. Mountain Agency, L.L.C.*, Clermont App. No. CA2008-05-056, 2009-Ohio-2202, ¶13, citing *C.E. Morris Co. v. Foley Const. Co.* (1978), 54 Ohio St.2d 279, syllabus. In determining whether a judgment was against the manifest weight of the evidence, an appellate court must be "guided by a presumption that the findings of

the trier of fact were indeed correct." *Seasons Coal Co. v. Cleveland* (1984), 10 Ohio St.3d 77, 80. As a result, because the trial court is in the best position to weigh the testimony and observe the witnesses' demeanor in order to gauge their credibility, this court must not substitute its judgment for that of the trial court when there is competent and credible evidence supporting the trial court's findings of fact and conclusions of law. Id. Therefore, "where the decision in a case turns upon credibility of testimony, and where there exists competent and credible evidence supporting the findings and conclusions of the trial court, deference to such findings and conclusions must be given by the reviewing court." *Choate v. Tranet, Inc.*, Warren App. No. CA2005-09-105, 2006-Ohio-4565, ¶67, quoting *Myers v. Garson,* 66 Ohio St.3d 610, 614, 1993-Ohio-9. Accordingly, "in reviewing a bench trial, an appellate court will uphold the trial court's decision unless it appears the record cannot support a reasonable person in concluding as the trial judge did." *Bales v. Miami Univ.*, Butler App. No. CA2006-11-295, 2007-Ohio-6032, ¶16.

{¶17} At trial, although Albert testified that "[h]e gave it to me," Beaumont testified that he "purchased [Albert's] house as security against the loan," that their agreement was "made very, very clear to [Albert] that the money was for the house," and that "there was no way that [the money] could be construed as a gift." In support of his claim, Beaumont introduced a notarized document, signed by both parties, stating the following:

{¶18} "Agreement between [Albert] and [Beaumont] * * *. [Albert] will buy the property for $125,000 61 days after the initial transfer of the deed to [Beaumont]." [sic]

{¶19} In explaining this agreement, Beaumont testified that he was "buying

the property for $125,000 so that [Albert could] meet her divorce decree," and that "[w]ithin 61 days of transferring the title to [him, she was] going to acquire a mortgage to buy the property back * * *." Beaumont also introduced evidence indicating that he loaned an additional $24,000 to Albert secured by the Preble County residence.

{¶20} In classifying the transfer of $149,000 as a loan, the trial court determined that "[Albert's] claim that the transfer of funds was a gift [was] not credible," that "there [was] no evidence that [Beaumont] intended to make gifts to [Albert] of $125,000 and $24,000," and that "a review of the exhibits indicates that [he] expected to be repaid and desired some security to secure repayment." In addition, the trial court found Beaumont "obtained an interest in [Albert's] real estate because he wanted some security for the debt," and that he filed suit against her when "he found out that his interest was taken from him."

{¶21} After a thorough review of the record, and although there was conflicting evidence as to the nature of the money transferred, we find no error in the trial court's decision classifying the $149,000 as a loan, and not, as Albert claims, merely a gift. As noted above, there was some competent, credible evidence to support the trial court's determination that Beaumont loaned Albert a total of $149,000 in anticipation of being repaid. Therefore, because the trial court's decision was supported by some competent, credible evidence, we find that the trial court's decision finding Beaumont loaned Albert $149,000 was not against the manifest weight of the evidence. Accordingly, Albert's second assignment of error is overruled.

{¶22} Assignment of Error No. 1:

{¶23} "THE TRIAL COURT ERRED IN NOT FINDING THAT APPELLEE'S

CLAIMS WERE BARRED BY THE DOCTRINE OF ACCORD AND SATISFACTION."

{¶24} In her first assignment of error, Albert argues that the trial court erred by not finding the "two prior settlement agreements acted as an accord and satisfaction of [her] alleged debt." We disagree.

{¶25} "An accord is a contract between a debtor and a creditor in which the creditor's claim is settled in exchange for a sum of money other than that which is allegedly due. Satisfaction is the performance of that contract." *Hicks v. Hicks* (July 24, 2000), Warren App. No. CA99-09-112, at 5, quoting *Allen v. R.G. Indus. Supply*, 66 Ohio St.3d 229, 231, 1993-Ohio-43. A valid accord and satisfaction *completely discharges* the debtor's existing duties and constitutes a defense to any attempt to enforce a claim based on such duties. *Titus v. Marzocco* (Oct. 14, 1996), Clermont App. No. CA96-02-026, at 4-5. The doctrine of accord and satisfaction is an affirmative defense and the burden of proof is on the proponent of the defense. *Hicks* at 5, citing *State ex rel. Shady Acres Nursing Home, Inc. v. Rhodes* (1983), 7 Ohio St.3d 7, 8; *Hinton v. Johnson* (June 19, 1995), Warren App. No. CA94-03-031, at 5.

