

**IN THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
LAKE COUNTY, OHIO**

MARK S. MOLK,	:	OPINION
Plaintiff-Appellant,	:	
- vs -	:	CASE NO. 2010-L-089
GOLD STAR PAWN SHOP, L.L.C., et al.,	:	
Defendants-Appellees.	:	

Civil Appeal from the Willoughby Municipal Court, Case No. 09 CVH 00809.

Judgment: Affirmed.

Ron M. Graham, 6988 Spinach Drive, Mentor, OH 44060 (For Plaintiff-Appellant).

Carl J. Zaffiro, 5495 Mayfield Road, Lyndhurst, OH 44124 and *Robert B. Holman*, Holman, Frank & McDonald, P.O. Box 46390, Cleveland, OH 44146 (For Defendants-Appellees).

MARY JANE TRAPP, J.

{¶1} Appellant, Mark S. Molk, appeals from two judgment entries of the Willoughby Municipal Court: the April 27, 2010 entry, adopting the magistrate’s decision and granting judgment in favor of appellees, Gold Star Pawn Shop, L.L.C., c/o Anthony Zaffiro, Statutory Agent, and Gold Star Pawn Shop, L.L.C. (collectively “Gold Star”); and the June 23, 2010 entry, overruling Mr. Molk’s objections to the magistrate’s decision.

{¶2} Mr. Molk entrusted four firearms to a friend, Joseph Sabo. Mr. Sabo in turn pawned those weapons at Gold Star and, after receiving proper notice, failed to redeem the pledged property or to pay all interest due and storage charges resulting in a forfeiture of the firearms to Gold Star. The evidence established Gold Star did not have actual knowledge that the firearms at issue were stolen when they were pawned and that it later voluntarily complied with a 30-day “allegedly stolen property” hold request issued by a police department outside the jurisdiction where the pawn shop does business before selling them. It was also established that before the filing of the complaint, Gold Star did not know Mr. Molk claimed ownership of the firearms, and Gold Star was never informed by any police department of the true owner’s identity nor instructed by the police to release the weapons to the true owner. Because Gold Star followed the proper procedure pursuant to R.C. 4727.12 before selling the firearms, we affirm.

{¶3} **Procedural History and Factual Background**

{¶4} On April 21, 2009, Mr. Molk filed a pro se complaint against Gold Star for conversion, negligence, and replevin regarding firearms that he had given to Mr. Sabo, who in turn pawned the weapons to Gold Star. After being granted leave, Gold Star filed an answer and third party complaint against Mr. Sabo.¹

{¶5} **The Guns’ Owner**

{¶6} A hearing was held before the magistrate at which Mr. Molk related that on April 16, 2007, he allowed his friend, Mr. Sabo, to borrow his four firearms for the purpose of appraising them. On the following day, Mr. Sabo pawned three of the

1. Mr. Sabo is not a named party to the instant appeal.

firearms to Gold Star in Eastlake, Ohio, and the fourth gun to the same pawn shop the next day. When Mr. Sabo failed to return the weapons, and after learning from his brother on June 19, 2007, that the guns had been pawned, Mr. Molk filed a police report with Patrolman Mark Featheroff of the Mentor Police Department on June 22, 2007. Mr. Molk testified that on July 2, 2007, he called Gold Star and spoke with a male who identified himself as the “manager.” According to Mr. Molk, the manager told him he could get the guns back for \$1,600.

{¶7} Mr. Molk went to the Eastlake Police Department on July 10, 2007, and made a report seeking, but not receiving, an escort to assist him in picking up the guns. Mr. Molk testified that Mr. Sabo was later prosecuted, found guilty of unauthorized use of property, and ordered to pay him for the guns as the firearms had been sold to third parties.

{¶8} **The Pawn Broker**

{¶9} Mr. Anthony Zaffiro testified for Gold Star. He has owned the pawn shop for over three years, is a licensed pawn broker in the state of Ohio, and has knowledge of the Pawn Broker Act. Mr. Zaffiro indicated that he never had any previous problems with Mr. Sabo’s pawns, and with respect to the guns at issue, Mr. Zaffiro said that he properly identified Mr. Sabo and gave him copies of the pawn tickets.

