



ATTORNEY FOR APPELLANT

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IN THE
COURT OF APPEALS OF INDIANA

Nick’s Packing Services, Inc.,
Appellant-Defendant,

v.

Jacqueline Renee Chaney,
Appellee-Plaintiff.

December 27, 2021

Court of Appeals Case No.
21A-SC-820

Appeal from the Pike Township
Court

The Honorable A. Douglas
Stephens, Judge

Trial Court Cause No.
49K05-2012-SC-1904

Mathias, Judge.

[1] Nick’s Packing Services, Inc. (“Nick’s Packing”), appeals the Pike Township Small Claims Court’s judgment in favor of Jacqueline Renee Chaney after several of her personal belongings went missing when she was evicted from her apartment.

We affirm.

Facts and Procedural History

- [2] In October 2020, after Chaney’s landlord, First Key Homes, LLC (“Landlord”), evicted her from her apartment, the Pike Township Small Claims court issued an order granting the Landlord immediate possession of the apartment. The Landlord hired Nick’s Packing Services, Inc., a company that often helps the Landlord with “move-outs and evictions,” Tr. p. 14, to assist the Pike Township Constable in executing the possession order. On October 21, Pike Township Deputy Constable Aaron Berry, accompanied by Nick’s Packing employees, visited the apartment to execute the possession order.
- [3] After removing all persons from the apartment, Deputy Constable Berry permitted Chaney fifteen minutes to gather as many of her personal belongings as she could fit in her car. Nick’s Packing informed Chaney that she would have to retrieve her remaining belongings from Nick’s Packing’s storage facility, for a fee, at a later date. *Id.* at 15–16.
- [4] Craig Huff, a Nick’s Packing employee, took an inventory of the items that Chaney had been unable to take with her. Huff also completed a notice of removal of personal property. The inventory sheet listed, among other items, “2 flat screen T.V.’s.” Ex. Vol. p. 10. According to Nick’s Packing’s typical procedure for move-outs and evictions, “[i]nventory sheets are taped to the door,” Tr. p. 16, even if the listed items remain inside the property after the evicted tenants have vacated it, *id.* at 18. After Chaney left the premises, the Landlord changed the locks on the apartment and put a combination lockbox on the front door.

- [5] Because Nick’s Packing had several other move-outs to do that day, it returned to the apartment the next day, October 22, to retrieve the items Chaney had left behind. Upon arrival, Nick’s Packing discovered that the front door was unlocked. A window in the back bedroom had been broken out, and “[e]verything of value was gone out of the place.” *Id.* at 88. Nick’s Packing had not obtained Chaney’s contact information, so it did not contact her. Nick’s Packing also did not contact law enforcement, believing that “[the] responsibility to file a police report” belonged to someone else. *Id.* at 100–101.
- [6] On December 7, 2020, after Chaney learned that her belongings were missing, she filed a notice of claim in the Pike Township Small Claims Court alleging that Nick’s Packing had failed to return the items she left in its possession. She requested \$8,000 in damages. Appellant’s App. p. 2.
- [7] The court held a bench trial on February 12, 2021, and heard testimony from three Nick’s Packing employees, as well as Deputy Constable Berry. Chaney also testified. On April 6, almost two months after the trial, the court entered judgment in favor of Chaney, awarding her \$2,500 in damages. *Id.* at 8.
- [8] Nick’s Packing now appeals.

Discussion and Decision

- [9] Small claims actions involve informal trials with the sole objective of dispensing speedy justice between the parties according to the rules of substantive law. *Harvey v. Keyed in Prop. Mgmt., LLC*, 165 N.E.3d 584, 587 (Ind. Ct. App. 2021), *trans. denied*. Accordingly, judgments from small claims actions are provided a

deferential standard of review. *Id.* We will neither reweigh the evidence nor assess witness credibility, and we consider only the evidence most favorable to the judgment. *Pfledderer v. Pratt*, 142 N.E.3d 492, 494 (Ind. Ct. App. 2020).

[10] However, this deferential standard relates only to procedural and evidentiary issues; it does not apply to substantive rules of law, which we review de novo. *Id.* We also note that where, as here, the appellee has not filed an appellate brief, we will reverse if the appellant demonstrates prima facie error, which is “error at first sight, on first appearance, or on the face of it.” *Id.*

[11] In awarding damages to Chaney, the trial court concluded that a bailment was created when Nick’s Packing took possession of Chaney’s belongings. A bailment arises when (1) personal property belonging to a bailor is delivered into the exclusive possession of the bailee, and (2) the property is accepted by the bailee. *Winters v. Pike*, 171 N.E.3d 690, 699 (Ind. Ct. App. 2021) (quoting *Cox v. Stoughton Trailers, Inc.*, 837 N.E.2d 1075, 1082–83 (Ind. Ct. App. 2005)). For delivery to occur, there must be a full transfer of the property, either actually or constructively, to the sole custody of the bailee such as to exclude both the owner of the property and others. *Id.* Acceptance of the property by the bailee may arise from an express contract or from circumstances that imply such a contract. *Id.*

