

RENDERED: DECEMBER 21, 2012; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2011-CA-001802-MR

PATRICK NIEZGODSKI

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE SUSAN SCHULTZ GIBSON, JUDGE
ACTION NO. 10-CI-006253

MICHELLE ABOUD

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: MAZE, STUMBO AND THOMPSON, JUDGES.

STUMBO, JUDGE: Patrick Niezgodski appeals from an order of the Jefferson Circuit Court holding that Michelle Aboud was not liable to Appellant for a debt of \$10,000. We find no error and affirm.

Appellant and Appellee met in late 2008 or early 2009 through e-Harmony, an internet dating service. Appellant was living in Lexington and Appellee was living in Louisville. They communicated primarily by telephone,

text messaging, and e-mail, with infrequent personal visits. The relationship can best be described as on-again, off-again.

In November of 2009, Appellee, a physician, lost her position at Baptist Hospital in Louisville and decided to open her own practice. She needed to secure financing to do so and discussed this with Appellant. Appellee testified that at no time did she ask Appellant to lend her money. Appellant testified that she asked him to loan her money in order to bolster her assets, which she believed would help in her securing a loan. Appellant also testified that Appellee promised to repay him when she got the loan.

On or about December 22, 2009, Appellant transferred \$10,000 into Appellee's bank account. No written agreement or other documentation was created. Appellant claims this was a loan, while Appellee claims it was a gift. On February 4, 2010, Appellee gave a \$5,000 check to Appellant. Appellee testified that at the time, the relationship was on the rocks and she no longer wished to see Appellant and she hoped the \$5,000 would make him "go away." She also testified that Appellant told her she did not need to pay back the additional \$5,000. Appellant admitted he received the check, but denied he told her she did not need to repay him.

After this meeting, Appellee wanted no further contact with Appellant. Appellant testified that he made multiple attempts to contact Appellee by telephone, text, and e-mail in order to be repaid the remaining \$5,000, but received no response. On May 1, 2010, Appellant sent a demand letter to

Appellee's work address seeking the outstanding \$5,000 he alleges he was owed.

Appellant then initiated this lawsuit on September 8, 2010.

A bench trial was held on May 25, 2011. The only witnesses who testified at trial were Appellant and Appellee. Appellant testified that the \$10,000 was a loan and Appellee testified it was a gift. The trial court ultimately found that it was a gift. The court also found that, even if it was a loan, the Kentucky Statute of Frauds - Kentucky Revised Statutes 371.010(9) - prohibited any enforcement because nothing was in writing. This appeal followed.

In all actions tried upon the facts without a jury . . . the court shall find the facts specifically and state separately its conclusions of law thereon and render an appropriate judgment[.] 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.

Kentucky Rules of Civil Procedure (CR) 52.01

The Court of Appeals, however, [is] entitled to set aside the trial court's findings only if those findings are clearly erroneous. And, the dispositive question that we must answer, therefore, is whether the trial court's findings of fact are clearly erroneous, i.e., whether or not those findings are supported by substantial evidence. "[S]ubstantial evidence" is "[e]vidence that a reasonable mind would accept as adequate to support a conclusion" and evidence that, when "taken alone or in the light of all the evidence . . . has sufficient probative value to induce conviction in the minds of reasonable men." Regardless of conflicting evidence, the weight of the evidence, or the fact that the reviewing court would have reached a contrary finding, "due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses" because judging the credibility of witnesses and weighing evidence are tasks within the

exclusive province of the trial court. Thus, “[m]ere doubt as to the correctness of [a] finding [will] not justify [its] reversal,” and appellate courts should not disturb trial court findings that are supported by substantial evidence.

Moore v. Asente, 110 S.W.3d 336, 353-354 (Ky. 2003)(citations omitted).

In the case at hand, only two witnesses testified and each had a different version of events surrounding the money. In light of all the evidence, the trial court chose to believe the testimony of Appellee and found there to be no loan. Appellee’s testimony was adequate to support the trial court’s conclusion that the \$10,000 was a gift. The trial court’s findings of fact were not clearly erroneous and the trial court did not misconstrue the law. Because the findings of fact were based on substantial evidence and support the trial court’s judgment, we find it unnecessary to analyze the trial court’s conclusion regarding the Statute of Frauds.

Based on the foregoing, we affirm the order and judgment of the trial court.

MAZE, JUDGE, CONCURS.

THOMPSON, JUDGE, CONCURS IN RESULT ONLY.

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