{¶10} **Required Reports, Holds, and Notices**

{¶11} Mr. Zaffiro explained that he submitted the required reports of the pawns to the Eastlake Police Department. He never received any information from the Eastlake Police Department that the firearms actually belonged to Mr. Molk or any directives to return them to him. Mr. Zaffiro said that Mentor Patrolman Featheroff gave

him a 30-day notice to hold because a report that the weapons were possibly stolen had been made to that department. According to Mr. Zaffiro, he only has an obligation to hold an item from a 30-day notice from the Eastlake Police Department; however, he honors any 30-day hold request from any police department as a courtesy. Thus, when he received the 30-day hold from the Mentor Police Department, he complied and held the firearms for at least 30 days.

{¶12} Mr. Zaffiro does not consider himself the manager of Gold Star and does not identify himself as the manager when he answers the phone. He claimed he did not speak with Mr. Molk on July 2, 2007, nor did any of his employees.

{¶13} On July 3, 2007, Gold Star sent Mr. Sabo a notice for redemption via ordinary mail documenting same with a proof of mailing. Mr. Sabo failed to contact Gold Star and failed to redeem the firearms. Mr. Zaffiro stated that the firearms were subsequently sold, and he never had any contact from Mr. Molk regarding the firearms until Mr. Molk filed his complaint.

{¶14} **The Value of the Firearms**

{¶15} At the hearing, Charles Atwell, president of Atwell's Police and Fire Equipment Company, which sells and trades firearms, testified for Mr. Molk. Mr. Atwell indicated that on November 15, 2008, he wrote a quote for Mr. Molk for a Springfield 308, a Colt AR15, a Ruger Mini-14, and a Colt 1911. The total value of the four firearms was \$4,637.81, including tax.

{¶16} On cross-examination, Mr. Atwell stated that the value of the firearms before tax was \$4,365. He indicated that he never saw the firearms and did not know their condition before giving a quote to Mr. Molk.

{¶17} Testimony of Mentor Patrolman William Kuret

{¶18} Patrolman William Kuret with the Mentor Police Department also testified for Mr. Molk. On June 25, 2007, he was given a list of guns and assigned to investigate some area pawn shops to see if any of the listed guns had been pawned. One of the shops he called was Gold Star in Eastlake. Patrolman Kuret was advised by the person he spoke with at Gold Star that it did not have any of the listed guns.

{¶19} On cross-examination, Patrolman Kuret said that he believed he identified himself as a police officer when he called Gold Star. He did not recall who he spoke with at Gold Star, did not tell the person on the phone what dates the firearms were pawned or identify the guns by their serial numbers, nor did he advise who pawned them.

{¶20} Testimony of Mentor Patrolman Mark Featheroff

{¶21} Mr. Molk also called Patrolman Featheroff with the Mentor Police Department, who confirmed that on June 22, 2007, Mr. Molk reported four guns stolen and provided him with descriptions and serial numbers. On June 28, 2007, Patrolman Featheroff called Gold Star and spoke with the owner, Mr. Zaffiro, who said that the guns had been pawned at his shop. Patrolman Featheroff filled out a pawn broker notification form, went to Gold Star, verified that the four guns were there, and handed over the form to Mr. Zaffiro. There were two receipts documenting when the guns were pawned at Gold Star, which Patrolman Featheroff collected and took back to the station. Patrolman Featheroff left a message for Mr. Molk advising him that the firearms were at Gold Star, and also forwarded the report to the city prosecutor.

{¶22} On cross-examination, Patrolman Featheroff acknowledged that this was the first time he had ever issued a report regarding possibly stolen items to a pawn shop and that he was not familiar with the Pawn Shop Act. He also acknowledged he did not notify Gold Star of the identity of the guns' rightful owner and that he did not discuss the release of the firearms with Mr. Molk. Patrolman Featheroff did not have any contact with the Eastlake Police Department regarding the firearms.

