[Cite as *Ford Motor Credit Co. v. Ryan & Ryan, Inc.*, 2018-Ohio-3960.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Ford Motor Credit Company,	:	
Plaintiff-Appellee,	:	
v.	:	No. 17AP-304 (C.P.C. No. 06CV-6659)
Ryan & Ryan, Inc. et al.,	:	(REGULAR CALENDAR)
Defendants-Appellees,	:	
(James M. Ryan,	:	
Defendant-Appellant).	:	
Ford Motor Credit Company,	:	
Plaintiff-Appellee,	:	
v.	:	No. 17AP-375 (C.P.C. No. 06CV-6659)
James M. Ryan et al.,	:	(REGULAR CALENDAR)
Defendants-Appellees,	:	
(Carolyn P. Ryan,	:	
Defendant-Appellant).	:	

D E C I S I O N

Rendered on September 27, 2018

On brief: *Frantz Ward LLP, Brett K. Bacon,* and *Timothy J. Richards,* for appellee Ford Motor Credit Company.

On brief: *Reminger Co., L.P.A., Michael J. Valentine,* and *Zachary B. Pyers,* for appellee Automobile Recovery Services of Cincinnati, Inc.

On brief: *James M. Ryan,* pro se.

On brief: *Carolyn P. Ryan*, pro se.

APPEALS from the Franklin County Court of Common Pleas

HORTON, J.

{¶ 1} This case, which has already seen numerous appeals to this court, arises out of contractual defaults and the resulting repossession of five leased or purchased vehicles on several different dates in 2005 and 2006. Defendant-appellant, James M. Ryan, in case No. 17AP-304 appeals from a final judgment of the Franklin County Court of Common Pleas dismissing his remaining counterclaims against plaintiff-appellee, Ford Motor Credit Company ("Ford"), and his cross-claims against Ford's repossession agent, defendant-appellee, Automobile Recovery Services ("ARS"). Defendant-appellant, Carolyn P. Ryan, in case No. 17AP-375 appeals from earlier judgments of the trial court granting summary judgment in favor of ARS on her cross-claims and dismissing her third-party claim against defendant-appellee, Bob-Boyd Lincoln, Inc. ("Bob-Boyd"), FKA Bob-Boyd Lincoln-Mercury, Inc.

{¶ 2} In 2009, Ford obtained judgment in its favor on all its contract claims and the Ryans' counterclaims, and ARS obtained judgment on all third-party claims by the Ryans. (Some of the original claims and counterclaims concerned corporate entities associated with Mr. Ryan that are no longer active in the case.) The Ryans appealed, and this court issued a 30-page decision in 2010 affirming most aspects of the trial court's judgment but remanding on limited aspects of the case. *Ford Motor Credit Co. v. Ryan*, 185 Ohio App.3d 560, 2010-Ohio-4601 (10th Dist.) (hereinafter "*Ryan I*"). These surviving claims included four claims by Mr. Ryan: his conversion claim arising out of the loss of vehicle contents from a May 9, 2005 repossession, and trespass, conversion, and assault claims arising from a January 12, 2006 repossession, the only occasion on which Mr. Ryan actually confronted the repossession agent. With respect to the trespass claim, we specifically held that this turned on whether ARS had committed a breach of the peace during its January 12, 2006 repossession of one of the vehicles, and by doing so had removed itself from the statutory protections and rights afforded to secured parties recovering collateral from debtors. We also reversed on one of Mrs. Ryan's third-party

claims, a Consumer Sales Practices Act ("CSPA") claim against Bob-Boyd. On this claim we held that Mrs. Ryan had not purchased her vehicle for commercial use, and could maintain a CSPA claim as a consumer. *Ryan I* at ¶ 82.

{¶ 3} On remand, ARS initially moved for partial summary judgment on January 19, 2012. The motion addressed the Ryans' trespass and conversion claims arising from two repossessions occurring on February 7, and 8, 2006. This motion was unnecessary because our decision in *Ryan I* affirmed the trial court's prior grant of summary judgment on these claims. *Ryan I* at ¶ 43. On March 15, 2012, the trial court nonetheless entered (redundant) summary judgment in favor of Ford and ARS on claims arising from the February 2006 repossessions.

{¶ 4} On July 5, 2012, Mrs. Ryan voluntarily dismissed her CSPA claim against Bob-Boyd. On July 1, 2013, she refiled a modified version of the same claim. On September 5, 2014, the trial court granted Bob-Boyd's motion to dismiss the CSPA claim because it was filed beyond the two-year statute of limitations. The court noted that while the initial 2007 complaint was not subject to tolling under the discovery rule, which does not apply to CSPA claims for money damages, the 2013 refiling asserted for the first time a claim for rescission of a consumer contract, for which the tolling principles would apply. Despite this, the court ruled that even if the discovery rule applied to toll the statute of limitations, the claim was filed well out of rule.

