TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

NO. 03-22-00492-CV

Manika Henderson, Appellant

v.

Ronald W. Moomaw d/b/a R & B Equipment, Inc., Appellee

FROM THE COUNTY COURT AT LAW NO. 1 OF BELL COUNTY
NO. 22CCV00584, THE HONORABLE JEANNE PARKER, JUDGE PRESIDING

M E M O R A N D U M   O P I N I O N

Manika Henderson appeals from the county court's judgment rendered against her on the debt claim of Ronald W. Moomaw d/b/a R & B Equipment, Inc. For the reasons explained below, we will affirm the judgment.

Moomaw filed a suit in justice court against Henderson after she allegedly failed to pay him for repairs he made to her residential septic system. In her answer, Henderson claimed that Moomaw charged her for repairs and replacement parts but that the repair work was not completed, that her septic system was still not operating properly after the repairs, that Moomaw's technicians caused damage to her septic-tank caps, and that she had to hire a different company to fix the damage that Moomaw's crew had caused. After Henderson failed to appear for trial, Moomaw obtained a default judgment against Henderson, and Henderson filed a de novo appeal to the county court. Moomaw and Henderson testified at a bench trial before the

county court, after which that court rendered judgment against Henderson in the amount of $1,344. Henderson timely perfected appeal to this Court.

In her brief's section entitled "Issues Presented," Henderson, appearing pro se, does not clearly identify any issues or allege any errors made by the county court and instead makes an argumentative recitation of facts, concluding with an allegation that Moomaw breached his septic-maintenance contract with her by "disabling components" and an alarm that were in place to warn of septic problems.[1] *Cf.* Tex. R. App. P. 38.1 (listing requisites of briefs, including concise statement of issues presented for review). Although we construe pro se briefs liberally, pro se appellants are held to the same standards as appellants represented by counsel to avoid giving them an unfair advantage. *See Mansfield State Bank v. Cohn*, 573 S.W.2d 181, 184–85 (Tex. 1978). Reading Henderson's brief liberally, we glean from the other sections of her brief two main legal complaints: (1) the justice court erred in failing to "consider critical and supportive evidence" of her claim "prior to default judgment" and (2) the county court erred in rendering judgment in Moomaw's favor because Moomaw first breached the parties' service contract by disconnecting the septic alarm system, which caused her drains to get backed up and sewage puddles to form in her yard.

To the extent that in her first complaint Henderson is complaining about the default judgment rendered in justice court, that judgment was vacated when the county court

[1] The parties agreed at trial that, predating the repairs at issue, they had a written service contract pursuant to which Moomaw provided regular inspections of Henderson's septic system, as required by the county, and for which service Henderson paid an annual fee. The repairs at issue in this lawsuit are separate from that contract, and Henderson contends on appeal that her septic alarm had been sounding intermittently, and after several inspections by Moomaw's technicians under the service contract, the technicians disabled the alarm and later informed her about the need for repairs, which did not fall under the service contract and which are the subject of this lawsuit.

rendered its judgment, and therefore she presents nothing for this Court to review. *See Triple Crown Moving & Storage, LLC v. Ackerman*, 632 S.W.3d 626, 636 (Tex. App.—El Paso 2020, no pet.) (holding that because appeals from justice courts to county courts are de novo, neither county court nor appellate court has jurisdiction to review justice court's decision for alleged legal errors). However, if Henderson is complaining not of the justice court's failure to "consider" her evidence but of the county court's alleged failure, she does not specify which evidence the county court allegedly failed to consider. Furthermore, although the reporter's record reflects that Henderson presented some documents for the county court's review (by "hand[ing] documents to the Court Deputy"), it does not contain copies of those documents or any explanation of what they were. Apart from Henderson handing documents to the deputy, the record does not reflect any rulings by the trial court admitting or excluding the documents as evidence. Thus, to the extent that Henderson is complaining on appeal about the county court's failure to consider her evidence by excluding the documents she handed to the deputy, she has not preserved that issue for review by offering exhibits, obtaining a ruling from the county court (or objecting to the county court's refusal to rule), or making an offer of proof. *See* Tex. R. App. P. 33.1(a); Tex. R. Evid. 103(a)(2). We overrule Henderson's first issue.[2]

We next address Henderson's argument that Moomaw was not entitled to judgment on his claim because he (a) failed to adequately or completely perform the repairs he promised to perform and (b) first breached the septic-maintenance contract he had with her when

