Cite as 2010 Ark. App. 670

ARKANSAS COURT OF APPEALS

DIVISION III
No. CA09-801

	Opinion Delivered October 6, 2010
MOSE MINOR APPELLANT	APPEAL FROM THE JOHNSON COUNTY CIRCUIT COURT, [NO. CIV-2008-4]
V.	HONORABLE WILLIAM M. PEARSON, JUDGE
CHASE AUTO FINANCE CORPORATION APPELLEE	AFFIRMED

DAVID M. GLOVER, Judge

Appellant, Mose Minor, appeals from a directed verdict in favor of appellee, Chase Auto Finance Corporation. Minor argues that his causes of action against Chase for wrongful repossession, conversion, violation of the Arkansas Deceptive Trade Practices Act (ADTPA), and punitive damages should have gone to the jury. We affirm.

In 2003, Minor financed the purchase of a pickup truck through Chase. His installment contract called for approximately sixty-five payments of $456.99 due on the fourteenth of each month. The parties' security agreement provided that, if Minor filed bankruptcy or failed to make a timely payment, Chase could immediately repossess the vehicle.

Minor made numerous late payments during the first year or so of his contract, all of which Chase accepted with an accompanying late fee. By September 2004, Minor was several

months in arrears but worked out an extension agreement with Chase. In November 2004, he filed bankruptcy, and his debt to Chase was ultimately discharged. He continued to use the truck, however, and made fairly regular payments to Chase through early 2006.[1] At that point, according to Chase's records, Minor missed his March, May, and June 2006 payments. He then made payments in July, August, and September, the last of which was posted on September 20, 2006.

On September 28, 2006, Minor was at home during daylight hours when Chase's repossession agent, Joshua Niles, appeared in his driveway. Minor learned of Niles's intention to repossess the truck, and he asked Niles to stop the repossession, stating that there must be a misunderstanding. Niles gave Minor Chase's telephone number, and Minor went into the house to call Chase. Niles waited for fifteen minutes and, when Minor did not reappear, Niles towed the truck away.

While in the house, Minor spoke to a Chase representative on the telephone. The representative informed Minor that he was behind on payments for March 2005, March 2006, May 2006, and June 2006. Minor checked his records and, according to him, found a money order receipt that corresponded with the March 2006 payment and a money order that had not been cashed. Chase determined that, even if it gave Minor credit for these two payments, his account was still delinquent and the repossession should proceed. Accordingly, Chase retained possession of the vehicle, sold it, and applied the sales price to Minor's balance due.

[1]Chase notified Minor that, if he wanted to keep using the truck, he must make payments or see it repossessed. *See Haney v. Phillips*, 72 Ark. App. 202, 35 S.W.3d 373 (2000) (holding that a creditor's lien on property may be preserved for foreclosure notwithstanding the debtor's discharge in bankruptcy).

Based on these events, Minor sued Chase for wrongful repossession, conversion, violation of the ADTPA, and punitive damages. Minor claimed that Chase's course of dealing in accepting late payments waived its right to repossess; that Chase breached the peace during repossession; and that Chase incorrectly concluded that he was in default on his payments. At trial, Minor recounted the aforementioned facts and expressed his belief that he was current on his payments at the time of repossession. He recognized, however, that Chase had the right to repossess his truck if his payments were not made when due. Following Minor's presentation of evidence, Chase moved for a directed verdict on all of Minor's causes of action. The circuit court granted the directed verdict, and Minor filed this appeal.

In determining whether a directed verdict should have been granted by a circuit court, we review the evidence in the light most favorable to the party against whom the verdict was sought and give the evidence its highest probative value, taking into account all reasonable inferences deducible from it. *Scott v. Cent. Ark. Nursing Ctrs., Inc.*, 101 Ark. App. 424, 278 S.W.3d 587 (2008). A motion for a directed verdict should be granted only if there is no substantial evidence that would support a jury verdict. *See id.* Where the evidence is such that fair-minded persons might reach different conclusions, then a jury question is presented, and the directed verdict should be reversed. *Id.*

Minor's first assignment of error has already been decided by our supreme court as the result of our certification of this case. Minor argued that, under the supreme court's holding in *Ford Motor Credit Co. v. Ellison*, 334 Ark. 357, 974 S.W.2d 464 (1998), Chase's regular acceptance of late payments waived its right of repossession unless Chase informed him in

advance that the course of dealing would change. The supreme court declined to apply *Ellison* in this instance because the parties' security agreement contained non-waiver and no-unwritten-modification clauses. *Minor v. Chase Auto Finance Corp.*, 2010 Ark. 245, ___ S.W.3d ___. Accordingly, the court decided the issue in favor of Chase and remanded the case to us with instructions to address Minor's remaining arguments.

Minor's first remaining argument is that he produced substantial evidence of wrongful repossession, conversion, and violation of the ADTPA because Chase breached the peace during repossession. A secured party may repossess collateral without judicial process if he proceeds "without breach of the peace," Ark. Code Ann. § 4-9-609 (Repl. 2001), but if the secured party's repossession is wrongful, it may constitute the tort of conversion. *Mercedes-Benz Credit Corp. v. Morgan*, 312 Ark. 225, 850 S.W.2d 297 (1993). Additionally, a party may violate the ADTPA by engaging in "unconscionable, false, or deceptive act in business, commerce, or trade." Ark. Code Ann. § 4-88-107(a)(10) (Repl. 2001). The word "unconscionable" has been defined to mean an act that affronts the sense of justice, decency, and reasonableness. *Baptist Health v. Murphy*, 365 Ark. 115, 226 S.W.3d 800 (2006).

According to Minor, Chase's agent, Joshua Niles, breached the peace when he decided to tow the vehicle despite Minor's request that he stop the repossession. We disagree. The agent employed no force or threats of violence. *See Ford Motor Credit v. Herring*, 267 Ark. 201, 589 S.W.2d 584 (1979). Nor did the parties exchange harsh words, raise their voices, behave in a confrontational manner, or otherwise risk the public order. Furthermore, Niles entered Minor's driveway and obtained access to his vehicle without passing through any gates, fences,

or other obstructions. *See Oaklawn Bank v. Baldwin*, 289 Ark. 79, 709 S.W.2d 91 (1986). Minor also agreed in his contract with Chase that, in the event of repossession, Chase could enter the premises where the vehicle was located. Viewing these circumstances in their entirety, we see no substantial evidence that Chase's agent breached the peace in repossessing Minor's vehicle. We therefore find no error on this point.

Minor's second remaining argument is that he produced substantial evidence that he was current on his truck payments when the repossession occurred. While Minor may not have been as far in arrears as Chase first claimed, he could not deny the fact that he had not made *all* payments due under the contract at the time of repossession. In particular, he produced no receipt for a June 2006 payment, which Chase's records showed had not been paid. Consequently, Minor's failure to make a payment when due constituted a contractual default, giving Chase the right to exercise the remedy of repossession. Moreover, Minor's mere subjective belief that he was current on his payments, as stated during his testimony, was conclusory rather than substantial evidence. *See generally Little Rock Elec. Contractors, Inc. v. Entergy Corp.*, 79 Ark. App. 337, 87 S.W.3d 842 (2002).

For these reasons, we affirm the circuit court's directed verdict in favor of Chase. Our holding makes it unnecessary to address Minor's claim for punitive damages, because such damages cannot be awarded in the absence of compensatory damages on the underlying causes of action. *Bell v. McManus*, 294 Ark. 275, 742 S.W.2d 559 (1988).

Affirmed.

GLADWIN and ABRAMSON, JJ., agree.