{¶ 5} On April 29, 2013, Mr. Ryan filed a motion to bifurcate the compensatory and punitive damages aspects of the matter under R.C. 2315.21. The trial court denied the motion on January 14, 2015 on the grounds that Mr. Ryan no longer had any punitive damages claims pending. Mr. Ryan appealed the trial court's decision on February 9, 2015, and this court dismissed the appeal in 10th Dist. No. 15AP-88 on March 13, 2015 for lack of a final appealable order. (March 12, 2015 Journal Entry of Dismissal.) We subsequently denied his application for reconsideration in 10th Dist. No. 15AP-88. (March 23, 2015 Journal Entry.)

{¶ 6} The trial court then addressed cross-motions by the parties for summary judgment: Mr. Ryan's motion for partial summary judgment filed on August 23, 2016, and ARS and Ford's joint motion for summary judgment filed on August 25, 2016, both

addressing Mr. Ryan's remaining claims. The trial court denied both motions by decision and entry dated February 8, 2017.

{¶ 7} On March 22, 2017, the trial court granted a motion in limine by Ford and ARS to "exclude all evidence, testimony or comment concerning damages to Ryan & Ryan, Inc. or any other corporate entity at trial." (Mar. 22, 2017 Jgmt. Entry at 1.)

{¶ 8} On April 25, 2017, the trial court entered a decision and entry denying Mr. Ryan's motion for default judgment against Ford, ARS, and Bob-Boyd. The motion was based on an alleged failure by these defendants to file responsive pleadings to Mr. Ryan's counterclaims, cross-claims, and third-party claims filed in 2008. Beyond looking to the many responsive pleadings actually filed in the case by the alleged defaulters, the trial court noted that Mr. Ryan had waited over nine years after the nonmoving parties' alleged failure to file timely pleadings before bringing his motion for default judgment. The court determined that the motion for default judgment was not timely under Loc.R. 55.02 of the Franklin County Court of Common Pleas.

{¶ 9} The matter proceeded to a bench trial on April 27, 2017. On the morning of trial, Mr. Ryan filed a notice of dismissal of his assault claim, and proceeded to try only his other claims. At the close of plaintiff's evidence, ARS and Ford filed a motion for a directed verdict pursuant to Civ.R. 50. The court remarked that this motion was inapposite in a jury-waived trial, and sua sponte converted it to a motion for dismissal pursuant to Civ.R. 41(B)(2). The court rendered an oral decision granting dismissal of all Mr. Ryan's claims, journalized by entry dated April 28, 2017.

{¶ 10} Mr. Ryan has timely appealed from the trial court's final judgment and brings the following assignments of error:

> [I.] The Trial Court erred by not formally vacating the Amended Entry dated February 25, 2010 r-493, the Judgment Entry dated May 15, 2009 r-443/444 and the Amended Entry Granting Summary Judgment in Favor of Bob-Boyd Lincoln Mercury Inc. dated February 24, 2010 r-492 and by failing to reinstate the case to proceed from the point at which the appeal errors occurred in accordance with the terms of reversal and remand stated in Ford Motor Credit Company v. Ryan, 189 Ohio App. 3d 560, 2010-Ohio-4601.

[II.] The Trial Court erred in not applying the correct legal standard by its ruling that *Ford Motor Credit Company v. Ryan*, 189 Ohio App. 3d 560, 2010-Ohio-4601 held that the Amended Entry dated February 25, 2010 r-493 was final and settled as to the alleged repossession of the Premier vehicle on January 12, 2006 as a result of Ryan's alleged default of payment and that FMCC's taking of the Premier was lawful and therefore Ryan was foreclosed from being entitled to possession of the vehicle or damages related to the Premier's removal. The Trial Court further erred by sustaining FMCC's & ARS's objections related thereto which prohibited Ryan from testifying as to his damages caused by Premier's removal on January 12, 2006. The Trial Court's rulings are set forth at page 55 line 12-25 page 57 line 6-15, line 23 to line 5 of page 58 and page 59 lines 21 to 1 on page 60 all included in the trial transcript r-920 or 921.

[III.] The Trial Court erred as a matter of law by its findings that there was no breach of the peace which would serve as a predicate for Mr. Ryan's claims related to conversion and trespass, erred as a matter of law by finding that Ryan's claim for assault has been dismissed, erred as a matter of law by its findings that an assault is a requirement of finding that there was a breach of the peace. The Trial Court also erred as a matter of law and against the manifest weight of the evidence its findings that the Court did not have before it competent, creditable testimony and evidence going to all the essential elements to support that a breach of the peace, a trespass and a conversion occurred on January 12, 2006, that a conversion of Ryan's property occurred in March 2005 and that a measure of damages did not exist that could be awarded to Ryan, and the dismissal of all of Ryan's claims. R-914 (see page 129 lines 15-19, page 129 lines 24-25 & page 130 lines 1-5, page 130 lines 10-25, page 131 lines 1-13 or the trial transcript r-920 or 921.)

