

ORIGINAL

FILED

01/29/2020

Bowen Greenwood  
CLERK OF THE SUPREME COURT  
STATE OF MONTANA

Case Number: DA 19-0036

DA 19-0036

IN THE SUPREME COURT OF THE STATE OF MONTANA

2020 MT 21N

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MARK KUCERA,

Plaintiff and Appellant,

v.

CHRISTOPHER BRADY,

Defendant and Appellee.

FILED

JAN 28 2020

Bowen Greenwood  
Clerk of Supreme Court  
State of Montana

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APPEAL FROM: District Court of the Thirteenth Judicial District,  
In and For the County of Yellowstone, Cause No. DV 18-0782  
Honorable Donald L. Harris, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Mark Kucera, Self-represented, Billings, Montana

For Appellee:

Christopher Brady, Self-represented, San Antonio, Texas

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Submitted on Briefs: September 4, 2019

Decided: January 28, 2020

Filed:

  
Clerk

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Justice Dirk M. Sandefur delivered the Opinion of the Court.

¶1 Pursuant to Section I, Paragraph 3(c), Montana Supreme Court Internal Operating Rules, this case is decided by memorandum opinion and shall not be cited and does not serve as precedent. Its case title, cause number, and disposition shall be included in this Court's quarterly list of noncitable cases published in the Pacific Reporter and Montana Reports.

¶2 Mark Kucera appeals the December 2018 judgment of the Montana Thirteenth Judicial District Court, Yellowstone County, awarding Christopher Brady \$7,000 in damages, with prejudgment interest, for the breach of an oral contract to purchase certain vehicle parts for \$15,000. We affirm.

¶3 This case arises from the disputed terms and performance of an oral agreement for the sale and delivery of certain Packard automobile parts in 2018. Kucera had recently acquired a 1932 Packard Model 903 Super 8 Dual Cowl Sport Phaeton automobile (903 Packard) and was looking for a transmission and other parts to restore it. Based on his belief from a prior discussion with Keith Rasmussen that he had a compatible transmission from or for a 1932 Model 902 Packard Roadster (902 Packard), Kucera contacted Rasmussen who advised that he sold his 902 Packard and spare parts to Brady. He advised, however, that Brady would soon be traveling to Colorado from Texas for a car auction and might be willing to bring along the 902 Packard transmission for sale to Kucera. Upon inquiry, Kucera confirmed that Brady had the 902 transmission, and other

spare parts obtained from Rasmussen, and was willing to sell and deliver them to Kucera in Billings.

¶4 Though they later disputed whether Kucera agreed to purchase all of the Packard parts Brady acquired from Rasmussen,<sup>1</sup> whether they agreed on a purchase price,<sup>2</sup> and whether Brady committed to accept one of Kucera's vehicles in trade in lieu of part of the purchase price, the parties ultimately agreed that Brady would bring the 902 Packard transmission and other spare parts acquired from Rasmussen to Billings for sale to Kucera. Brady also separately agreed to pick up some Jaguar parts for Kucera from a third-party seller in Texas and bring them to Billings.

¶5 When Brady later arrived in Billings with the parts, Kucera accepted the Jaguar parts without dispute, except for questions as to whether he received an expected box of small parts from the third-party seller. With the 902 Packard parts still on Brady's truck, Kucera showed Brady around his shop. After Kucera showed him a number of cars as possible trade items, Brady advised that he was not interested in any of them. Though the parties dispute who said what in their subsequent discussion, Kucera ultimately gave Brady an \$8,000 check (from Kucera's girlfriend—Dr. Bailey) and accepted all of the 902 Packard

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<sup>1</sup> Brady later testified that Kucera agreed in advance of Brady coming to Montana to purchase all of the Packard 902 parts acquired from Rasmussen—Kucera later asserted that he agreed only to purchase the 902 transmission and Packard 903 parts.

<sup>2</sup> Brady later testified that they agreed in advance of his trip to Montana to a \$15,000 purchase price for all of the Packard 902 parts acquired from Rasmussen—Kucera later asserted that they had no advance agreement on a purchase price.

parts on Brady's truck without inspection or dispute.<sup>3</sup> Several days later, after discovering that one of the 902 Packard parts was not compatible with his 903 Packard, Kucera texted Brady and demanded a refund.<sup>4</sup> When Brady refused, Kucera filed a district court complaint asserting various contract, tort, and declaratory judgment claims against Brady regarding the Packard parts and missing Jaguar parts. Brady responded with general denials and various contract and tort counterclaims. Following bench trial on November 7, 2018, the District Court issued written findings of fact, conclusions of law, and judgment in favor of Brady.