[2] Although Henderson attached several documents to her brief, including photographs of her septic system, Moomaw's work orders, and estimates from a different service company she allegedly hired after Moomaw terminated his maintenance contract with her, we cannot consider those documents in our review as they are not part of the record from the trial-court proceedings. *See Noble Expl., Inc. v. Nixon Drilling Co.*, 794 S.W.2d 589, 592 (Tex. App.—Austin 1990, no writ).

his technicians disabled the alarm on her septic system. Although Henderson appears to have placed this breach-of-contract counterclaim and excused-performance affirmative defense before the county court through her answer and had them tried by consent, the trial court's judgment against her reflects its implied ruling against her on the counterclaim and defense. We thus construe her true complaint to be one challenging the sufficiency of the evidence to support the trial court's judgment.

As to the adverse finding on which Henderson did not have the burden of proof—Moomaw's debt claim—to prevail on a legal-sufficiency challenge Henderson must demonstrate that no evidence supports the adverse finding, and to prevail on a factual-sufficiency challenge she must demonstrate that the evidence supporting the adverse finding is so weak as to make the judgment clearly wrong and manifestly unjust. *See Austin Tapas, LP v. Performance Food Grp., Inc.*, No. 03-18-00680-CV, 2019 WL 3486574, at *2 (Tex. App.—Austin Aug. 1, 2019, no pet.) (mem. op.). As to the adverse findings on which Henderson had the burden of proof—her counterclaim and affirmative defense—to prevail on appeal she must either demonstrate that the evidence establishes as a matter of law all vital facts in support of the issues (legal-sufficiency standard) or that the adverse findings are against the great weight and preponderance of the evidence (factual-sufficiency standard). *See Realtex Hous. Mgmt., LLC v. Villa Main Hous. Assocs., Ltd.*, No. 03-22-00104-CV, 2023 WL 8655279, at *5 (Tex. App.—Austin Dec. 15, 2023, no pet.) (mem. op.).

Moomaw testified that he completed the septic work on the original work order: replacing the water pump and "pumping out the system." He testified that he had seen the report from the company Henderson hired after he completed the work, and that company had not needed to redo his work. His charge for the services specified in the work order was $1,344, but

Henderson did not pay and instead requested additional work. Moomaw informed Henderson that he would perform the additional work after she paid the $1,344, but Henderson refused to pay, and he thereafter terminated his maintenance contract with her and filed this lawsuit.

Henderson in her testimony agreed that she owed Moomaw some amount of money, but she was not sure how much. She admitted that Moomaw replaced some parts on her system, but "the work was not completed and wasn't done correctly" and she had to have "another company come in and do the same thing that [Moomaw] stated that [he] did." She detailed some of the "issues" she had with Moomaw's work: "water above the ground"; broken "floater tabs," which prevented the floater from staying secured and requiring her to "put bricks on top of it to keep it down"; and "just a lot of [other] stuff." She stated that she has had the "same things going wrong with the septic" for her house since she bought it four years ago, and that she has paid already three times for the repairs that Moomaw performed, but still she has problems with her septic system, including wastewater settling on the ground above the septic system, which was still "not running properly."[3]

Thus, the evidence was conflicting, and the county-court judge—as factfinder at the bench trial—was empowered to find Moomaw's testimony that he completed the repairs and services specified on the work order at issue more credible than Henderson's testimony that Moomaw's technicians caused damage to her system and made incomplete repairs. *See Golden Eagle Archery, Inc. v. Jackson*, 116 S.W.3d 757, 761 (Tex. 2003) (noting that factfinder is sole judge of witnesses' credibility and weight to be given to their testimony). We may not pass upon the credibility of the witnesses or substitute our judgment for that of the factfinder. *George*

[3] Although in the factual sections of her brief Henderson alleges that Moomaw's technicians disabled her septic system's alarm or warning system, she did not testify about that allegation at trial.

Joseph Assets, LLC v. Chenevert, 557 S.W.3d 755, 765 (Tex. App.—Houston [14th Dist.] 2018, pet. denied). Applying the well-established standards of review, we conclude that the evidence is both legally and factually sufficient to support the judgment. *See Realtex Hous. Mgmt., LLC*, 2023 WL 8655279, at *5; *Austin Tapas, LP*, 2019 WL 3486574, at *2.

We accordingly affirm the trial court's judgment.

Thomas J. Baker, Justice

Before Justices Baker, Triana, and Kelly

Affirmed

Filed: April 24, 2024