[IV.] The Trial Court erred in its sustaining FMCC/ARS's objection to the introduction of certified public records as exhibits as being exempt from the hearsay rule. (see page 31 line 6-7 the trial transcript r-920 or 921) and by Ryan's reference to Court filings made in this action (page 53 lines 24-25 & page 54 lines 1-6 the trial transcript r-920 or 921)

[V.] The Trial Court erred in its Decision and Entry Denying James M. Ryan's Motion to Bifurcate dated January 14, 2015, r-772

> [VI.] The Trial Court erred in its September 05, 2014 Decision and Entry r-730 denying James M. Ryan's Motion to Exclude Witness John Bailey.
>
> [VII.] The Trial Court erred in granting Summary Judgment as to Count 1 of Ford Motor Credit Company's September 19, 2006 Amended Complaint and Granting Judgment jointly against James M. Ryan and Ryan & Ryan Inc. in the amount of $2,742.65 in its Amended Judgment Entry dated February 25, 2010 r-105 as Ford Motor Credit Company was not the real party in interest, did not have standing to bring the action and therefore the Trial Court lacked jurisdiction and subject matter jurisdiction.
>
> [VIII.] The Trial Court erred in its Decision and Order Granting Motion for Partial Summary Judgment of Third Party Automobile Recovery Services of Cincinnati Inc. dated March 1, 2012 r-585-586 and in its Judgment Entry dated March 15, 2012 r-593 as Automobile Recovery Services of Cincinnati Inc. has admitted to its trespass onto the Dale Avenue property on February 7th or 8th 2006 and this Court in *Ford Motor Credit Company v. Ryan*, supra, has held @ 36 that there was a trespass when ARS entered the properties on February 7 & 8th 2006 therefore there were genuine issues of material facts in dispute that were not resolved making Summary Judgment inappropriate. The Trial Court also erred in determining that these trespasses were legal trespasses.
>
> [IX.] The Trial Court erred by its Order dated May 19, 2009 r-446, and its Decision and Entry Denying James M. Ryan's Motion to Vacate dated May 5, 2011.
>
> [X.] The Trial Court failed to issue its May 15, 2009 Judgment Entry Granting Third-Party Defendant Automobile Recovery Services of Cincinnati Inc.'s Motion for Summary Judgment against Cross-Claim Plaintiff James M. Ryan, r-444-443.

(Sic passim.)

{¶ 11} Mrs. Ryan brings the following assignments of error:

> [I.] The Trial Court erred by not formally vacating the Amended Entry dated February 25, 2010 r-493, the Judgment Entry dated May 15, 2009 r-443/444 and the Amended Entry Granting Summary Judgment in Favor of Bob-Boyd Lincoln Mercury Inc. dated February 24, 2010 r-492 and by failing to reinstate the case to proceed from the point at which the appeal

> errors occurred in accordance with the terms of reversal and remand stated in Ford Motor Credit Company v Ryan, 189 Ohio App. 3d 560, 2010-Ohio-4601.
>
> [II.] The trial court erred in decision dated September 5, 2014 dismissing with prejudice Appellant's Cross-Claim Counterclaim Complaint and Third Party Complaint. R-731-727.

(Sic passim.)

{¶ 12} We first address Mr. Ryan's assignments of error. As noted by the trial court, after remand from *Ryan I* and subsequent rulings in the trial court, Mr. Ryan maintained four claims: a claim for trespass against ARS and Ford arising out of the January 12, 2006 repossession attempt; a claim for assault against ARS and Ford arising from the January 12, 2006 repossession attempt; a claim for conversion (the vehicle itself) against ARS and Ford arising from the January 12, 2006 repossession attempt; and a claim for conversion (the vehicle contents) against ARS arising from the May 9, 2005 repossession. (Feb. 8, 2017 Jgmt. Entry at 4.) Mr. Ryan then voluntarily dismissed his assault claim on the eve of trial, leaving only his trespass and conversion claims.

{¶ 13} Mr. Ryan's first, seventh, ninth, and tenth assignments of error present arguments that are resolved by application of the law of the case doctrine.

{¶ 14} Mr. Ryan's first assignment of error asserts that the trial court erred by not vacating its judgment journalized on February 25, 2010, one of the judgments that preceded the appeal to this court resulting in our September 28, 2010 decision in *Ryan I*. Mr. Ryan appears to argue that, because our decision in *Ryan I* reversed certain limited aspects of the trial court's judgments in the case, including part of the February 25, 2010 judgment granting summary judgment in favor of Ford, the trial court was obligated to vacate that judgment in its entirety.

{¶ 15} Mr. Ryan presents no authority for the proposition that a trial court, having seen its judgment reversed in part on appeal, should under all circumstances formally vacate its prior orders and judgments before resuming the case on remand. The effect of the reversal on appeal is in most cases self-actuating, and the trial court, as it did in this case, will proceed in accordance with the law stated in the appellate decision without any requirement to explicitly withdraw all prior orders in the case. Moreover, much of Mr.

