

[Cite as *Brewer v. Black*, 2009-Ohio-6625.]

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

WADE E. BREWER,
ADMINISTRATOR OF THE ESTATE
OF LARRY L. BREWER

Appellant

-vs-

FRANCES ALICE BLACK

Appellee

JUDGES:

Hon. Sheila G. Farmer, P.J.
Hon. W. Scott Gwin, J.
Hon. William B. Hoffman, J.

Case No. 2008CA00278

OPINION

CHARACTER OF PROCEEDING:

Appeal from the Stark County Court of
Common Pleas, Case No. 2006CV03435

JUDGMENT:

Affirmed

DATE OF JUDGMENT ENTRY:

December 14, 2009

APPEARANCES:

For Appellant

For Appellee

DAVID V. PATTON
P.O. Box 39192
Solon, Ohio 44139-0192

JOHN V. BOGGINS
1428 Market Avenue
North Canton, Ohio 44714

Gwin, J.

{¶1} Defendant-appellant Wade E. Brewer, Administrator of the Estate of Larry L. Brewer, appeals the June 27, 2007 Judgment Entry of the Stark County Court of Common Pleas adopting and approving a magistrate decision in favor of Plaintiff-appellee Frances Alice Black. Appellant assigns three errors:

{¶2} “I. THE TRIAL COURT PREJUDICIALLY ERRED BECAUSE THE MAGISTRATE’S DECISION, AND THE JUDGMENT ENTRY THAT ADOPTED IT, WERE AGAINST THE MANIFEST WEIGHT OF EVIDENCE.

{¶3} “II. THE TRIAL COURT PREJUDICIALLY ERRED IN AWARDING THE APPELLEE PUNITIVE DAMAGES BECAUSE PUNITIVE DAMAGES MAY NOT BE AWARDED AGAINST AN ESTATE.

{¶4} “III. THE TRIAL COURT PREJUDICIALLY ERRED IN AWARDING THE APPELLEE PUNITIVE DAMAGES BECAUSE THE PUNITIVE DAMAGES AWARD VIOLATED THE APPELLANT’S DUE PROCESS RIGHTS.”

{¶5} The magistrate to whom the matter was referred made findings of fact. Appellee and decedent Larry L. Brewer were involved in a close personal relationship and had lived together for approximately four years. Appellee and Brewer lived at Brewer's residence located in Alliance, Ohio. Appellee kept four horses at the premises.

{¶6} In early 2006, the relationship between Appellee and Brewer ended, and Appellee moved out of the home. She left most of her personal belongings and her horses at the property. On April 13, 2006, Appellee returned to the home to care for her horses. Brewer suggested Appellee remove her Christmas decorations from the home, which were located in the basement. Brewer followed Appellee into the basement, and

he handed her a box of Christmas decorations. Appellee states Brewer then struck her in the stomach, face, head, and arms.

{¶7} Brewer used duct tape and rope to tie Appellee to a mattress he had placed in the back room of the basement. Appellee states Brewer then sexually assaulted her. After approximately seven hours, Brewer released Appellee. She left the property and called the police. The police returned to the house and found the house engulfed in flames. Upon investigation and entry into the house, the police found Brewer's body in the basement and determined he had committed suicide.

{¶8} Appellee filed a personal-injury action seeking compensatory and punitive damages against Appellant, the Estate of Larry L. Brewer. Appellant filed a counterclaim for the alleged conversion of personal property, but the claim was not pursued at trial.

{¶9} The case was tried before a magistrate on May 14, 2007. The trial was conducted over a two-day period with numerous fact witnesses. On June 27, 2007, the magistrate issued her decision, concluding Brewer abducted Appellee and committed common-law assault and battery against her. The magistrate awarded judgment in favor of Appellee and against Appellant for the intentional torts of abduction, assault and battery, and severe infliction of emotional distress. Appellee was awarded \$5,194.38 in special damages, \$50,000 for severe pain and suffering, anxiety and loss of enjoyment of life, and \$10,200 for conversion. The trial court did not address Appellee's demand for punitive damages.

