

Commonwealth Of Kentucky

Court Of Appeals

NO. 2001-CA-001339-MR

IRENE JONES

APPELLANT

v. APPEAL FROM WAYNE CIRCUIT COURT
HONORABLE EDDIE C. LOVELACE, JUDGE
ACTION NO. 00-CI-00061

JEFF HUMBLE, D/B/A DOUBLE J. STABLES
AND
JOANN HUMBLE, D/B/A DOUBLE J. STABLES

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: BARBER, BUCKINGHAM, AND COMBS, JUDGES.

BARBER, JUDGE: Appellant, Irene Jones ("Jones"), appeals from a judgment of the Wayne Circuit Court in favor of Appellees, Jeff and Joann Humble d/b/a Double J Stables ("the Humbles"), in the amount of \$12,500.00, plus interest and costs. Finding no error, we affirm.

On February 29, 2000, the Humbles filed a complaint against Jones alleging that she had failed and refused to pay for the care and keeping of her horses, and for stud fees. The Humbles maintained that Jones had delivered two horses to them,

"Cumberland's Lass," and "She's My Fancy," and had authorized their sale. Further, that a reasonable and customary charge for the feeding and care of the horses was \$200.00 per month, per horse; that Jones had failed to pay any sums for the care and keeping of the horses, and that pursuant to KRS 376.400, the Humbles had "in effect" an agister's lien on the horses. The Humbles also alleged that they were obligated to pay stud fees in the amount of \$300.00 per horse, because Jones had failed to provide registration papers for the horses, after they had arranged for their sale and breeding. The Humbles demanded judgment against Jones in the amount of \$4,800.00 through the date of filing the complaint, with an additional \$200.00 per month, per horse, until paid, the sum of \$600.00 for stud fees, as well as their costs expended.

On April 19, 2001, following a bench trial, the circuit court entered Findings of Fact, Conclusions of Law, and Judgment, concluding that:

Humble should recover from Jones the sum of \$9,800.00 for the boarding, feeding, watering, trimming and worming of Cumberland's Lass and She's My Fancy. This Court also concludes that this sum of money encompasses money expended for labor in the cleaning of the stalls where the two(2)mares were housed. This sum of money takes into consideration and encompasses the three (3) week hiatus of She's My Fancy from Humble's stables.

. . . the foal of Cumberland Lass has also remained at Humble's stables for a period of 13 months and that he shall recover from Jones the sum of \$2,600.00 for the services rendered by his stables.

. . . Humble should recover from Jones the sum of \$600.00 for stud fees. . . .

The Court ordered Jones to pay the above sums, with accrued interest to Humble within 30 days. In the event Jones failed to pay the judgment, the court directed that a Special Master Commissioner be appointed to sell the mares and the foal, with any money over and above the amount of the judgment and Commissioner's costs, to be paid to Jones. By order entered June 5, 2001, the court denied Jones' motion to alter, amend or vacate.

On June 19, 2001, Jones filed a notice of appeal; on June 27, 2001, Jones filed an amended notice of appeal.¹ On appeal, Jones asserts: (1) that the court erred in not requiring the plaintiff to follow the procedure set out in the applicable statute KRS 346.400; (2) that the court erred in awarding sums of money to extend beyond a one-year period under KRS 376.410; and (3) that the plaintiff was not entitled to a lien, for he made personal use of the animals while they were in his possession.

(1) & (2)

Jones maintains that the court did not follow the procedure for enforcement, and lacks jurisdiction to enforce an

¹On August 7, 2001, the trial court entered an Agreed Order that the mares and foal be sold "in recognition of the fact that " Jones had filed a notice of appeal, but had not posted a supersedeas bond to stay enforcement of the judgment pending appeal. On August 21, 2001, a report of sale was filed by the auctioneer, reflecting that Cumberland's Lass sold for \$2,200.00, the foal sold for \$170.00, and She's My Fancy sold for \$100.00; further that the proceeds were placed in escrow pending further order of the court. On August 28, 2001, an Agreed Order of Distribution was filed confirming the sale of the horses and giving Jones a credit for the remaining amount due on the judgment.

agister's lien. Jones also maintains that under the statute, the lien is limited to one year. Jones' arguments are not relevant, because the statute does not provide the sole remedy for the collection of this type of claim.

KRS 376.410, entitled "Enforcement of Lien for Care of Livestock," provides:

Any person in whose favor a lien provided for in KRS 376.400 exists may, before the district court of the county where the cattle were fed or grazed, by himself or agent, make affidavit of the amount due him and in arrears for keeping and caring for the cattle, and describing as nearly as possible the cattle so kept by him. The court shall then issue a warrant, directed to the sheriff or any constable or town marshal of the county, authorizing him to levy upon and seize the cattle for the amount due, with interest and costs. If the cattle are removed with the consent and from the custody of the livery stable keeper or the person feeding or grazing them, the lien shall not continue longer than one (1) year from and after the removal, nor shall the lien in case of such removal be valid against a bona fide purchaser without notice at any time after the removal. The warrant may be issued to a county other than that in which the cattle were fed or grazed, and the lien may also be enforced by action as in the case of other liens.

The trial court did not issue a warrant in this case; the trial court issued a common law judgment against Jones for money owed. In Benjamin v. Goff, Ky. 314 Ky. 639, 236 S.W.2d 905 (1951), Kentucky's high court held that the statutes did not provide the exclusive remedy for the collection of this type of claim. There, the defendant had filed a claim against a decedent's estate for amounts due for stallion fees and board of horses for various periods of time from 1946 through 1949. The

Administratrix questioned her right to pay the claim on the theory that Sections 376.400 and 376.420 of the Kentucky Revised Statutes barred the claim.

[The version of] KRS 376.400² [in effect at that time provided] . . . in part: 'Any owner or keeper of a livery stable, and a person feeding or grazing cattle for compensation, shall have a lien upon the cattle placed in the stable or put out to be fed or grazed by the owner, for his reasonable charges for keeping, caring for, feeding and grazing the cattle. * * * The lien shall be subject to the limitations and restrictions placed upon a landlord's lien for rent.'

Id. at 905.

In Benjamin, the parties agreed that the time had lapsed for enforcement of any lien which the creditor may have. The court held that the creditor was entitled to assert a claim against the decedent's estate for money due, notwithstanding that the lien was barred by limitations, because nothing about the statutes suggested that they provided the exclusive remedy or intended to repeal the common law.

(3)

²The current version of the statute provides: Any owner or keeper of a livery stable, and a person feeding or grazing cattle for compensation, shall have a lien for one (1) year upon the cattle placed in the stable or put out to be fed or grazed by the owner, for his reasonable charges for keeping, caring for, feeding, and grazing the cattle. The lien shall attach whether the cattle are merely temporarily lodged, fed, grazed, and cared for, or are placed at the stable or other place or pasture for regular board. The lien shall take priority over a lien created pursuant to KRS 376.420(1).

Jones also argues that the Humbles were not entitled to a lien, because they made personal use of the animals while they were in their possession. Jones also argues that one of the horses was not the same horse she had left with the Humbles. The trial court has already decided these issues adversely to Jones. The only issue before us is whether the trial court's findings are clearly erroneous. "Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses." CR 52.01. We agree with the Humbles that the trial court's findings are based upon substantial evidence. There is no ground for reversal.

ALL CONCUR.

BRIEF FOR APPELLANT:

Gordon T. Germain
Monticello, Kentucky

BRIEF FOR APPELLEES:

John Paul Jones II
Monticello, Kentucky