Ryan's assignment of error in this respect is an attempt to rehash individual components of the trial court's prior judgments that were, in fact, affirmed on appeal and therefore preserved in this appeal by application of the law of the case. *See generally*, *Hillman v. Larrison*, 10th Dist. No. 17AP-160, 2018-Ohio-184. Mr. Ryan's first assignment of error is accordingly overruled.

{¶ 16} In assignment of error seven, Mr. Ryan argues that the trial court erred when it granted summary judgment in favor of Ford on Count 1 of Ford's amended complaint, which stated a claim for breach of a motor vehicle lease agreement for a 2002 Ford Windstar. The trial court's judgment entered on February 25, 2010 was one of the trial court orders that were ripe for determination in *Ryan I*. Mr. Ryan now raises standing arguments with respect to Ford's ability to bring the claim in its complaint. That argument does not appear to have been raised in *Ryan I*, and if it were, our prior affirmance of the trial court's judgment addressing Ford's breach of contract claims would preclude reexamination of the question. Mr. Ryan's seventh assignment of error is accordingly overruled.

{¶ 17} Similarly, Mr. Ryan's ninth assignment of error addresses trial court orders in this matter preceding the appeal that resulted in *Ryan I*. These included procedural orders on May 19, 2009 (extension of time) and November 13, 2008 (leave to file). Application of the law of the case doctrine also bars relitigation of these issues settled in our prior appeal, and Mr. Ryan's ninth assignment of error is overruled.

{¶ 18} Mr. Ryan's tenth assignment of error also argues alleged error occurring by the trial court prior to the appeal in *Ryan I*. Specifically, Mr. Ryan argues that the trial court did not properly enter judgment granting ARS's motion for summary judgment on May 15, 2009. The docket reflects that the judgment was properly entered. To the extent that Mr. Ryan complains that he was not served, that issue was not raised as error in the initial appeal and is again barred by application of the law of the case doctrine. Mr. Ryan's tenth assignment of error is overruled.

{¶ 19} Mr. Ryan's eighth assignment of error relates to the trial court's grant of partial summary judgment after our remand from *Ryan I* but preceding trial and final judgment. Mr. Ryan asserts that the trial court erred in granting partial summary judgment in favor of ARS, reflected in a decision on March 1, 2012, and judgment entry on March 15, 2012. This relates to the trespass counterclaim by Mr. Ryan arising out of ARS's entry onto

the Ryan property on February 7, and 8, 2006. As described above, this claim was put to rest by *Ryan I*, and there was no need for the trial court to consider appellees' motion for summary judgment.

{¶ 20} Despite this, Mr. Ryan argues that we held in *Ryan I* at ¶ 36, that there was a trespass when ARS entered the property on those dates. That is not what this court held. Our analysis in *Ryan I* began by noting that Ohio's repossession statute, R.C. 1309.609, "gives a repossessor a privilege to enter another's land to effectuate a repossession, so long as the repossessor does not breach the peace." *Id.* at ¶ 35. " ' When there is a limited entry onto the debtors property, such as the debtor's driveway, carport, or open garage, the creditor is said to have an implied limited privilege peacefully to trespass and take possession of the collateral, as long as the debtor does not object and no breach of the peace is committed while on the land.' " *Id.*, quoting Carter, Repossessions, Section 6.4.4.2, at 205 (6th Ed.2005). We then held, "[h]ere, ARS exercised its right under R.C. 1309.609 to enter onto private property to repossess the three vehicles on February 7 and 8, 2006. This *trespass*, without more, does not constitute a breach of peace. Accordingly, no liability for conversion arose out of the repossessions of the three vehicles." (Emphasis added.) *Id.* at ¶ 36.

{¶ 21} Our use of the term "trespass" in this part of *Ryan I* does not denote a finding of *actionable* trespass. "A common-law tort in trespass upon real property occurs when a person, *without authority or privilege*, physically invades or unlawfully enters the private premises of another whereby damages directly ensue, even though such damages may be insignificant." (Emphasis added.) *Linley v. DeMoss*, 83 Ohio App.3d 594, 598 (10th Dist.1992); *see also, Apel v. Katz*, 83 Ohio St.3d 11, 19 (1998); *Vineyard Christian Fellowship of Columbus v. Anderson*, 10th Dist. No. 15AP-151, 2015-Ohio-5083, ¶ 38. Perhaps it might be best when discussing R.C. 1309.609 cases to speak of *entry* onto private property, since the "trespass," in terms of actionable infringement on property, is privileged when repossession is properly undertaken in accordance with R.C. 1309.609. There was therefore no finding of trespass in our prior decision, and although the trial court's decision granting summary judgment again to ARS was unnecessary, nothing in the trial court's judgment is otherwise in contradiction with the law of the case. Mr. Ryan's eighth assignment of error is overruled.