{¶26} At trial, Albert testified that she agreed to enter into two settlement agreements with Beaumont so that "[h]e'd stay out of [her] life" and "stop suing" her. In explaining the terms of the alleged settlement agreements, Albert testified that Beaumont initially "wanted the [w]ill," and then "he wanted insurance" to dismiss his suit.[2] This was the only evidence offered to establish the existence of a valid accord

2. Although not particularly clear, Albert essentially claims that Beaumont agreed to voluntarily dismiss his suit against her if she named him as a beneficiary in her will. However, sometime after drafting her will, Albert testified that she agreed to revoke her will and name Beaumont as a beneficiary on her life insurance policy because he "wanted the insurance."

and satisfaction.

{¶27} In finding no accord and satisfaction, the trial court found that "the evidence before [it] was insufficient to support [Albert's] claim that the issues in each case were *completely settled* so as to act as a bar to future claims * * *." (Emphasis added.) After a thorough review of the record, we find no error in the trial court's decision. Here, there was no testimony, besides that from Albert herself, indicating Beaumont agreed to completely discharge his claim as part of the parties' alleged settlement agreement. See *Hicks* at 5-6; *Titus* at 5; *Hinton* at 6-7. Absent evidence of mutual assent there can be no accord and satisfaction between the parties. *Hicks* at 6. Accordingly, Albert's first assignment is overruled.

{¶28} Assignment of Error No. 3:

{¶29} "THE TRIAL COURT ERRED IN AWARDING APPELLEE PUNITIVE DAMAGES."

{¶30} In her third assignment of error, Albert argues that "the record lacks the necessary clear and convincing evidence of fraud to support the imposition of punitive damages." This argument lacks merit.

{¶31} The decision to award punitive damages is within the trial court's discretion, and absent an abuse of that discretion, the trial court's ruling on punitive damages will be upheld. *Padgett v. Sanders* (1998), 130 Ohio App.3d 117, 121.

{¶32} Punitive damages are generally not recoverable in a breach of contract action. *Mabry-Wright v. Zlotnik*, 165 Ohio App.3d 1, 2005-Ohio-5619, ¶18; citing *Digital & Analog Design Corp. v. N. Supply Co.* (1989), 44 Ohio St.3d 36, 45-46. However, as this court has previously noted, punitive damages are recoverable in a civil action alleging a breach of contract where "the conduct constituting the breach is

also a tort for which punitive damages are recoverable." *Unifirst Corp. v. Yusa Corp.*, Fayette App. No. CA2002-08-014, 2003-Ohio-4463, ¶31, quoting *Lake Ridge Academy v. Carney* (1993), 66 Ohio St.3d 376, 381. In tort law, punitive damages are available in actions involving fraud on the part of the defendant. *Creech v. Brock & Assoc. Constr.*, Preble App. No. CA2008-12-024, 2009-Ohio-3930, ¶20. In turn, "when elements of the tort fraud are also proven and the plaintiff establishes that the [tortious conduct] * * * was egregious, punitive damages may be awarded." *Stern Enterprises v. Plaza Theaters I & II, Inc.* (1995), 105 Ohio App.3d 601, 606, quoting, *Salgado v. Shoreway Circle, Inc.* (Dec. 9, 1994), Lake App. No. 93-L-071, 1994 WL 721854, at *4. Egregious has been defined as "conspicuous for bad quality and taste." *Grodhaus v. Burson* (1991), 71 Ohio App.3d 477, 481.

{¶33} After reviewing the record, we find that the evidence clearly indicates Albert engaged in prolonged fraudulent activity that was nothing short of egregious. As noted above, and just as the trial court found, "[Albert's] fraudulent conduct started when she transferred only a one-half interest in the real estate to [Beaumont], continued when she set in motion the acts that resulted in her regaining sole title to the real estate, and ended when she sold the real estate to innocent purchasers." As a result, because the record is replete with evidence that Albert engaged in egregious fraudulent activity, we find the trial court's decision to award punitive damages to Beaumont was not an abuse of discretion. Therefore, Albert's third assignment of error is overruled.

{¶34} Assignment of Error No. 4:

{¶35} "THE TRIAL COURT ERRED BY FAILING TO DETERMINE THE NET WORTH OF APPELLANT AT THE TIME THE TORT WAS COMMITTED."

{¶36} In her fourth assignment of error, Albert argues that the trial court erred by awarding $20,000 as punitive damages because the award "exceeded ten percent of [her] net worth," thereby violating R.C. 2315.21(D)(2)(b). However, contrary to Albert's claim, R.C. 2315.21, which governs the award of punitive damages in *tort actions*, is inapplicable to "a civil action for damages for a breach of contract or another agreement between persons." See R.C. 2315.21(A)(1). Therefore, because Beaumont's claim was a civil action for damages resulting from her breach of contract, R.C. 2315.21(D)(2)(b) is inapplicable. Accordingly, Albert's fourth assignment of error is overruled.

{¶37} Judgment affirmed.

YOUNG and HENDRICKSON, JJ., concur.