[12] If a bailment is found to exist, the bailee in possession of the bailed property must exercise the degree of care commensurate with the benefit derived from the arrangement. *Winters*, 171 N.E.3d at 699 (citing *United Farm Fam. Inc. Co. v.*

Riverside Auto Sales, 753 N.E.2d 681, 684–85 (Ind. Ct. App. 2001)). In a mutual benefit bailment, where a bailment exists for both the bailor’s and bailee’s benefit, the bailee must exercise a duty of ordinary care. *Id.* A showing by the bailor that the items were in good condition and were either returned in a damaged condition or not returned at all creates an inference that the bailee has failed to exercise the appropriate degree of care. *Id.* The burden then shifts to the bailee to demonstrate that the loss, damage, or theft was not his fault. *Id.*

[13] Here, Nick’s Packing claims that it neither accepted Chaney’s belongings nor gained exclusive possession of them. More specifically, it argues that “[m]erely filling out an inventory sheet . . . did not create bailment.” Appellant’s Br. at 10. In support of this argument, Nick’s Packing notes that the Landlord placed the lockbox on the apartment door, and asserts that, at that point, only the Landlord had access to and control over Chaney’s belongings.

[14] Contrary to this claim, Nick’s Packing employee Craig Huff testified that when an evicted tenant’s belongings are left at one of the Landlord’s properties, the Landlord’s locksmith puts the lockbox “somewhere where I can get back in.” Tr. p. 84. And when Huff returned to the apartment on October 22 to transport the items Chaney had left behind, he “got the key from the coded lockbox” and “went to unlock the door.” *Id.* at 90. Considering this testimony, we are not persuaded by Nick’s Packing’s claim that it had no access to the items.

[15] We also note that the inventory sheet on which Nick’s Packing listed Chaney’s belongings “verif[ied] that on 10/21/2020, the following personal property was

removed from 2634 Westleigh Dr. by NPS staff and delivered to Nick’s Packing Services, Inc.” Ex. Vol. p. 10. The inventory sheet further stated that Nick’s Packing “will store the personal property at 517 Main Street, Beech Grove, Indiana 46107, and dispose of it.” *Id.* at 10. The notice of removal of personal property that accompanied the inventory sheet instructed: “Please contact Nick’s Packing Services, Inc. for information on retrieving this personal property.” *Id.* at 9.

[16] Although the record does not show that a bailment was created by an explicit written contract signed by both Chaney and Nick’s Packing, the language contained in both the inventory sheet and the notice of removal, in addition to the exclusive code-combination access given to Nick’s Packing, underscores the company’s acceptance of those delivered items and the exclusiveness of its possession. Chaney delivered the items to Nick’s Packing when she left them in the vacated apartment on October 21. When the lockbox was placed on the door, Nick’s Packing gained possession of those items to the exclusion of Chaney, who did not have a code to unlock the apartment door.

[17] Moreover, Nick’s Packing returned to the apartment on October 22 specifically to gather the belongings that she had been unable to take the day before and which Nick’s Packing had been too busy to transport. Had her belongings not gone missing from the apartment, Chaney would have had to pay Nick’s Packing a fee to retrieve those items from Nick’s Packing. *See* Tr. p. 15. Thus, both parties derived a benefit from the arrangement, rendering Nick’s Packing the bailee of a mutual benefit bailment.

[18] Nick’s Packing therefore had the burden of explaining why Chaney’s belongings were never returned to her and demonstrating that the loss of those items was not its fault. However, as the trial court noted in its judgment, Nick’s Packing did not present any evidence to explain the loss of Chaney’s belongings. Nick’s Packing assumed that “the tenant had come in and taken what [she] wanted,” Tr. p. 110, but that unsupported assumption does not explain why the list of Chaney’s belongings—including two flat-screen TV’s—was taped to the apartment’s front door. Nick’s Packing also failed to explain why it contacted neither Chaney nor law enforcement when it discovered that the apartment’s window had been broken out and that the items listed on the inventory sheet, including the two TV’s, were no longer inside the apartment. We therefore conclude, commensurate with the trial court’s judgment, that as bailee of Chaney’s belongings, Nick’s Packing failed to exercise a duty of ordinary care.

Conclusion

[19] For all of these reasons, we find no error in the small claims court’s judgment in favor of Chaney.

[20] Affirmed.

Bailey, J., and Altice, J., concur.