{¶23} **The Magistrate's Decision**

{¶24} Following the hearing, the magistrate filed a decision, finding that a conversion of the firearms took place when Mr. Sabo pawned the firearms with Gold Star and that if property in the hands of the seller is stolen, then the purchaser cannot obtain a better ownership. However, a pawn broker, pursuant to R.C. 4727.12(B), can obtain good ownership rights (title) by following precise procedure. The magistrate also found that Gold Star, a licensed and operating pawn shop under R.C. 4727.03, waited the 30-day hold (and longer); Gold Star issued the notice required by R.C. 4727.11 to redeem the firearms; and after a 47-day delay, Gold Star took ownership of the firearms and sold them to recover pawn paid out amounts, interest, and costs on the failure to redeem. The magistrate further found that Gold Star is the holder of good title to the property (four firearms); and Mr. Molk is "guilty of laches by the long wait." Thus, the magistrate recommended that judgment be rendered for Gold Star and that Gold Star's claim against Mr. Sabo is moot and should be dismissed. The trial court adopted the magistrate's decision that same date, granting judgment in favor of Gold Star and dismissing Gold Star's third party complaint.

{¶25} Mr. Molk filed objections to the magistrate’s decision, to which Gold Star filed a reply, and the trial court overruled Mr. Molk’s objections to the magistrate’s decision. Mr. Molk filed the present appeal from both the magistrate’s decision and the trial court’s judgment on that decision, asserting the following assignment of error for our review:

{¶26} “The trial court erred by finding that Appellee followed proper procedure pursuant to [R.C.] 4727.12(B).”

{¶27} In his sole assignment of error, Mr. Molk argues that the trial court erred by finding that Gold Star followed the proper procedure pursuant to R.C. 4727.12(B).

{¶28} **Standard of Review**

{¶29} “The standard of review in an appeal from a trial court’s interpretation and application of a statute is de novo.” *State v. Magruder*, 11th Dist. No. 2007-G-2799, 2008-Ohio-2137, at ¶10.

{¶30} As an appellate court, we evaluate the findings of the trial court under a presumption that those findings are correct. *Seasons Coal Co. v. Cleveland* (1984), 10 Ohio St.3d 77, 80. This is because the trier of fact is in the best position “to view the witnesses and observe their demeanor, gestures and voice inflections, and use these observations in weighing the credibility of the proffered testimony.” *Id.*

{¶31} As this case involves a determination of witnesses’ credibility, in addition to statutory interpretation, we bear in mind that while “[a] finding of an error in law is a legitimate ground for reversal, a difference of opinion on credibility of witnesses and evidence is not.” *Seasons Coal* at 81. As a reviewing court, we are unwilling to second guess the trial court’s determination where there is competent, credible evidence to

support it, nor are we willing to weigh the credibility of the witnesses. *Karnofel v. Girard Police Dept.*, 11th Dist. No. 2004-T-0145, 2005-Ohio-6154, at ¶19.

{¶32} **R.C. 4727.12**

{¶33} R.C. 4727.12, addressing the required period of retention by a licensee and the question of allegedly stolen property, provides:

{¶34} “(A) A person licensed as a pawnbroker shall retain any and all goods or articles pledged with the licensee until the expiration of seventy-two hours after the pledge is made, and shall retain any goods or articles purchased by the licensee until the expiration of fifteen days after the purchase is made. The licensee may dispose of such goods or articles sooner with the written permission of the chief of police of the municipal corporation or township in which the licensee’s place of business is located or, if the place of business is not located within a municipal corporation or township that has a chief of police, with the written permission of the sheriff of the county in which the business is located.

{¶35} “(B) If the chief of police or sheriff to whom the licensee makes available the information required by section 4727.09 of the Revised Code has probable cause to believe that the article described therein is stolen property, the chief or sheriff shall notify the licensee in writing. Upon receipt of such a notice, the licensee shall retain the article until the expiration of thirty days after the day on which the licensee is first required to make available the information required by section 4727.09 of the Revised Code, unless the chief or sheriff notifies the licensee in writing that the licensee is not required to retain the article until such expiration.

