[Cite as *Cieskak v. Foldes*, 2010-Ohio-3611.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 93834

DENNY CIESLAK

PLAINTIFF-APPELLEE

vs.

CHERYL FOLDES, ET AL.

DEFENDANTS-APPELLANTS

JUDGMENT:
AFFIRMED

Civil Appeal from the
Cleveland Municipal Court
Case No. 08 CVI 031840

BEFORE: Rocco, P.J., Blackmon, J., and Dyke, J.

RELEASED AND JOURNALIZED: August 5, 2010

APPELLANT

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APPELLEE

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KENNETH A. ROCCO, P.J.:

{¶ 1} Defendant-appellant, Cheryl Foldes, appeals from a judgment of the Cleveland Municipal Court finding her liable to plaintiff-appellee, Denny Cieslak, in the amount of $1,939 and entering judgment in appellee's favor on appellant's counterclaim. Appellant argues that (1) the court failed to protect her right to due process, (2) the court "failed to protect [her] basic human rights to 'equality of arms,'" (3) the court's decision was "based on false and fraudulent testimony and documents," (4) the court "sanctioned a breach of a legal contract for the sale of goods," (5) the court was biased in favor of appellee, and (6) the court "failed to maintain a protocol in court that led to unequal treatment under the law." Appellant has failed to demonstrate any error in the proceedings below. Accordingly, we affirm.

{¶ 2} Appellee filed his complaint in the municipal court on December 19, 2008, alleging that he purchased a defective starter from the appellant that damaged his transmission. He sought judgment in the amount of $1,939, plus interest from March 1, 2008, plus costs.

{¶ 3} A magistrate's decision filed April 3, 2009 states that the case was called for trial on February 24, 2009. The magistrate found that appellee purchased a new starter for his 1999 Ford F250 pickup truck from appellant for $100 and had it installed on his truck. Approximately one month later, appellee could not start his truck. A mechanic replaced a relay, but that did not resolve the problem. The mechanic then removed the starter and found that "the starter gear had come off the part and was inside the transmission housing." He advised appellee that the transmission was liable to fail soon.

{¶ 4} According to the magistrate's decision, the mechanic testified that the starter had not been improperly installed; it was defective, and the defect caused the gear to fly off the starter and damage the transmission. For $139, the appellee's mechanic installed a rebuilt starter supplied by appellant.

{¶ 5} "A few days later[,] the transmission blew." Repair of the transmission cost $1,800. A gear from the starter was found in the transmission housing. Appellee returned this gear to appellant, but kept the remainder of the starter. Both the gear and the defective starter were presented as evidence to the court. The gear was in pristine condition, but the starter was worn and dirty, with some corrosion.

{¶ 6} Based upon this evidence, the magistrate found that appellee had sustained his burden of proof and was entitled to judgment in the amount of $1,939. Further, the magistrate determined that appellant was not entitled to her lost wages for attending the trial, and had not proved any other damages.

{¶ 7} The court immediately approved and confirmed the magistrate's decision and entered judgment for appellee in the amount of $1,939, plus 5% interest from the date of judgment, plus costs. However, appellant timely filed an objection to the magistrate's decision on April 8, 2009. She did not provide the court with a transcript of the proceedings before the magistrate or an affidavit of evidence submitted, as required by Civ.R. 53(D)(3)(b)(iii) and Local Rule 13.09(D) of the Cleveland Municipal Court. The court overruled appellant's objection and adhered to its previous judgment entry, terminating the stay imposed by Civ.R. 53(D)(4)(i). Appellant then filed the instant appeal.

{¶ 8} Appellant raises a plethora of alleged errors in the proceedings before the municipal court. Among other things, she claims that:

{¶ 9} (1) The court erred by allowing appellee to recover for the damage to his transmission because the manufacturer's express warranty excluded liability for consequential damages;

{¶ 10} (2) The arrangement of the courtroom was unfair because appellee was allowed to control the podium, placing appellant in a "subservient" position next to it;

{¶ 11} (3) The court erred by allowing appellee to call appellant a "liar" and a "smooth talker," and failed to maintain courtroom decorum;

{¶ 12} (4) The court did not allow appellant access to appellee's evidence against her, so she could not challenge it;

{¶ 13} (5) The court's decision was based on "false and fraudulent" testimony and documents. Appellant claims that appellee falsely testified that the truck was not used for snow plowing when it was, and that the gear was found in the transmission even though appellant testified that she had taken it and retained it several days before. Appellant further claims that the truck's transmission was "slipping" before the starter was installed. She challenges the testimony of appellee's mechanic that he installed a new relay because there was no evidence that he billed appellee for this work. Finally, she challenges the evidence of the price for the transmission.

{¶ 14} We are unable to evaluate any of these arguments because appellant has not supplied this court with a transcript of the proceedings or a statement of the evidence or proceedings. "A presumption of validity attends the trial court's action. In the absence of an adequate record, which is the appellant's responsibility, see App.R. 9 * * *, we are unable to evaluate the merits of the assignments of error and must affirm the trial court's decision." *Volodkevich v. Volodkevich* (1989),48 Ohio App.3d 313, 314, 549 N.E.2d 1237 (citing *Knapp v. Edwards Laboratories* (1980), 61 Ohio St.2d 197, 199, 400 N.E.2d 384, 385 and

Meinhard Commercial Corp. v. Spoke & Wheel, Inc. (1977), 52 Ohio App.2d 198, 201-202, 368 N.E.2d 1275, 1277).

{¶ 15} Furthermore, appellant failed to provide the trial court with a transcript of the magistrate's hearing or an affidavit of the evidence that was presented to the magistrate, as required by Civ.R. 53(D)(3)(b)(iii). If the objecting party fails to provide either a transcript or an affidavit in support of its objections, that party "'is precluded from arguing factual determinations on appeal.'" *In re Cunningham*, Trumbull App. No. 2008-T-0006, 2008-Ohio-3737, ¶35, quoting *Harris v. Transp. Outlet*, Lake App. No. 2007-L-188, 2008-Ohio-2917, ¶34. "The result of this preclusion is the waiver of 'any claim that the trial court erred in adopting the magistrate's findings,' and the appellate court is limited to a 'determination of whether the trial court erred in finding that there was no error of law or other defect on the face of the * * * magistrate's decision. Civ.R. 53(E)(4)(a).' " *In re Cunningham*, at ¶36 (citations omitted). We find that the trial court did not err by finding no error or other defect on the face of the magistrate's decision. Accordingly, we affirm.

Affirmed.

It is ordered that appellee recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

KENNETH A. ROCCO, PRESIDING JUDGE

PATRICIA ANN BLACKMON, J., and
ANN DYKE, J., CONCUR