

RENDERED: DECEMBER 10, 2010; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2009-CA-002257-MR

DONNIE BAKER

APPELLANT

v. APPEAL FROM CLAY CIRCUIT COURT
HONORABLE OSCAR G. HOUSE, JUDGE
ACTION NO. 02-CI-00264

THE FIRST NATIONAL BANK,
a subsidiary of FIRST NATIONAL
FINANCIAL CORPORATION

APPELLEE

OPINION
AFFIRMING

** ** * ** * ** *

BEFORE: ACREE, CLAYTON AND STUMBO, JUDGES.

STUMBO, JUDGE: Donnie Baker is appealing a judgment of the Clay Circuit Court entered in favor of The First National Bank (hereinafter the Bank). The case was tried by the court and the issue being appealed is whether the Bank properly repossessed Baker's Peterbilt semi-tractor truck. We find the trial court's judgment was not in error and affirm.

In April of 2002, Baker took out a loan with the Bank. Baker used certain real estate, a mobile home, a 1998 Peterbilt truck, and a 1999 Chevrolet pickup as collateral for the loan. Baker failed to make timely payments and in June of 2002, the Bank sought to repossess the pickup truck and Peterbilt truck. The trucks were repossessed on June 25, 2002. Baker was informed that unless he cured the deficiency and provided proof of valid insurance on the two vehicles, they would be sold at auction on July 12, 2002.

On or about June 28, 2002, Baker brought \$5,000 to the Bank in order to bring the loan at issue current. He also brought with him proof of insurance on the pickup truck. The Bank accepted the money and proof of insurance and released the pickup to him. The Bank claims that Baker was then told the Peterbilt truck would not be released without proof of insurance. Baker claims that the truck was already insured through his employer and that the Bank was aware of this. Regardless, Baker took no further action and the Peterbilt truck was sold at auction on July 12, 2002.

Baker then brought suit alleging that the Bank repossessed the truck in bad faith. Baker claims that the sole reason the Peterbilt truck was repossessed was because he failed to maintain insurance on the truck, which was a term of the loan agreement. At trial he introduced a fax from his employer's insurance company, dated May 6, 2002, showing he had valid insurance until July of 2002. This fax was sent to the Bank. In the trial court's opinion and judgment, the court found that the reason the truck was repossessed was because Baker was behind on

payments. It further found that the truck was not returned to him after the \$5,000 payment because there was no insurance. This appeal followed.

As in any case that is tried without the intervention of a jury, the findings of fact of the trial court should not be reversed unless they are determined to be clearly erroneous. In making such consideration the appellate court must keep in mind that the trial court had the opportunity to hear the evidence and observe the witnesses, so as to judge their credibility, and therefore, is in the best position to make findings of fact.

Bealert v. Mitchell, 585 S.W.2d 417, 418 (Ky. App. 1979).

We cannot hold the trial court's findings of fact to be clearly erroneous in this case. The evidence is undisputed that at the time the Peterbilt truck was repossessed, Baker was behind on his loan payments and the vehicle was not insured. Baker cured the back payments on the loan with the tendering of \$5,000, but did not prove he had insurance on the Peterbilt truck. Baker did have insurance on the vehicle through his employer, as shown by the May 6, 2002 fax, but it was only valid during the time of his employment.¹ Baker ceased working for his employer on June 7, 2002, and did not obtain additional insurance. At the time the vehicle was repossessed and sold at auction, Baker did not have insurance on the vehicle. Without insurance, the Bank had no obligation to release the vehicle to him.

Appellant attacks the trial court's findings of fact for the court's failure to set forth the testimony or exhibit relied upon for reaching each conclusion framing this argument as a failure to make findings essential to the

¹ See Defendant's Trial Exhibit 3, Baker's employment contract.

judgment. We cannot agree with appellant. While it would certainly make the appellate review of bench trials such as the one at bar more easily accomplished, the trial court need not cite to specific evidence as a basis for each finding as long as the evidence is present in the court record to be found. Further, Appellant did not request additional findings at the appropriate time to do so. The essential question here was whether the Bank had a legitimate reason to repossess the truck at issue. The trial court found that it did after setting forth the facts upon which it relied.

We therefore affirm the judgment of the trial court.

ALL CONCUR.

BRIEFS FOR APPELLANT:

Willard B. Paxton
Princeton, Kentucky

BRIEF FOR APPELLEE:

R. Aaron Hostettler
London, Kentucky