¶6 In essence, the court found and concluded that the parties entered into an enforceable oral agreement for Kucera to purchase the lot of Brady's 902 Packard parts for \$15,000 without warranty or representation by Brady as to their compatibility with Kucera's 903 Packard. The court further found and concluded that Kucera thus breached the contract by failing to pay the \$7,000 balance due. The court ruled that Kucera failed to meet his burden of proof on his claims against Brady and that Brady's successful recovery on the contract claim precluded a duplicate recovery under his alternative tortious conversion claim. Kucera timely appealed, asserting, *inter alia*, that the District Court erroneously:

- (1) ignored inconsistencies in Brady's testimony and found it to be more credible than Kucera's more consistent testimony;

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<sup>3</sup> Kucera later asserted that Brady accepted the \$8,000 check as payment in full—Brady contrarily asserted that Kucera agreed to pay \$15,000 for the lot in accordance with their prior agreement. He testified that Kucera told him he did not then have all of the money, had borrowed the \$8,000 from his girlfriend, and said that he would later mail Brady a check for the \$7,000 balance. Kucera asserted that he did not inspect the Packard parts based on Brady's representations that they were 903 Packard parts—not 902 parts.

<sup>4</sup> Kucera later produced a text message indicating that he demanded a \$5,000 refund.

- (2) failed to consider that Brady's deletions of text messages and "alterations of evidence" undermined his credibility;
- (3) "misquoted and reworded" Kucera's testimony in its findings of fact to unfairly favor Brady;
- (4) found that "Rasmussen also told [Kucera] that some [Packard] parts were compatible with either a 902 Packard or a 903 Packard";
- (5) found that Kucera demanded an \$8,000 refund from Brady rather than the \$5,000 indicated in the contemporaneous text message demand;
- (6) allowed Brady to present the third-party witness testimony of Kucera's girlfriend by affidavit not subject to cross-examination; and
- (7) denied him adequate time to set up a videoconference call to present the remote testimony of his girlfriend at trial.

¶7 When functioning as the finder of fact, district courts have broad discretion to assess and determine the relative weight and credibility of evidence, particularly in the face of conflicting evidence. *In re Marriage of Horton*, 2004 MT 353, ¶ 11, 324 Mont. 382, 102 P.3d 1276; *Double AA Corp. v. Newland & Co.*, 273 Mont. 486, 494, 905 P.2d 138, 142 (1995). Trial courts also have broad discretion in regulating the admission of evidence and trial administration. *Fink v. Williams*, 2012 MT 304, ¶ 18, 367 Mont. 431, 291 P.3d 1140; *Seltzer v. Morton*, 2007 MT 62, ¶ 65, 336 Mont. 225, 154 P.3d 561. We review evidentiary and trial administration rulings for an abuse of discretion. *Blanton v. Dep't of Pub. Health & Human Servs.*, 2011 MT 110, ¶ 22, 360 Mont. 396, 255 P.3d 1229; *Seltzer*, ¶ 65. A lower court abuses its discretion only if "it exercises its discretion based on a mistake of law, clearly erroneous finding of fact, or otherwise acts arbitrarily without

employment of conscientious judgment, or in excess of the bounds of reason, resulting in substantial injustice.” *Larson v. State*, 2019 MT 28, ¶ 16, 394 Mont. 167, 434 P.3d 241.

¶8 We review lower court findings of fact only for clear error. *Ray v. Nansel*, 2002 MT 191, ¶ 19, 311 Mont. 135, 53 P.3d 870. Findings of fact are clearly erroneous only if not supported by substantial evidence, the court misapprehended the effect of the evidence, or, based on our review of the record, we have a definite and firm conviction that the lower court was mistaken. *Larson*, ¶ 16; *Interstate Prod. Credit Ass’n of Great Falls v. DeSaye*, 250 Mont. 320, 323, 820 P.2d 1285, 1287 (1991). Lower court findings of fact, conclusions of law, and exercises of discretion are presumed correct. *Hellickson v. Barrett Mobile Home Transp., Inc.*, 161 Mont. 455, 459, 507 P.2d 523, 525 (1973). The appellant has the burden of demonstrating error on appeal. *In re Marriage of McMahon*, 2002 MT 198, ¶ 7, 311 Mont. 175, 53 P.3d 1266; *Hellickson*, 161 Mont. at 459, 507 P.2d at 525.