{¶ 22} Mr. Ryan's fifth assignment of error asserts that the trial court erred in denying his motion to bifurcate the issues of compensatory and punitive damages, as allowed by R.C. 2315.21. The trial court denied this motion by entry on January 14, 2015, concluding that Mr. Ryan no longer had a punitive damages claim pending that could be bifurcated.

{¶ 23} "R.C. 2315.21(B) creates, defines, and regulates a substantive, enforceable right to separate stages of trial relating to the presentation of evidence for compensatory and punitive damages in tort actions." *Havel v. Villa St. Joseph*, 131 Ohio St.3d 235, 2012-Ohio-552, ¶ 5. Upon motion by the party seeking punitive damages, bifurcation is not discretionary with the trial court. *Id*. at ¶ 25.

{¶ 24} ARS filed a motion for summary judgment on March 9, 2009, including a request for summary judgment on Mr. Ryan's punitive damages claim. Ford filed a motion for summary judgment on March 16, 2009, which also included a request for summary judgment on Mr. Ryan's punitive damages claim. The trial court granted these motions for summary judgment by entries on May 15, 2009 and February 25, 2010, respectively. These entries were the object of the appeal in *Ryan I*. Mr. Ryan failed to argue error in this respect in *Ryan I*, and we affirmed the trial court's judgment on the punitive damages issue. *Ryan I* at ¶ 55. The issue of punitive damages in this case is settled pursuant to the law of the case, and there was nothing for the trial court to bifurcate. Moreover, bifurcation is not required for cases tried to the bench: "In a tort action *that is tried to a jury* and in which a plaintiff makes a claim for compensatory damages and a claim for punitive or exemplary damages, upon the motion of any party, the trial of the tort action shall be bifurcated." (Emphasis added.) R.C. 2315.21(B)(1). This case culminated in a bench trial, and the trial court therefore did not err in declining to bifurcate damages as requested by Mr. Ryan, and his fifth assignment of error is overruled.

{¶ 25} Mr. Ryan's sixth assignment of error asserts that the trial court erred in overruling his pre-trial motion to exclude the testimony of witness John Bailey, the ARS repossession agent who undertook the January 12, 2006 repossession that resulted in a confrontation. Mr. Ryan argues that Ford and ARS did not disclose Bailey as a witness in compliance with Loc.R. 43.04 of the Franklin County Court of Common Pleas. Because that is the exact extent of Mr. Ryan's one sentence argument in support of this assignment of

error, it is difficult to ascertain on what basis we might conclude that the witness was not disclosed in a timely fashion. Moreover, because the trial concluded without presentation of any evidence by appellees, who accordingly never proffered Bailey's testimony, no prejudice to Mr. Ryan could result from the trial court's ruling. Mr. Ryan's sixth assignment of error is overruled.

{¶ 26} Mr. Ryan's fourth assignment of error alleges error in various evidentiary rulings during trial. Mr. Ryan asserts that the trial court erred in sustaining an objection by Ford and ARS to the introduction by Mr. Ryan of certified public records as exhibits. Mr. Ryan also asserts that the trial court erred in ruling that he could not refer to court filings previously made in a companion case, or give preclusive effect to certain pleadings in the case at bar.

{¶ 27} Mr. Ryan first attempted to introduce an affidavit taken from the record in a companion case in the Franklin County Court of Common Pleas. This action took place before a different judge, although the case also involved repossession of yet another Ryan family vehicle. The document in question was an affidavit from one Wendy Smith, a Ford employee, averring that the January 12, 2006 repossession related only to a Mercury Villager vehicle, not the Mercury Mountaineer Premier actually towed on that date. This document would have been the first step in Mr. Ryan's attempt to prove that ARS lacked statutory privilege to enter the property on January 12; he wished to argue that because the vehicle actually taken was not yet in default, ARS and Ford were not shielded by the repossession statute. As a result, any entry on the property constituted a trespass, even in the absence of any breach of the peace. (Tr. at 25-31.)

{¶ 28} Trial counsel for Ford and ARS objected to introduction of the affidavit on the basis that it constituted hearsay testimony by definition. Mr. Ryan argued at trial that this constituted an exception to the hearsay rule as a public record. The trial court ruled that the affidavit was offered to prove the truth of the matter asserted, that Ford and ARS had no opportunity to confront the witness, and that no hearsay exceptions applied.

{¶ 29} Decisions regarding the admissibility of evidence lie within the broad discretion of the trial court. *State v. Hymore*, 9 Ohio St.2d 122, 128 (1967). As a result, a decision by the trial court to admit or exclude evidence will be upheld on appeal absent an

abuse of discretion by the trial court. *O'Brien v. Angley*, 63 Ohio St.2d 159, 164-65 (1980); *Beard v. Meridia Huron Hosp.*, 106 Ohio St.3d 237, 2005-Ohio-4787, ¶ 20.

