2016 IL App (5th) 140572-U

NO. 5-14-0572

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

FONZO FRITZ,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Bond County.
	)	
v.	)	No. 13-LM-37
	)	
C. ELLIOTT ENTERPRISES, INC., an Illinois Corporation; ELLIOTT TRUCK AND TIRE; and CHARLES ELLIOTT,	)	Honorable
	)	Ronald R. Slemer,
Defendants-Appellees.	)	Judge, presiding.

JUSTICE STEWART delivered the judgment of the court.
Presiding Justice Schwarm and Justice Cates concurred in the judgment.

ORDER

¶ 1 *Held*: The circuit court's judgment resolving claims and counterclaims stemming from an unpaid bill for automotive repairs and other expenses is affirmed.

¶ 2 This case stemmed from an unpaid bill for repairs performed upon a pickup truck and for other expenses. The plaintiff, Fonzo Fritz, filed a two-count complaint against the defendants, C. Elliott Enterprises, Inc., Elliott Truck and Tire, and Charles Elliott, seeking replevin of the pickup truck and monetary damages. The defendants answered the complaint and filed a counterclaim with three alternate counts, each seeking payment for repairs upon the truck, for storage of the truck, and for the plaintiff's stay in a motel.

The circuit court conducted a bench trial on the complaint and counterclaim and entered judgment in favor of the defendants and against the plaintiff. The plaintiff now appeals. Because the judgment is not against the manifest weight of the evidence, it is affirmed.

¶ 3 BACKGROUND

¶ 4 This factual summary is derived exclusively from the record on appeal. The action below commenced on September 27, 2013, when the plaintiff filed a *pro se* two-count complaint against the defendants. Count I of the complaint was labeled "Replevin" and sought return of a Ford F350 pickup truck. Count II of the complaint was labeled "Conversion" and sought compensatory damages in the amount of $146,700, including, *inter alia*, $21,000 for the value of the truck at the time the defendants took wrongful possession of it and $96,000 in lost income for the plaintiff. The plaintiff alleged that the defendants negligently performed repairs on his truck and performed unnecessary and unauthorized repairs, destroying the truck's engine in the process, and due to the plaintiff's reasonable refusal to pay the defendants' bill, the defendants had wrongfully placed a lien on the truck and were wrongfully detaining the truck pursuant to that lien, thus depriving the plaintiff of his lawful entitlement to possession. The plaintiff also alleged that the defendants had violated several provisions of the Automotive Repair Act (815 ILCS 306/1 *et seq.* (West 2012)) by failing to provide written estimated prices for labor and parts, by making repairs without the plaintiff's authorization, etc., and that these violations barred the defendants from asserting the lien that they, in fact, had asserted upon the truck.

¶ 5 On October 29, 2013, the parties appeared before the circuit court. The plaintiff requested an immediate replevin order, but the court denied the request. However, the defendants agreed to stop charging any additional daily fees for storage of the truck.

¶ 6 On November 13, 2013, the defendants filed an answer with three affirmative defenses, as well as a counterclaim. In their answer, the defendants denied all of the material allegations of the complaint. The defendants' affirmative defenses were as follows: (1) on September 6, 2013, the defendants placed a lien on the truck, pursuant to the Labor and Storage Lien Act (770 ILCS 45/0.01 *et seq.* (West 2012)), and their interest in the truck was superior to the plaintiff's interest, under the terms of that same act; (2) government records did not name the plaintiff as an owner of the truck; and (3) the plaintiff himself caused the damage to the truck's engine by negligently "depositing products" into it.

¶ 7 In their counterclaim, the defendants pleaded three alternative grounds for recovery. Count I of the counterclaim sought foreclosure of the labor and storage lien on the truck. Count II sought recovery based upon breach of an oral contract. Count III sought recovery on the theory of *quantum meruit*. In each of the three counts, the defendants sought damages in the amount of $15,582.07, plus costs. The defendants alleged that they, at the request of the plaintiff, had towed the truck, had performed repairs upon the truck, and had provided the plaintiff with a hotel room during the period the repairs were being performed, but the plaintiff refused to pay the bill. The defendants also alleged that they had been storing the truck on their property since ending their repair work.

