

IN THE COURT OF APPEALS OF TENNESSEE  
AT NASHVILLE  
Assigned on Briefs June 5, 2007

**R. ELAINE EASTERLING v. BRENDA E. EASTERLING**

**Appeal from the Circuit Court for Williamson County  
No. 04348 Russ Heldman, Judge**

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**No. M2006-00600-COA-R3-CV - Filed December 21, 2007**

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American Express card holder obtained a guest credit card for her future (now former) daughter-in-law, with the understanding that the future daughter-in-law would reimburse her for any charges. Substantial debt was incurred on the account, and the mother-in-law took out a home equity loan to pay down the debt. At trial, the mother-in-law's American Express records were admitted into evidence. The trial court found in favor of the mother-in-law. The daughter-in-law appeals, asserting that the American Express records were inadmissible hearsay and should have been excluded. The mother-in-law asserts that, even if the records were inadmissible hearsay, their admission was harmless error because she testified to the same information. The judgment of the trial court is affirmed.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed**

ANDY D. BENNETT, J., delivered the opinion of the court, in which PATRICIA J. COTTRELL and FRANK G. CLEMENT, JR., JJ., joined.

Fred C. Dance, Franklin, Tennessee, for the appellant, Brenda E. Easterling.

Dana C. McLendon, III, Franklin, Tennessee, for the appellee, R. Elaine Easterling.

**MEMORANDUM OPINION<sup>1</sup>**

**I. FACTUAL BACKGROUND**

The trial court issued a statement of the evidence, which both parties adopted in their appellate briefs. The trial court's statement of the evidence appears below:

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<sup>1</sup>Tenn. R. Ct. App. 10 states:

This Court, with the concurrence of all judges participating in the case, may affirm, reverse or modify the actions of the trial court by memorandum opinion when a formal opinion would have no precedential value. When a case is decided by memorandum opinion it shall be designated "MEMORANDUM OPINION," shall not be published, and shall not be cited or relied on for any reason in any unrelated case.

1. The matter came for a bench trial before the Honorable Russ Heldman on 31 May 2005.
2. Plaintiff testified at trial that she lives in Southfield, Michigan and has lived there for the last decade.
3. Plaintiff testified at the time of trial that she was unemployed and retired.
4. In approximately November, 2002, the plaintiff's son, Richard Easterling, telephoned her and asked Plaintiff if she would authorize American Express to issue a "guest card" for her account to his girlfriend (and later wife) Brenda Kiser (now Brenda Easterling).
5. Richard Easterling and Brenda Kiser married in December 2002.
6. Richard Easterling explained his request for a "guest card" to plaintiff, telling plaintiff that Brenda Easterling needed a credit card for work purposes but could not, because of bad credit, get one on her own.
7. Brenda Easterling later confirmed Richard Easterling's explanation and reiterated the request that Plaintiff cause American Express to issue a "guest card" to Brenda Easterling.
8. Plaintiff testified that Brenda Easterling agreed to pay the American Express bill charges that were incurred on the "guest card" and explained to plaintiff that Brenda Easterling would regularly submit reimbursement requests to her employer and then apply those reimbursements, and her salary, to pay the charges on the "guest card."
9. Plaintiff caused American Express to issue a "guest card" to defendant and defendant began to use the "guest card."
10. Plaintiff testified that she regularly paid off the American Express card account balance that she had incurred, and that Richard Easterling had paid \$3,000 to her in partial payment of the guest card charges.
11. Later, Plaintiff told defendant that plaintiff was going to take a \$32,000 loan on her home to pay down the outstanding balance on the American Express account. Plaintiff did take a \$32,000 loan on her home to pay down the American Express account.
12. At trial, plaintiff's counsel asked plaintiff if she knew how much was owed on the American Express card account after the \$32,000 was applied to pay down the account. Defendant's counsel objected on the basis of hearsay, and the objection was overruled. Plaintiff testified that the amount then owing was \$59,655.52.
13. Plaintiff then offered documentary exhibits to demonstrate the history of the account, including all the charges on the guest card, the payment of \$32,000 from the home equity loan, and the amount then owing. Defendant objected on the basis of hearsay and the objection was overruled and the documents were admitted as exhibits to the trial.
14. Plaintiff testified on cross examination that she and defendant had never had an explicit conversation about defendant repaying the \$32,000 home equity loan, but plaintiff did testify that the \$32,000 loan was used to pay down the guest card charges and that the \$59,655.52 balance owing was all attributable to the guest card.
15. Plaintiff testified that American Express had not sued her to collect the unpaid balance.

16. Plaintiff testified that American Express agents had intimated to her that they might or might not seek to hold her liable for the guest card charges.
17. Brenda Easterling testified that she and Richard Easterling discussed the fact that Brenda Easterling needed a credit card so that she could travel for her job, which required extensive travel, but that Brenda Easterling had bad credit and could not get a credit card in her own name.
18. Brenda Easterling testified that she and plaintiff did not have any discussions about paying the balance on the guest card.
19. Brenda Easterling testified that for many of the charges on the guest card, she sought and received reimbursement from her employer.
20. Brenda Easterling testified that she conveyed her reimbursement checks to her former husband, Richard Easterling, with the understanding that he would use the reimbursement and their collective income to pay the guest card charges.
21. Brenda Easterling testified that she had no knowledge of any \$32,000 home equity loan used to pay down plaintiff's American Express account and had made no agreement with plaintiff regarding the loan.
22. Brenda Easterling testified that she did not know that her husband had not paid off the guest card charges until they became estranged.
23. Brenda Easterling testified that she and Richard Easterling divorced and made no arrangements in their divorce for the payment of the plaintiff's guest card charges.
24. Brenda Easterling testified that many of the charges on the guest card were in fact charges that she had personally made and benefited [sic] from, and that others were charges she attributed to her former husband.
25. Brenda Easterling could not attribute any guest card charges to anyone other than herself or her former husband.