{¶10} On July 11, 2007, Appellant filed its objections to the magistrate's decision and praecipe for a transcript of the trial. Appellant objected to numerous findings of fact and conclusions of law made by the magistrate regarding both liability and damages.

The trial court overruled Appellant's objections and adopted the magistrate's decision on July 19, 2007.

{¶11} On appeal, this Court reversed and remanded the matter to the trial court finding the trial court did not afford Appellant reasonable time in which to secure the transcript prior to its ruling on the objections to the magistrate's decision.

{¶12} On remand, the trial court again adopted the magistrate's decision.

I.

{¶13} In the first assignment of error, Appellant maintains the trial court's judgment is against the manifest weight of the evidence. Specifically, Appellant cites chronological and physical inconsistencies in Appellee's testimony and the evidence.

{¶14} Our standard of reviewing the trial court's finding is enunciated in *C .E. Morris Company v. Foley Construction Company* (1978), 54 Ohio St.2d 279. In *Morris*, the Ohio Supreme Court held judgments supported by competent and credible evidence which goes to each of the essential elements of the case should not be reversed by a reviewing court as against the manifest weight of the evidence.

{¶15} As an appellate court, we are not fact finders; we neither weigh the evidence nor judge the credibility of witnesses. Our role is to determine whether there is relevant, competent and credible evidence upon which the fact finder could base its judgment. *Cross Truck v. Jeffries* (Feb. 10, 1982), Stark App. No. CA-5758. It is well-established the trial court is in the best position to determine the credibility of witnesses. See, e.g., *In re Brown*, Summit App.No. 21004, 2002-Ohio-3405, ¶ 9, citing *State v. DeHass* (1967), 10 Ohio St.2d 230, 227 N.E.2d 212.

{¶16} Upon review of the record, we find the judgment of the trial court is supported by competent, credible evidence going to the essential elements of the case. While we recognize Appellant raises many arguments which challenge the validity of the judgment, we find the record contains sufficient evidence to support the trial court's conclusion Brewer committed common law assault and battery against Appellee, causing her significant personal injury and inflicting extreme pain and grievous suffering.

{¶17} Appellant's first assignment of error is overruled.

II and III.

{¶18} Appellant's second and third assignments of error raise common and interrelated issues; therefore, we will address the arguments together.

{¶19} Appellant maintains the trial court erred in awarding Appellee punitive damages because, it maintains punitive damages may not be awarded against an estate. Appellant also argues the award violated Appellant's due process rights as the judgment of the trial court was against the manifest weight of the evidence.

{¶20} Appellant notes appellee prayed for punitive damages in her complaint and amended demand. However, at the end of the trial, appellee acknowledged that a single Ohio Common Pleas case, *Mongold v. Gilbert*, (2000) 114 Ohio Misc. 32, 758 N.E.2d 1245 has held a court may not award punitive damages against an estate. Appellee did not address punitive damages in her proposed findings of fact and conclusions of law.

{¶21} In light of our analysis and disposition of Appellant's first assignment of error, and upon review of the trial court's judgment entry, we find the trial court did not award Appellee punitive damages against the estate. Rather, the trial court fashioned

an award for non-economic compensatory damages, including pain and suffering, anxiety, and loss of enjoyment of life, in the amount of \$50,000. We find the record supports the award.

{¶22} Accordingly, the second and third assignments of error are overruled.

{¶23} For the foregoing reasons, the judgment of the Stark County Court of Common Pleas is affirmed.

By: Gwin, J.

Farmer, P.J. concurs

Hoffman, J. dissents

HON. W. SCOTT GWIN

HON. SHEILA G. FARMER

HON. WILLIAM B. HOFFMAN

WSG:clw 1208

Hoffman, J., dissents

{¶24} Although I do not disagree with the analysis of the merits of Appellant's two assignments of error, I nevertheless dissent because I do not find the order appealed from is a final appealable order. The judgment fails to determine Appellee's claims for punitive damages. Accordingly, I would dismiss this appeal for lack of jurisdiction.

HON. WILLIAM B. HOFFMAN

