clarify testimony and expedite the trial, the judge may not, in a civil matter, assume the role of the plaintiff.

6. Clerkin alleges that an oral contract was entered into by the parties on or about April 30, 2001 when Wheeler "claimed" the horse, Heroic Peace, out of the first race at Delaware park. At that time, Wheeler requested that Clerkin perform veterinary services on two horses owned by him whenever necessary and requested by Wheeler's licensed thoroughbred trainer, Julie King.

7. Clerkin contends that Wheeler knowingly and voluntarily wrote down his name and address and gave it to Clerkin for billing purposes at the time veterinary services were first requested on April 30, 2001. Clerkin asserts that, on the basis of the oral agreement and Wheeler's promise to pay, Clerkin agreed to perform veterinary services. Clerkin did, in fact, perform all veterinary services as requested by Wheeler and his trainer Julie King. Clerkin later submitted a veterinary bill to Wheeler in the amount of $1,426.00 for various veterinary services performed on behalf of Wheeler for the period of April 30, 2001through June 6, 2001.

8. Clerkin asserts that during the period of time in question, Wheeler's horses earned $7,900.00 while continuing to race at Delaware Park and while under Clerkin's veterinary care. Wheeler received the benefit of Clerkin's veterinary services.

9. The facts of this case were heard by Justice of the Peace Court No. 12 on January 22, 2003. Judgment was awarded Clerkin in the amount of $1,426.00 plus costs. Wheeler appealed. The matter then was heard in the Court of Common Pleas of New Castle County on October 3, 2003. Judgment again was entered in favor of Clerkin and against Wheeler. Wheeler again appealed.

10. On an appeal from the Court of Common Pleas to the Superior Court, the standard of review "in addition to correcting errors of law, is 'whether the factual findings made by the trial judge are sufficiently supported by the record and are the product of an orderly and logically deductive process.'"[1] Findings of the trial Court that are supported by the record should be accepted even if the reviewing court, acting independently, would have reached a contrary conclusion.[2] This is the same standard of review for appeals from the Superior Court to the Supreme Court.[3]

11. At the close of the trial held in CCP on October 3, 3003, the judge stated that the cause of action was based on the premise that there was an oral contract.

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[1] *Mellon Bank v. Dougherty*, Del.Super., C.A. No. 88A-DE-3-A, Steele, J. (Aug. 24, 1989) (*citing Smart v. Bank of Delaware*, Del.Supr., C.A. No. 82A-DE-5, Christie, J. (Dec. 5, 1984)).

[2] *See Besk Oil, Inc. v. Brown & Bigelow, Inc.*, Del.Super., C.A. No. 88A-JA-3-1, Stiftel, P.J. (Dec. 16, 1988) at 3; *see also H&H Poultry Co., Inc. v. Whaley*, 408 A.2d 289, 291 (Del. 1979).

[3] *Moss v. Prudential-Bache Securities*, 581 A.2d 1138, 1140 (Del. 1990) (*citing Levitt v. Bouvier*, 287 A.2d 671, 673 (Del. 1972)).

Prior to the time Clerkin rendered the veterinary services, he had a meeting, or came in contact with Wheeler, and informed Wheeler that he would provide service on the basis that services would be timely paid. During the course of that meeting, Wheeler placed his address on a racing form.[4]

12. CCP reasoned that as a result of the transaction between Wheeler and Clerkin, where Clerkin retained or obtained the name and address from Wheeler for future billing, Clerkin proved by a preponderance of the evidence an oral contract was formed.

13. Wheeler testified that he informed Clerkin throughout the time from April 30, 2001 to June 30, 2001 not to touch his horse. However, Wheeler also testified that an injection of Lasix was required before the horses could run at the Delaware Park Racetrack. It is undisputed that Clerkin was the veterinarian who gave the mandatory injections. Therefore, Wheeler's assertion that he may have told his trainer, or told Clerkin, not to come near his horses is not supported by the record. The CCP found Appellant's testimony not credible.

[4]The CCP found that there is credible evidence in the record that there was no agency between Appellee and the trainer. The address on the racing form may have been provided to the trainer, and the trainer may have then passed it on to Clerkin. This finding was not determinative of the CCP's ruling.

CONCLUSION

This Court finds that the record evidence supports CCP's assessment that an oral contract was formed between Wheeler and Clerkin. Clerkin provided services in good faith. Clerkin remitted detailed invoices for services rendered between April 30, 2001 to June 30, 2001. Clerkin is entitled to be paid for the services provided.

There is sufficient record support for the CCP's ruling that Clerkin is entitled to $1,426 for the services he provided, plus pre-judgment interest, post-judgment interest, and costs. The CCP's factual findings are the product of an orderly and logical deductive process. It is irrelevant whether the testimony was in response to questions by the parties or the judge.

THEREFORE, the decision by the Court of Common Pleas is hereby **AFFIRMED**.

IT IS SO ORDERED.

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The Honorable Mary M. Johnston

ORIGINAL: PROTHONOTARY'S OFFICE - CIVIL DIV.