On June 8, 2005, the trial court entered judgment in favor of the plaintiff, Elaine Easterling, in the amount of \$93,500.00. The defendant, Brenda Easterling, filed a motion to alter or amend, arguing that the American Express records were inadmissible hearsay. Following a hearing on the matter, the trial court denied the motion.

The defendant has raised two issues on appeal: (1) whether the trial court erred in admitting the American Express bills into evidence, and (2) whether the admission of the American Express bills into evidence constitutes prejudicial error.

## **II. STANDARD OF REVIEW**

The trial court's findings of fact are reviewed "*de novo* upon the record of the trial court, accompanied by a presumption of the correctness of the finding, unless the preponderance of the evidence is otherwise. . . ." Tenn. R. App. P. 13(d). Review of a question of law is also *de novo*, but "with no presumption of correctness afforded to the conclusions of the court below." *King v. Pope*, 91 S.W.3d 314, 318 (Tenn. 2002).

In regard to the admissibility of evidence, the Supreme Court of Tennessee has stated:

Generally, the admissibility of evidence is within the sound discretion of the trial court. *Otis v. Cambridge Mut. Fire Ins. Co.*, 850 S.W.2d 439, 442 (Tenn. 1992). The trial court's decision to admit or exclude evidence will be overturned on appeal only where there is an abuse of discretion. *Id.* A trial court abuses its discretion "only when it 'applie[s] an incorrect legal standard, or reache[s] a decision which is against logic or reasoning that cause[s] an injustice to the party complaining.'" *Eldridge v. Eldridge*, 42 S.W.3d 82, 85 (Tenn. 2001) (quoting *State v. Shirley*, 6 S.W.3d 243, 247 (Tenn. 1999)).

*Mercer v. Vanderbilt Univ., Inc.*, 134 S.W.3d 121, 131 (Tenn. 2004).

### III. ANALYSIS

The defendant argues that the trial court's admittance of the American Express records into evidence was error and that such error was prejudicial because, without such records, the plaintiff "could not credibly prove the amount of the debt." Citing Rule 801 of the Tennessee Rules of Evidence<sup>2</sup>, the defendant asserts that the American Express records were inadmissible hearsay and that, even if one of the hearsay exceptions could have been applied to the records, the plaintiff did not properly authenticate and lay the proper foundation to admit the records.

The plaintiff argues that, even if the American Express records were inadmissible hearsay, the trial court still had ample evidence to sustain its ruling. Specifically, the plaintiff testified, prior to the admission of the American Express records, that she had taken out a \$32,000 home equity loan and applied the proceeds to the American Express bill; and that the balance remaining on the account thereafter was approximately \$60,000. Therefore, asserts the plaintiff, any subsequent erroneous admission of the American Express records was harmless error.

The American Express records at issue here are computer-generated statements of the plaintiff's account activity. The defendant argues that the plaintiff failed to lay a proper foundation for the admission of these records under the business records exception set forth in Tenn. R. Evid. 803(6).<sup>3</sup> It appears, however, that these records may represent the computer's "self-generated

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<sup>2</sup> Rule 801(c) of the Tennessee Rules of Evidence defines hearsay as "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted."

<sup>3</sup>Tenn. R. Evid. 803(6) provides that the following will not be excluded by the hearsay rule:

A memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinions, or diagnoses made at or near the time by or from information transmitted by a person with knowledge and a business duty to record or transmit if kept in the course of a regularly conducted business activity and if it was the regular practice of that business activity to make the memorandum, report, record or data compilation, all as shown by the testimony of the custodian or other qualified witness or by certification that complies with Rule 902(11) or a statute permitting certification, unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness. The term "business" as used in this paragraph includes business, institution,

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record of its operations,” rather than “computer stored human statements or assertions which have been retrieved from the computer.” *State v. Meeks*, 867 S.W.2d 361, 375 (Tenn. Crim. App. 1993) (quoting *State v. Armistead*, 432 So.2d 837, 839-840 (La. 1983)). There is Tennessee caselaw indicating that such self-generated computer records do not constitute hearsay and that their admissibility hinges upon the reliability of the computer system. *See Meeks*, 867 S.W.2d at 375-76; *State v. Hall*, 976 S.W.2d 121 (Tenn. Crim. App. 1998). In any case, the statement of the evidence in the record does not indicate that any type of foundation was laid for this evidence.

We have determined, however, that we need not decide the evidentiary issue presented since there is other evidence in the record to support the trial court’s decision – namely, the testimony of the plaintiff concerning the home loan and the remaining debt with American Express. While the transcript of the evidence states that the defendant objected to the plaintiff’s testimony regarding the remaining debt, the defendant does not argue on appeal that the plaintiff’s testimony was improperly admitted.

The trial court heard and evaluated the plaintiff’s testimony. It is an accepted principle that “the trial court is in the best position to assess the credibility of the witnesses; accordingly, such credibility determinations are entitled to great weight on appeal.” *Rice v. Rice*, 983 S.W.2d 680, 682 (Tenn. Ct. App. 1999). Thus, we give the trial court’s acceptance of the plaintiff’s testimony great weight. Even if the trial court’s admission of the American Express records was error, we conclude that it was harmless error because the plaintiff independently testified to the amounts owed; the American Express records further supported the plaintiff’s testimony.

#### IV. CONCLUSION

The judgment of the trial court is affirmed. Costs of the cause are taxed against the defendant.

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ANDY D. BENNETT, JUDGE

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<sup>3</sup>(...continued)

profession, occupation, and calling of every kind, whether or not conducted for profit.