

STATE OF MICHIGAN
COURT OF APPEALS

RICKY HICKS and ROXANNE HICKS,

Plaintiffs-Appellees,

and

BRIAN GOODSSELL,

Plaintiff,

v

AUTO CLUB GROUP INSURANCE
COMPANY,

Defendant-Appellant.

UNPUBLISHED

May 3, 2011

No. 295391

Manistee Circuit Court

LC No. 08-013074-CK

Before: O'CONNELL, P.J., and K. F. KELLY and RONAYNE KRAUSE, JJ.

RONAYNE KRAUSE, J. (*dissenting*)

I respectfully dissent, because I believe the majority has applied an insufficiently deferential standard of review to the trial court's factual findings.

As the majority states, this case arises out of a fire that destroyed plaintiffs'¹ house. Plaintiffs reported to defendant, their insurer, that more than \$70,000 worth of personal property was destroyed with the house. Subsequent investigation revealed the remains of relatively little personal property in the remains of the house, indicating that the property was never in the house to begin with: as the trial court observed, house fires simply do not tend to *completely* destroy everything. Defendant denied plaintiffs' insurance claim in its entirety because the policy, by its terms, was void if a person intentionally concealed or misrepresented any material fact pertaining to a claim. The trial court found that the fire had not been arson, but that plaintiff Ricky Hicks unsophisticatedly and naively attempted to take advantage of the fire and intentionally

¹ Because Brian Goodsell is not participating in this appeal, I refer to Ricky and Roxanne Hicks only as "plaintiffs."

misrepresented and concealed material facts. However, the trial court found plaintiff Roxanne Hicks was an innocent coinsured who “didn’t know if she was coming or going in filling out this inventory,” had at most a general idea of what was in the house, and “was entirely dependent upon her husband and [Brian] Goodsell.”

We review de novo a trial court’s findings of law, but the trial court’s findings of fact are reviewed for clear error; this Court does not reverse unless definitely and firmly convinced that the trial court made a mistake. *City of Detroit v Ambassador Bridge Co*, 481 Mich 29, 35; 748 NW2d 221 (2008). The trial court is in the better position to evaluate the credibility of the witnesses, and this Court must defer to the trial court’s superior capabilities in this regard. MCR 2.613(C). Furthermore, trial courts are inherently better suited to evaluating the evidence before them than is an appellate court. See *Anderson v Bessemer City*, 470 US 564, 574-575; 104 S Ct 1504; 84 L Ed 2d 518 (1985). As the majority observes, credibility determinations are not wholly shielded from review where a witness’s story is inherently unbelievable by any reasonable mind or where the story is incompatible with the objective evidence. *Beason v Beason*, 435 Mich 791, 804; 460 NW2d 207 (1990), citing *Anderson*, 470 US at 575. However, a reviewing court may not reverse factual findings “‘simply because it is convinced that it would have decided the case differently.’” *Beason*, 435 Mich at 803, quoting *Anderson*, 470 US at 573.

The relevant inquiry in this appeal is not whether plaintiffs’ insurance claim was inaccurate because of false swearing or misrepresentation. The question is whether Roxanne was intentionally responsible for any of the inaccuracies. The *objective* evidence presented in this case does not shed any light on this question—it only establishes the fact that much of what was claimed turned out not to be in the house. The undisputed evidence does, conversely, show, as the trial court found, that all of the plaintiffs are “not sophisticated.” Neither Ricky nor Roxanne graduated from high school, all three plaintiffs explicitly or implicitly admitted to being terrible record-keepers, Roxanne had no responsibility for finances or any dealings with the insurance provider, plaintiffs were given a short period of time in which to fill out the insurance paperwork while Ricky was attempting to run a business and Roxanne was dealing with four children, plaintiffs had not completely moved into the house and had not kept completely accurate track of what property was where, Roxanne was extremely distressed by the fire because of the deaths of her two nephews in another fire when she was a teenager,² and Roxanne found out about her fifth pregnancy shortly after the fire. Roxanne and Ricky were both, at a minimum, seriously distracted by other things in their lives.

The majority’s recitation of the salient facts is mostly not technically inaccurate,³ but I believe it is incomplete and therefore misleading. The majority correctly observes that neither

² The trial court explained that Roxanne provided ample detail about the fire and reasonably concluded that defendant “would have gone after it and would have found out about it and would have thoroughly impeached her on it.” Defendant did not do so.

³ Although, as discussed, Roxanne lost two nephews rather than a niece and a nephew, and she lost them in a fire when she was fourteen, not five years prior to the fire at issue here.

Ricky nor Roxanne explicitly said at trial, in so many words, that Roxanne merely followed Ricky's directions in filling out the paperwork. However, Roxanne's testimony was replete with deferences to her husband and admissions that she did not know things, and as noted, Ricky was the only one of the two who dealt with defendant or any other financial issues. At Roxanne's "examination under oath" two months after the fire, she explained that for at least some pages of the claim form, she *did* simply write down what Ricky or their son said.⁴ She further explained that she had no idea why there was a discrepancy of some \$20,000 between the tallied line items on the claim form and the total amount actually claimed, because Ricky had been the one who added it up. Ricky's statement that he needed his wife's help was in the context of a discussion about researching what the replacement value for numerous items would be, not what those items were.⁵

In short, the unrebutted evidence clearly supports the trial court's finding that Roxanne was in many ways largely helpless and reliant on her husband after the fire, and furthermore it is at least plausible that she was not very attentive to what possessions truly were not in the house. The majority finds this implausible; and perhaps if Roxanne was someone who had graduated from a university or professional school with an advanced degree, had no serious psychological issues, was a competent organizer, had a stable living environment, was unhurried, and was not dealing with four children and an unexpected pregnancy, it *would* be implausible. But based on a reading of the *entire* record, and giving proper deference to the trial court's position to evaluate the witnesses' credibilities, Roxanne's version of events is not internally inconsistent and the objective evidence does not contradict it. Consequently, I conclude that the majority is improperly and impermissibly engaging in a *de novo* review of the trial court's findings, rather than the correct clear error standard.

⁴ Some of her testimony at this examination, when read on paper, could be interpreted as suggesting that she was fairly certain about a number of items' locations within the house even though those items proved not to be in the house. However, I do not find that to be the only way to characterize her testimony, and in any event, this was not testimony she gave at trial, where her credibility could actually be evaluated.

⁵ This is admittedly not very clear from the transcript itself. Ricky had just been asked about a question he was given at an interview conducted less than a month after the fire, while plaintiffs were still in the process of creating their list of claimed items. At the interview, Ricky stated that he had, at that time, "tried to order some catalogs to help us out." At trial, Ricky explained that he did not yet have enough information to fill out the claim forms and he needed his wife's help to fill those forms out. The remainder of his testimony makes it clear that a large part of that help consisted of researching replacement values. At his "examination under oath," the only items with which Ricky indicated that he needed Roxanne to help were their daughters' clothes, toys, and makeup. He also stated that "[s]he lost a couple nephews in a house fire, so just, like, trying to get her to the table for this, took me a month."

I would find that the trial court did not commit clear error. In light of the majority's resolution of this matter, however, I decline to address the merits of defendant's claim that the trial court miscalculated the amount of recovery to which Roxanne was entitled.

/s/ Amy Ronayne Krause