{¶ 30} Generally, affidavits are not admissible because they constitute hearsay. *In re C.C.*, 10th Dist. No. 04AP-883, 2005-Ohio-5163, ¶ 76. The only exception to the hearsay rule suggested by Mr. Ryan on appeal is that the affidavit was admissible as a public record.

{¶ 31} Evid.R. 803(8) governs admissibility of public records and reports as an exception to the hearsay rule. The rule states as follows:

> **Public records and reports.** Records, reports, statements, or data compilations, in any form, of public offices or agencies, setting forth (a) the activities of the office or agency, or (b) matters observed pursuant to duty imposed by law as to which matters there was a duty to report, excluding, however, in criminal cases matters observed by police officers and other law enforcement personnel, unless offered by defendant, unless the sources of information or other circumstances indicate lack of trustworthiness.

{¶ 32} Assuming, arguendo, (and no authority supports this) that an affidavit becomes a public record merely because it is filed in a court case, the affidavit in the present case does not remotely fit the public record exception in Evid.R. 803(8). The trial court accordingly did not err or abuse its discretion in refusing admission of this affidavit.

{¶ 33} Mr. Ryan also asserts error in the trial court's refusal to allow him to admit prior pleadings in the case as evidence that Ford had conceded certain factual issues, particularly the existence of a physical confrontation between Mr. Ryan and the repossession agent in his driveway on January 12, 2006. Ford and ARS objected on the basis that this was again hearsay. While a court may take notice of *judgments* of another court or in prior proceedings, as far as their effect in creating the law of the case, a court generally will not take notice of factual findings in another proceeding or by another court, at least not without formally invoking the doctrine of collateral estoppel and determining if it applies. *Taylor v. Charter Med. Corp.*, 162 F.3d. 827 (5th Cir.1998).

{¶ 34} For some purposes, pleadings containing admissions against interest are admissible as evidence against the pleader, "as long as the admissions involve material and competent facts." *Haney v. Law*, 1st Dist. No. C-070313, 2008-Ohio-1843, ¶ 7. In this case, the pleading in question, which involved assertion of an affirmative defense by Ford and

ARS, does not constitute a binding admission, but merely a conditional proffer of the defense or applicability of law. *See generally, Russi v. Brentlinger Ents.*, 10th Dist. No. 10AP-1143, 2011-Ohio-4764, ¶ 27-29. Parties are free to plead alternative or inconsistent responses to a complaint, and the determination whether " 'a pleaded fact constitutes a judicial admission should be made on a case-by-case basis.' " *Id.* at ¶ 30, quoting *Haney* at ¶ 14. If the evidence on the factual point in question is contested at trial, the pleading is unlikely to be admitted as a factual admission. *Id.* at ¶ 29.

{¶ 35} We conclude that the trial court did not err in excluding the pleadings in the prior case. The facts pleaded therein were only conditionally conceded for purposes of developing an alternative theory for defense of the case.

{¶ 36} In sum, the trial court did not abuse its discretion in limiting the admission of affidavits and court pleadings. Mr. Ryan's fourth assignment of error is accordingly overruled.

{¶ 37} Mr. Ryan's second and third assignments of error assert that the trial court erred in entering judgment in favor of appellees pursuant to Civ.R. 41(B)(2) at the close of Mr. Ryan's evidence.

{¶ 38} Civ.R. 41(B)(2) provides for dismissal of a plaintiff's case after presentation of the plaintiff's evidence:

> **Dismissal; non-jury action**. After the plaintiff, in an action tried by the court without a jury, has completed the presentation of the plaintiff's evidence, the defendant, without waiving the right to offer evidence in the event the motion is not granted, may move for a dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief. The court as trier of the facts may then determine them and render judgment against the plaintiff or may decline to render any judgment until the close of all the evidence. If the court renders judgment on the merits against the plaintiff, the court shall make findings as provided in Civ. R. 52 if requested to do so by any party.

{¶ 39} Civ.R. 41(B)(2) allows the trial court to determine the facts, weigh the evidence, and resolve any conflicts therein. *Gianetti v. Teakwood, Ltd.*, 10th Dist. No. 15AP-413, 2016-Ohio-213, ¶ 11. "If, after evaluating the evidence, a trial court finds that the plaintiff has failed to meet her burden of proof, then the trial court may enter judgment in

the defendant's favor." *Jarupan v. Hanna*, 173 Ohio App.3d 284, 2007-Ohio-5081, ¶ 9 (10th Dist.). "Therefore, even if the plaintiff has presented evidence on each element of her claims, a trial court may still order a dismissal if it finds that the plaintiff's evidence is not persuasive or credible enough to satisfy her burden of proof." *Id.* at ¶ 9. On appeal, this court will not overturn a Civ.R. 41(B)(2) involuntary dismissal unless it is contrary to law or against the manifest weight of the evidence. *Stanley v. Ohio State Univ. Med. Ctr.*, 10th Dist. No. 12AP-999, 2013-Ohio-5140, ¶ 104.

