COURT OF APPEALS
DECISION
DATED AND FILED

October 30, 2007

David R. Schanker
Clerk of Court of Appeals

Appeal No. 2007AP902 **Cir. Ct. No. 2006SC43931**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT I

LANDMARK CREDIT UNION,

PLAINTIFF-RESPONDENT,

V.

LISA BORUM,

DEFENDANT-APPELLANT.

APPEAL from orders of the circuit court for Milwaukee County: MICHAEL B. BRENNAN, Judge. *Provisionally affirmed and cause remanded with directions.*

¶1 FINE, J. Lisa Borum, *pro se*, appeals a "Replevin Order for Judgment" (uppercasing omitted) awarded to Landmark Credit Union, and the trial court's order denying her motion for reconsideration. She contends that Landmark never properly perfected the "Motor Vehicle Consumer Simple Interest

Installment Sale and Security Agreement" (uppercasing omitted) she executed in April of 2005 giving Landmark a security interest in a car she bought from Ernie von Schledorn, Inc., because Wells Fargo Financial Acceptance, Essington, was originally listed on the certificate of title as the lien-holder, rather than Landmark. In connection with her forgery claim, she contends that Landmark forged her signature on the form that it sent to the Department of Motor Vehicles to substitute Landmark for Wells Fargo as lien-holder on the car's title.[1] As we explain below, we provisionally affirm.

I.

¶2 As noted, Borum executed a security agreement in connection with her purchase of a car from Ernie von Schledorn, and Landmark is on the security agreement as the secured party as the dealer's assignee for Borum's financing of the car. Under the agreement, Borum's first monthly payment was due on June 3, 2005, and she paid the required amount to Landmark by check dated June 5, 2005. She also paid Landmark what was apparently the second payment by check dated July 29, 2005. Believing that Borum was in default for not timely making the

[1] Borum included in her answer a "counter action" (uppercasing omitted), which alleged that Landmark had forged her signature. The trial court's orders did not address the "counter action," which was, in essence, a counterclaim. Nevertheless, as we explain in the main body of this decision, inasmuch as the trial court determined that there was no forgery, we assume that the trial court dismissed the counterclaim, and so construe her notice of appeal, which asserts that the trial court "overlooked her counterclaim based on the forgery of her name on Wisconsin Department of Transportation documents that were used to acquire the title used to support the plaintiff's action," to encompass what the trial court apparently did. We remand this matter to the trial court for a determination of whether our construction is correct and, if so, to enter a written order to that effect. This does not affect Borum's appeal of that issue, however. *See* WIS. STAT. RULE 808.04(8) ("If the record discloses that the judgment or order appealed from was entered after the notice of appeal or intent to appeal was filed, the notice shall be treated as filed after that entry and on the day of the entry."). If our construction is not correct, the trial court shall issue an appropriate order, which may or may not also affect the replevin order, in connection with Borum's counterclaim, and, if it deems it appropriate, hold a further evidentiary hearing.

required payments and for not keeping the car insured, Landmark sent to Borum a "Notice of Right to Cure Default" (uppercasing omitted), dated November 11, 2005, which indicated that Borum was late in making two payments, the one for October, 2005, and the one for November, 2005, and that Borum was also in default for not keeping the car insured, as both parties agree was required by the security agreement.[2] A representative of Landmark testified that Borum did not cure her default by getting the required insurance.[3]

¶3 Borum is correct and Landmark concedes that the original title listed Wells Fargo as the lien-holder, but Landmark explained at the trial that that was a clerical error by the dealership. Indeed, Wells Fargo specifically disclaimed any interest in the car, and the title was ultimately corrected to list Landmark as the lien-holder. As noted, Borum claims that her signature was forged on the document used to make the correction.

¶4 In support of her contention that her signature was forged, Borum called a handwriting expert, whom the trial court found to be qualified. He testified that he compared the signature purporting to be Borum's on the

[2] Only the front side of the security agreement is in the Record. The security agreement, however, specifically recites that Borum agreed to "observe and comply with the Additional Provisions on the reverse side and shall not permit an event of default to occur." (Capitalization in original.) Presumably the insurance-requirement was set out on the reverse side. *See* ***State v. Goyette***, 2006 WI App 178, ¶22 n.11, 296 Wis. 2d 359, 372 n.11, 722 N.W.2d 731, 738 n.11 ("[W]e assume facts, reasonably inferable from the record, in a manner that supports the circuit court's decision."). In any event, Borum does not dispute that she was required to keep the car insured.

