

THIRD DIVISION
MARCH 12, 2014

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

No. 1-13-1405

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

ELFEGO REYES,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Cook County
)	
v.)	No. 13 M1 500041
)	
NANCY ROJAS,)	Honorable
)	Daniel J. Kubasiak,
Defendant-Appellee.)	Judge Presiding.

JUSTICE PUCINSKI delivered the judgment of the court.
Presiding Justice Hyman and Justice Mason concurred in the judgment.

ORDER

Held: Manifest weight of evidence presented at trial established that plaintiff was entitled to order of replevin for two vehicles in defendant's possession.

¶ 1 Plaintiff Elfego Reyes and defendant Nancy Rojas were in a relationship and lived together in plaintiff's home until they broke up in July 2012. Defendant moved out, but when she left she took two cars with her: a 2004 Dodge Caravan and a 2003 Saturn L200. Plaintiff

claimed that the vehicles belonged to him, but when he demanded that defendant return them, she failed to do so. Plaintiff then filed this lawsuit, seeking replevin of the vehicles or, alternatively, damages for conversion. After a trial, the circuit court ruled in favor of defendant. We reverse and remand.

¶ 2 The trial in this case was brief, and the only witnesses who testified were the parties. According to plaintiff, he purchased the Dodge in 2007, which was prior to the beginning of his relationship with defendant. Plaintiff later bought the Saturn in 2010. Plaintiff introduced copies of the vehicles' titles, registration, proof of insurance, and proof of purchase, all of which listed plaintiff as the purchaser or owner of the vehicle. The vehicle titles, however, reflected that the ownership of the vehicles had been transferred to defendant on August 2, 2012. Plaintiff noted that this was about a month after the parties broke up and defendant took the vehicles, and plaintiff testified that he never agreed to such a transfer. When he was shown a copy of the title, plaintiff stated that the signature on the assignment of title was not his and that the signature was a forgery. Plaintiff testified that he immediately reported the issue to the Illinois Secretary of State Police and filed a fraud complaint.

¶ 3 In contrast, defendant testified that she, not plaintiff, had paid the original dealer for both of the vehicles and made monthly finance payments on them in cash, though her testimony on this point is contradictory. When pressed for corroboration of her claim, defendant could not produce any documentation but then claimed that she had actually used checks to pay for the vehicles. While defendant insisted that she, not plaintiff, had made all payments on the vehicles, she conceded that the vehicles were titled to plaintiff. Defendant also maintained that she had not forged plaintiff's signature on the titles, but she was impeached on this point. Defendant had apparently testified in an unrelated criminal matter, and plaintiff's counsel introduced a copy of

the transcript in which defendant stated that she had signed the assignment of title document at plaintiff's direction. Yet at trial in this case, defendant claimed to have never made that statement and insisted that she had never signed the assignment documents at all.

¶ 4 We initially note that defendant has not filed a response brief, so we consider this appeal under the principles of *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128 (1976) (“[I]f the appellant's brief demonstrates [p]rima facie reversible error and the contentions of the brief find support in the record the judgment of the trial court may be reversed.”). On review following a bench trial, we will defer to the factual findings of the circuit court unless those findings are against the manifest weight of the evidence. See *Nokomis Quarry Co. v. Deitl*, 333 Ill. App. 3d 480, at 484 (2002). “A judgment is against the manifest weight of the evidence only when the opposite conclusion is apparent or when findings appear to be unreasonable, arbitrary, or not based on the evidence.” *Green v. Papa*, 2014 IL App (5th) 130029, ¶ 32.

¶ 5 Replevin is a statutory procedure that allows a plaintiff to regain custody of personal property that is wrongfully being held by another. See 735 ILCS 5/19-101(West 2008). “The primary purpose of the replevin statute is to test the right of possession of personal property and place the successful party in possession of the property.” *Carrol v. Curry*, 392 Ill. App. 3d 511, 514 (2009). “[T]he plaintiff bears the burden to allege and prove that he [or she] is lawfully entitled to possession of the property, that the defendant wrongfully detains the property and refuses to deliver the possession of the property to the plaintiff.” (Internal quotation marks omitted.) *Id.* Importantly, any consideration of fault is irrelevant in the context of a replevin action. See *id.* at 516-17. While equity may be a consideration, it has only been recognized in

limited circumstances where “allowing recovery would have sanctioned fraudulent conduct or resulted in unjust enrichment.” *Id.*

¶ 6 The evidence in this case overwhelmingly established that plaintiff was the legal owner of the vehicles when defendant took possession of them in July 2012. Defendant herself acknowledged that the titles were in plaintiff’s name. While there was some dispute over which party made the down payment and was responsible for paying the finance charges for the vehicles, that question is irrelevant to the issue of the vehicles’ legal ownership. It is true that such payments, if proven, might have some bearing on an unjust enrichment claim, but defendant did not bring any counterclaims against plaintiff in this case and so the issue is forfeited. *Cf. Nadhir v. Salomon*, 2011 IL App (1st) 110851, ¶¶ 37-40 (failure to raise counterclaim results in forfeiture of the issue). Moreover, while the circuit court heard some testimony regarding several collateral cases involving the parties, one of which apparently involved nonpayment of child support, apportionment of fault in this or any other matter is not relevant to a replevin action. See *id.* Based on all of the relevant evidence in the record, it cannot be disputed defendant had no right to take possession of the vehicles in July 2012.

¶ 7 The question is somewhat closer regarding whether the title to the vehicles was fraudulently transferred to defendant in August 2012. Plaintiff testified that he had neither signed the assignment of title nor given defendant permission to do so in his name, while defendant claimed that she had not forged plaintiff’s signature. The circuit court apparently chose to credit defendant on this issue, though the record is not entirely clear on the circuit court’s reasoning. We generally defer to the circuit court’s determination on the credibility of witnesses at a bench trial, given that “it is in the best position to observe the conduct and demeanor of the parties and witnesses.” *Best v. Best*, 223 Ill. 2d 342, 350 (2006). Yet in this

case there is no basis that we can see in the record for the circuit court's decision to credit defendant's testimony on the issue of the forgery. Although defendant claimed that she had never signed the title assignment, she was impeached on this point by her prior testimony in the unrelated criminal case. Moreover, even a casual comparison of plaintiff's purported signature on the assignment-of-title document in the record with his undisputedly authentic signature on the bill of sale for the same vehicles shows that the two look nothing alike. Finally, it appears that the circuit court improperly held certain points against plaintiff, including defendant's allegations that plaintiff was behind on child support payments and his refusal on the basis of his fifth amendment rights to answer certain questions about an unrelated criminal case. Neither topic is relevant to either a replevin action or the veracity of a witness and is therefore not a permissible basis for a credibility determination.

¶ 8 The circuit court's determination that plaintiff did not prove that his right to possession of the vehicles was superior to defendant's was against the manifest weight of the evidence. We therefore reverse the circuit court's judgment and remand for issuance of an order of replevin and any other proceedings required by the replevin statute. Plaintiff has not challenged the circuit court's ruling on his conversion claim, so we do not reach that issue. See Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013) (points not argued are forfeited).

¶ 9 Reversed and remanded with directions.