{¶ 40} The first issue raised in Mr. Ryan's argument under these assignments of error is that the trial court erred by finding that his claim for assault had been voluntarily dismissed before trial. He points out that, under recently amended Civ.R. 41(A), a party may not dismiss fewer than all its claims against the opposing party, and any attempt to dismiss some but not all claims against a party is a nullity. *See generally*, *Pattison v. W.W. Grainger, Inc.*, 120 Ohio St.3d 142, 2008-Ohio-5276, ¶ 20; *Luehrman v. Verma*, 10th Dist. No. 12AP-1024, 2014-Ohio-3335. Appellees respond that, since this was a voluntary dismissal, Mr. Ryan cannot take advantage of his own invited error. *See Lester v. Leuck*, 142 Ohio St. 91 (1943); *State v. Jackson*, 157 Ohio App.3d. 574, 2004-Ohio-3446, ¶ 10 (6th Dist.). Recourse to the invited error doctrine, however, is unnecessary in this case. If Mr. Ryan voluntarily dismissed his assault claim, and if that dismissal was ineffective, the subsequent course of litigation reflects simply that Mr. Ryan failed to argue or introduce evidence on this claim. The trial court could accordingly grant final judgment in favor of appellees on that basis, even if dismissal of the assault claim was without effect.

{¶ 41} Mr. Ryan next argues that the trial court erred by finding there was no breach of the peace relating to the January 12, 2006 repossession and, accordingly, the trial court should have found that his claim for trespass would stand because the breach of the peace negated application of R.C. 1309.609 and made the repossession agent's entry onto the Ryan property unlawful.

{¶ 42} In order to maintain a trespass claim, plaintiff must show that entry onto the plaintiff's land was unlawful. *Chance v. BP Chemicals, Inc.*, 77 Ohio St.3d 17 (1996). Conversely, if the defendant's entry on the property is lawful or privileged, the tort of trespass does not occur. *Morgan v. Charvat*, 10th Dist. No. 09AP-121, 2009-Ohio-5581, ¶ 10. The interaction of the trespass law with R.C. 1309.609 was extensively discussed in

our decision with *Ryan I*. R.C. 1309.609 gives a repossession agent legal authority to enter land in possession of another in order to repossess the vehicle collateral as long as the agent does not breach the peace in doing so. A "mere trespass," of itself, does not constitute a breach of the peace negating application of the statute. *Ryan I* at ¶ 34, citing *Chrysler Credit Corp. v. Koontz*, 227 Ill.App.3d. 1078, 1083 (2d Dist.1996). A breach of the peace is a "violation of public order, a disturbance of the public tranquility, by any act or conduct inciting to violence or tending to provoke or excite others to break the peace." *Ryan I* at ¶ 31. A repossession agent who initially and lawfully enters the property to repossess a vehicle but is confronted by the owner and told to leave must promptly heed the command, and delay may establish a breach of the peace. *Morris v. First Natl. Bank & Trust Co. of Ravenna*, 21 Ohio St.2d 25, 29 (1970).

{¶ 43} The only evidence heard at trial came from the testimony of Mr. Ryan. Mr. Ryan began his testimony by attempting to introduce conclusory statements of law regarding his right under R.C. 2305.40 to confront trespassers on his homestead and the existence of a breach of the peace by the repossession agent. The court granted objections to both statements. (Apr. 27, 2017 Tr. at 28-33.)

{¶ 44} Mr. Ryan thereafter testified regarding the actual events on January 12, 2006. At approximately 8:15 in the morning, his wife notified him that there was a tow truck in the carport. Mr. Ryan exited the house and the repossession agent stated that he was there to repossess a 2001 Mercury Villager. Mr. Ryan stated that there was no such vehicle on the property. The agent then stated that he intended to repossess the 2004 Mercury Mountaineer Premier that was in the carport. The agent had already hooked up that vehicle to the tow truck. At this point, Mr. Ryan informed the agent that that vehicle was not in default and could not be repossessed. Mr. Ryan attempted to undo some of the chains attaching the Mountaineer to the tow truck. The agent attempted to grab Mr. Ryan's hands and pull them away. At that point, Mr. Ryan ordered the agent to leave the property immediately. The two men pushed each other, and Mr. Ryan began to retreat. At this point, the agent screamed at Mr. Ryan, who again responded that the agent was trespassing and must leave the premises immediately.

{¶ 45} Mr. Ryan went into the house and immediately received a phone call from Ford in South Carolina. He informed the caller that an agent was repossessing the wrong

car, and was told that Ford did not care. Mr. Ryan again left the house, by which time the repossession agent had dragged the vehicle down the driveway. Because the wheels were skewed on the towed vehicle it had "banged" into Mrs. Ryan's car in the carport and left rut marks in the floor of the carport and the length of the driveway to the street.

