

Affirmed and Opinion Filed May 30, 2018



**In The
Court of Appeals
Fifth District of Texas at Dallas**

No. 05-17-00212-CV

**KATHY WILBURN, Appellant
V.
GABRIELLE COLEMAN, Appellee**

**On Appeal from the County Court at Law No. 2
Dallas County, Texas
Trial Court Cause No. CC-16-05667-B**

MEMORANDUM OPINION

Before Justices Francis, Fillmore, and Whitehill
Opinion by Justice Whitehill

Kathy Wilburn, *pro se*, appeals the trial court's take-nothing judgment against her in a case she filed against Gabrielle Coleman to recover on an alleged debt. As discussed below, we affirm the trial court's judgment.

I. BACKGROUND

Wilburn and Coleman shared an apartment during a time when Coleman was involved with Wilburn's son. After Coleman moved out, Wilburn filed suit in justice of the peace court to recover on a \$900 promissory note and the value of certain property, including a handgun she alleged Coleman pawned. The JP court entered a \$1,500 judgment for Wilburn, and Coleman appealed *de novo* to the county court. After hearing witness testimony and admitting Wilburn's evidence, the trial court entered a take-nothing judgment on Wilburn's claim.

During the pendency of this appeal, Wilburn alleged that there were inaccuracies in the reporter's record. We abated the appeal and ordered the trial court to conduct a hearing on the matter. The trial court subsequently made findings of fact and conclusions of law about three inaccuracies in the record, none of which impact the substance of the appeal.¹ The appeal was then reinstated.

II. ANALYSIS

We construe Wilburn's issues to argue that (i) the evidence is factually insufficient to support the judgment and (ii) the trial court erred because it "excluded all exhibits."²

When evaluating the factual sufficiency of the evidence to support a finding, we consider all the evidence and will set aside the finding only if the evidence supporting the finding is so weak or so against the overwhelming weight of the evidence that the finding is clearly wrong and unjust. *See Cain v. Bain*, 709 S.W.2d 175, 176 (Tex. 1986).

Here, Wilburn testified that she loaned Coleman \$900 and Coleman signed a promissory note agreeing to repay that amount. She also testified that Coleman pawned Wilburn's handgun and several items of Wilburn's personal property were missing when Coleman moved out.

Conversely, Coleman admitted to signing the promissory note but said she never got the money. She said that she used her driver's license to help Wilburn's son pawn the gun because his license had been suspended. And she said she left the apartment with only her clothes.

In a bench trial, the trial court is the sole judge of the credibility of the witnesses, assigns the weight to be given their testimony, may accept or reject all or any part of their testimony, and

¹ Specifically, the court found: "1. There is an inaccuracy in the record on page 11, line 12 of the original transcript. Instead of "Ms. Wilburn" it should read "Ms. Coleman," 2. Additionally, there is an inaccuracy in the record on page 15, line 14-15 of the original transcript; instead of "the aggravated assault" it should read "for aggravated; 3. Additionally, there is an inaccuracy in the record on page 16, line 9 of the original transcript. Instead of "very marijuana habit" it should read "very bad marijuana habit;" and 4. Finally, the court finds no other inaccuracies in the record."

² Any other issues are forfeited for inadequate briefing. *See* TEX. R. APP. P. 38.1.

resolves any conflicts or inconsistencies in the testimony. *LaCroix v. Simpson*, 148 S.W.3d 731, 734 (Tex. App.—Dallas 2004, no pet.). This Court is not a fact finder and we may not pass upon the credibility of the witnesses or substitute our judgment for that of the trier of fact, even if a different answer could be reached upon review of the evidence. *See Rich v. Olah* (Tex. App.—Dallas 2013, no pet.).

Coleman said she never got the money, did not take any property, and was not the person responsible for pawning the gun. Although Wilburn’s version of the facts differed, the trial court was free to believe Coleman and not Wilburn. Therefore, we cannot conclude that the evidence is so weak or against the overwhelming weight of the evidence that the trial court’s finding is clearly wrong and unjust.

There is also nothing to suggest that the trial court abused its discretion by excluding evidence. *See Gharda USA, Inc. v. Control Solutions Inc.*, 464 S.W.3d 338, 347 (Tex. 2015) (abuse of discretion standard for evidentiary rulings). Wilburn does not identify any evidence that was allegedly offered and excluded, but instead argues that the trial court “excluded all exhibits.” The record, however, shows otherwise. Wilburn handed the trial judge six exhibits, and they were all admitted into evidence. We therefore cannot conclude the trial court abused its discretion by acting in an unreasonable or arbitrary manner, or without reference to any guiding rules and principles. *Downer v. Aquamarine Operators, Inc.*, 701 S.W.2d 238, 241–42 (Tex. 1985).

Wilburn’s issues are all resolved against her and the judgment of the trial court is affirmed.

/Bill Whitehill/

BILL WHITEHILL
JUSTICE



**Court of Appeals
Fifth District of Texas at Dallas**

JUDGMENT

KATHY WILBURN, Appellant

No. 05-17-00212-CV V.

GABRIELLE COLEMAN, Appellee

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No. 2, Dallas County, Texas

Trial Court Cause No. CC-16-05667-B.

Opinion delivered by Justice Whitehill.

Justices Francis and Fillmore participating.

In accordance with this Court's opinion of this date, the judgment of the trial court is **AFFIRMED**.

It is **ORDERED** that each party bear its own costs of this appeal.

Judgment entered May 30, 2018.