¶9 Here, regardless of the presence of conflicting evidence, the District Court’s findings of fact are supported by substantial evidence with one narrow exception. Our review of the record further indicates no basis upon which to conclude that the court otherwise misapprehended the effect of the evidence or was otherwise mistaken. As the lone exception, Kucera correctly points out that a record text message indicates that he demanded a \$5,000 refund from Brady rather than \$8,000 as found by the court. However, the discrepancy is not material to the District Court’s ultimate conclusions of law, and underlying findings of fact, that: (1) the parties entered into an enforceable oral agreement for Kucera to purchase the lot of Brady’s 902 Packard parts for \$15,000; (2) Kucera

breached the contract by failing to pay the \$7,000 balance due; and (3) Kucera failed to present sufficient credible evidence to support his contrary claims against Brady. We hold that Kucera has failed to meet his burden of demonstrating the District Court's findings of fact are clearly erroneous in any material regard.

¶10 The balance of Kucera's assertions of error either involve alleged abuses of discretion in the admission of evidence or trial administration including, *inter alia*, the admission of the affidavit testimony of Kucera's girlfriend (Dr. Bailey) and the failure to allow Kucera additional time to arrange for her live video testimony at trial. However, Kucera only objected to the admission of the selected portion of Bailey's three-page affidavit offered by Brady. Pursuant to Kucera's narrow completeness objection, the District Court admitted the entire affidavit without other objection. Kucera asserts that the court nonetheless erred by refusing to allow him to specifically read from the Bailey affidavit during his trial testimony. However, the record reflects that the court offered Kucera the opportunity to make a closing argument on the evidence but that he did not take that opportunity to point out any particular segment of Dr. Bailey's affidavit testimony.

¶11 As to her live testimony, the record reflects that the District Court advised Kucera prior to trial that it was his responsibility to make arrangements for Dr. Bailey to testify via videoconferencing. During trial, the court recessed for ten minutes to allow him to setup a cellular phone "Facetime" call connected to the court's videoconferencing system for that purpose. When the court denied him additional time to arrange her live testimony, Kucera made no offer of proof as to what extent, if any, Dr. Bailey could testify to facts materially

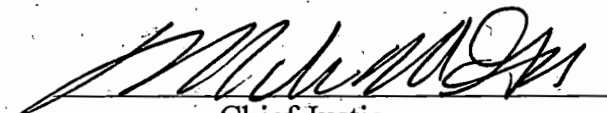
different from those set forth in her affidavit. We hold that Kucera has failed to satisfy his burden on appeal of demonstrating his various assertions of evidentiary and trial administration error.

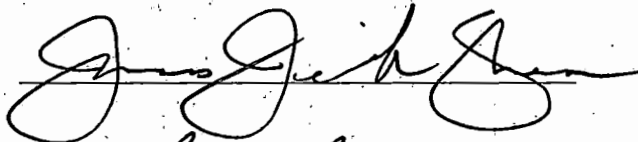
¶12 We have determined to decide this case pursuant to Section I, Paragraph 3(c) of our Internal Operating Rules, which provides for memorandum opinions. In the opinion of the Court, the case presents a question controlled by settled law or by the clear application of applicable standards of review. The District Court's findings of fact are not clearly erroneous. The District Court's interpretation and application of the law were correct.

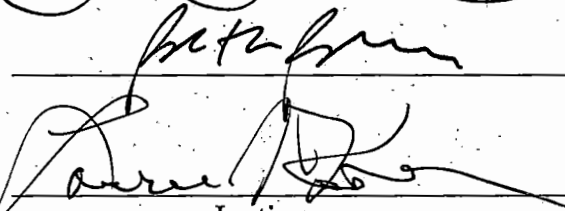
¶13 Affirmed.

  
Justice

We concur:

  
Chief Justice



  
Justices