{¶ 46} On cross-examination, Mr. Ryan confirmed that at the time he confronted the tow truck driver, the vehicle was already chained, lifted, and secured to the tow truck. He could not recall whether he had called the police on the day in question. (Tr. at 101.) He conceded that he had pushed the repossession agent, and was not physically injured as result of the incident. (Tr. at 102.) Again on cross, Mr. Ryan confirmed that he had grabbed for the chains securing the vehicle, at which point there was some minor physical contact between the two men.

{¶ 47} Because Civ.R. 41(B)(2) calls for the trial court to weigh the evidence, the trial court was not obligated to take Mr. Ryan's testimony in the light most favorable to him. Reviewing the entirety of the circumstances and the testimony presented at trial, it was not against the manifest weight of the evidence for the trial court to conclude that no breach of the peace occurred and dismissal pursuant to Civ.R. 41(B)(2) of the trespass claim was warranted.

{¶ 48} With respect to Mr. Ryan's claim that the January 12 repossession of the Mountaineer Premier constituted a conversion, the court ruled that this claim failed as a matter of law. Conversion is "the wrongful exercise of dominion over property to the exclusion of the rights of the owner, or withholding it from his possession under a claim inconsistent with his rights." *Joyce v. Gen. Motors Corp.*, 49 Ohio St.3d 93, 96 (1990), citing *Zacchini v. Scripps-Howard Broadcasting Co.*, 47 Ohio St.2d 224, 226 (1976). A plaintiff bringing such a claim must prove three elements: (1) the defendant's exercise of dominion or control (2) over a plaintiff's property (3) in a manner inconsistent with the plaintiff's rights of ownership. *Whitt Sturtevant, LLP v. NC Plaza LLC*, 10th Dist. No. 14AP-919, 2015-Ohio-3976, ¶ 65.

{¶ 49} Our decision in *Ryan I* upheld the trial court's prior judgment that the Mountaineer Premier contract was in default at the time of the repossession. *Ryan I* at ¶ 107. The trial court was bound to rely on that factual and legal predicate when later assessing the evidence at trial. If the Mountaineer Premier contract was in default, and that

default triggered Ford's right to repossess its collateral, then Ford and ARS's subsequent exercise of dominion and control over the vehicle was not "inconsistent" with Mr. Ryan's own possessory interest, which was correspondingly curtailed by contract. The trial court properly granted judgment for ARS and Ford on this conversion claim.

{¶ 50} Mr. Ryan also asserts that the trial court erred by dismissing his claim for conversion of personal property related to the previous repossession on May 9, 2005, and for damage caused by the January 12, 2006 repossession. In support of these claims, Mr. Ryan offered an itemized list of unverified price estimates for his personal property, and a repair estimate for another vehicle damaged in his driveway. Both were prepared by outside sources not authenticated when presented at trial. (Tr. at 74, 115.) Appellees argued at trial that this evidence, being unauthenticated, was inadmissible as hearsay and should be given no weight. In addition, review of the transcript discloses that Mr. Ryan did not offer any personal testimony as to his opinion of the value of the items claimed converted in the first repossession. Given the state of the evidence, the trial court could also grant dismissal pursuant to Civ.R. 41(B)(2) on this claim.

{¶ 51} In summary, the trial court did not err in granting Civ.R. 41(B)(2) dismissal on Mr. Ryan's trespass and conversion claims, and Mr. Ryan's second and third assignments of error are overruled.

{¶ 52} We now turn to appellant Mrs. Ryan's two assignments of error. These assert that the trial court erred in not vacating its previous judgment entries after the appeal to this court in *Ryan I* and that the trial court erred in dismissing her third-party CSPA claim against Bob-Boyd on September 5, 2014.

{¶ 53} With respect to the trial court's failure to vacate its prior entries, our disposition of Mr. Ryan's first assignment of error is equally applicable here. Mrs. Ryan's first assignment of error is overruled.

{¶ 54} With respect to Mrs. Ryan's CSPA claim, the trial court correctly observed that a two-year statute of limitations applied, and Mrs. Ryan did not bring the modified claim seeking rescission until "nearly seven years after the date she claims she became aware of the improper classification of her [auto] purchase as for business rather than personal use." (Sept. 5, 2014 Decision at 7.) Because the claim sought a different remedy that extended the applicable statute of limitations, it was not "substantially the same" as

the earlier CSPA claim that she voluntarily dismissed, and Ohio's savings statute, R.C. 2305.19(A), does not apply to make the new claim timely. *Lanthorn v. Cincinnati Ins. Co.*, 4th Dist. No. 02CA743, 2002-Ohio-6798, ¶ 27. Mrs. Ryan's second assignment of error is overruled.

{¶ 55} In closing, Mr. Ryan's ten assignments of error and Mrs. Ryan's two assignments of error are overruled. The judgment of the Franklin County Court of Common Pleas is affirmed.

Judgment affirmed.

TYACK and BRUNNER, JJ., concur.

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