[3] Borum argues that there was an installment payment that precluded replevin on the failure-to-pay ground. We do not address that issue because the trial court found that Borum was in default on the insurance ground, and, as will be seen in the next part of the decision, that finding is not "clearly erroneous." *See* WIS. STAT. § 805.17(2) (appellate court will not reverse circuit court's factual findings unless they are clearly erroneous); ***Gross v. Hoffman***, 227 Wis. 296, 300, 277 N.W. 663, 665 (1938) (only dispositive issue need be addressed).

application for a replacement title (listing Landmark as the lien-holder) with samples of her handwriting that she gave him and concluded that the signatures purporting to be Borum's on the application were "not authored by the person that supplied me with the known signatures." Nevertheless, the trial court found that there was no forgery.

¶5 The trial court also found that Landmark was the proper lien-holder under the security agreement, and, as material to our decision, Borum was in default on the insurance-requirement and did not cure that default. It concluded as well that the error on the original certificate of title did not nullify Landmark's right to replevin. In denying Borum's motion for reconsideration, the trial court determined that she was merely rearguing what she had contended at the trial.

II.

¶6 As noted earlier, a trial court's findings of fact will be upheld on appeal unless they are "clearly erroneous." WIS. STAT. § 805.17(2). Further, a fact-finder is not bound by the opinions of any expert even if those opinions are not contradicted. ***Pautz v. State***, 64 Wis. 2d 469, 476, 219 N.W.2d 327, 330–331 (1974). Under WIS. STAT. RULE 909.015(3), the trier of fact may do the handwriting comparison. *See* ***United States v. Dozie***, 27 F.3d 95, 98 (4th Cir. 1994) (per curiam) (applying the federal analogue to RULE 909.015(3), Rule 901(b)(3) of the Federal Rules of Evidence). That is what the trial court apparently did here. *See* ***State v. Goyette***, 2006 WI App 178, ¶22 n.11, 296 Wis. 2d 359, 372 n.11, 722 N.W.2d 731, 738 n.11 ("[W]e assume facts, reasonably inferable from the record, in a manner that supports the circuit court's decision."). As noted in footnote 1, if our construction of what the trial court did is correct, we affirm, but remand the matter to the trial court for the entry of an

appropriate order. As also noted in the footnote, if our construction is not correct, and the trial court did not rule on Borum's counterclaim, the trial court shall issue an appropriate order in connection with Borum's counterclaim, and, if it deems it appropriate, hold a further evidentiary hearing, which may or may not affect its order granting Landmark replevin and also its denial of Borum's motion for reconsideration.

¶7 As for Borum's contention that because of the misnomer on the certificate of title, Landmark's security interest in the car was ineffective because it was not "perfected," the statute that requires the lien-holder to be listed on the title protects third parties; it does not nullify between the parties to a security agreement an otherwise valid security interest. Thus, WIS. STAT. § 342.19(1) provides: "Unless excepted by s. 342.02, a security interest in a vehicle of a type for which a certificate of title is required is not *valid against creditors of the owner or subsequent transferees or secured parties of the vehicle* unless perfected as provided in this chapter."[4] (Emphasis added.) The phrase "secured parties" is modified by the word "subsequent," and, therefore, the section does not apply to Landmark.

[4] WISCONSIN STAT. § 342.02 does not apply here. It provides:

> This chapter does not apply to or affect:
>
> **(1)** A lien given by statute or rule of law to a supplier of services or materials for the vehicle.
>
> **(2)** A lien given by statute to the United States, this state or any political subdivision of this state.
>
> **(3)** A security interest in a vehicle created by a manufacturer or dealer who holds the vehicle for sale, which shall be governed by the applicable provisions of ch. 409.

¶8 Subject to our remand for the entry of an order in connection with Borum's counterclaim, we provisionally affirm the trial court's order granting Landmark replevin of the car as well as its order denying Borum's motion for reconsideration.

By the Court.—Orders provisionally affirmed and cause remanded with directions.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)4.