{¶36} “(C) If the chief or sheriff receives a report that property has been stolen and determines the identity of the true owner of the allegedly stolen property that has been purchased or pawned and is held by a licensee, and informs the licensee of the true owner’s identity, the licensee may restore the allegedly stolen property to the true owner directly.

{¶37} “If a licensee fails to restore the allegedly stolen property, the true owner may recover the property from the licensee in an action at law.

{¶38} “(D) If the licensee returns the allegedly stolen property to the true owner, the licensee may charge the person who pledged or sold the allegedly stolen property to the licensee, and any person who acted in consort with the pledgor or the seller to defraud the licensee, the amount the licensee paid or loaned for the allegedly stolen property, plus interest and storage charges provided for in section 4727.06 of the Revised Code.”

{¶39} **Application of R.C. 4727.12**

{¶40} A trial court must independently review a magistrate’s decision, and any objections, to determine whether the magistrate properly determined the factual issues and appropriately applied the law. Civ.R. 53(D)(4)(d). Under this de novo standard of review, the trial court may not merely “rubber stamp” the magistrate’s decision. *Knauer v. Keener* (2001), 143 Ohio App.3d 789, 793. An appellate court must uphold the judgment so long as the record contains “some evidence from which the trier of fact could have reached its ultimate factual conclusions.” *Amsbary v. Brumfield*, 177 Ohio App.3d 121, 2008-Ohio-3183, at ¶11.

{¶41} Gold Star did not have actual knowledge that the firearms were stolen when they were pawned by Mr. Sabo. Mr. Molk reported the stolen items to the Mentor Police Department, and Gold Star, which is located in Eastlake, is only required to report to the Eastlake Police Department pursuant to R.C. 4727.09 and R.C. 4727.12.

{¶42} In any event, however, Gold Star voluntarily complied with the Mentor Police Department's hold request. Upon receipt of such notice, Gold Star complied with R.C. 4727.12(B) which requires "the licensee [to] retain the article until the expiration of thirty days after the day on which the licensee is first required to make available the information required by section 4727.09 of the Revised Code [the daily report of pawns to the chief of police where the pawn shop is located] ***." The evidence establishes that Gold Star held the items for 47 days after Gold Star was alerted by the Mentor police that the property may have been stolen, and clearly well beyond the mandated 30-day holding period, which runs from the day the pawn shop reports the pawn to its local police chief.

{¶43} A Notice of Redemption was properly issued to Mr. Sabo, but he failed to redeem the pledged property or pay the pawn fees within the requisite statutory period. During that period, Mr. Sabo failed to contact Gold Star and failed to redeem the firearms or pay all interest due and storage charges. Accordingly, we agree with the trial court's finding that pursuant to statute Gold Star became the lawful owner of the firearms.

{¶44} Also, Mr. Zaffiro stated that he never had any contact with Mr. Molk regarding the firearms until Mr. Molk filed his complaint. Although Mr. Molk claims he did have contact with Gold Star, notifying the pawn shop of his ownership claim on July

2, 2007, we defer to the trier of fact, as the trial judge did in his independent review of the Magistrate's Decision.

{¶45} **Doctrine of Laches**

{¶46} Finally, Gold Star correctly argues that Mr. Molk failed to assign as error the magistrate's finding that Mr. Molk was guilty of laches. We also note that the magistrate also made it clear in his decision that laches was "not a deciding issue in that Gold Star acquired title by the numbers," a vernacular description for statutory compliance. In addition, Mr. Molk does not address the issue of damages. Thus, we will not address the arguments raised in Gold Star's brief regarding laches or damages. See *Schade v. Carnegie Body Co.* (1982), 70 Ohio St.2d 207, 210 (holding that issues not raised will not be decided at the appellate level).

{¶47} Mr. Molk's sole assignment of error is not well-taken. The judgment of the Willoughby Municipal Court is affirmed.

DIANE V. GRENDELL, J.,

THOMAS R. WRIGHT, J.,

concur.