¶ 8 On June 19, 2014, the plaintiff filed a *pro se* answer to the defendants' counterclaims. He essentially denied all of the counterclaims' material allegations. He also repeated his accusations that the defendants had violated various sections of the Automotive Repair Act.

¶ 9 On October 1, 2014, the plaintiff's complaint and the defendants' counterclaim proceeded together to a bench trial. The plaintiff continued to act as his own attorney.

¶ 10 At trial, Charles Elliott testified that he was the manager of Elliott Truck and Tire Service in Mulberry Grove, Illinois. He first met the plaintiff on October 10, 2012, during a service call, when the plaintiff's truck was broken down in Vandalia. The truck lacked oil pressure, and therefore Elliott towed it to his shop. At some point, the plaintiff told Elliott that he had been using "stop leak" in the truck and that the truck's EGR cooler was broken. Once the truck was at the shop, Elliott asked Joshua Scott, a mechanic with whom Elliott frequently consulted, to examine the truck and diagnose the problem. Scott agreed with Elliott's diagnosis that the high pressure oil pump was not functioning. One of Elliott's mechanics at the shop, Brandon Buatte, performed the repairs necessary to fix the truck's oil system, along with some other minor repairs. This work was completed on October 25, 2012. The bill came to $5,447.27, which included $626 for the plaintiff's 13-day stay in a local motel, which Elliott had arranged. The truck was functional at that point, but its engine still had unresolved problems. Elliott informed the plaintiff that needle bearings from the engine's camshaft had been found in the oil pan, and that this discovery evidenced engine problems that definitely would need to be fixed at some point. The plaintiff elected not to have the engine repairs performed at that time. At trial,

Elliott specifically denied that the plaintiff asked him at that time to fix the engine problems. The plaintiff paid the $5,447.27 bill and drove off in the truck.

¶ 11 Elliott further testified that during the night, or perhaps the next day, he received a telephone call from the plaintiff, who reported that his truck had broken down in the vicinity of Champaign, Illinois. Elliott drove up there and towed the truck back to his shop in Mulberry Grove for further repairs. Elliott again contacted Joshua Scott for a consultation. Scott determined that the truck's engine had become "gummed up" and its valves had become "stuck," a problem completely unrelated to the earlier oil-pressure problem. The plaintiff's use of stop leak, according to Elliott, was the cause of the gumming up of the engine. A procedure called an "EGR delete" was performed. Elliott or Buatte informed the plaintiff that in order to solve the "gumming up" problem, and to put the truck in working order, the engine would need to be removed from the truck, the cylinder heads would need to be "redone," and the camshaft would need to be replaced, all at considerable expense. The plaintiff replied that he did not have any more money for repairs, and that he did not want to have the engine repaired or replaced. No further work was performed on the truck.

¶ 12 At trial, Elliott identified the bill for the second round of repairs. Dated November 7, 2012, this bill was for $3,157.07, which included a tow charge of $300, a parts charge of $1,187.07, and $1,670 for a motel room; there was no charge for labor. Elliott also identified a bill dated June 10, 2013, in the amount of $7,525, for Elliott's storage of the truck for 215 days, commencing November 7, 2012, at a rate of $35 per day.

¶ 13 Elliott testified that he sought damages of $15,582.07, plus costs of $210 in filing fees and $14.34 in UPS fees for service of process. Damages included the second repair bill for $3,157.07 and vehicle storage fees, at $35 per day, for the days he stored the pickup truck, up to October 29, 2013, the date of a court hearing at which the parties appeared and at which Elliott agreed not to add any additional daily storage fees. Elliott acknowledged that he had placed a lien on the plaintiff's truck and that he was asking that the lien be foreclosed upon and that a sheriff's sale be permitted if the plaintiff did not pay the damages within 15 days after judgment.

¶ 14 Joshua Scott, called as a witness on behalf of Elliott, testified both as an occurrence witness and as an expert in automotive and diesel repair. Scott, though never an employee of Charles Elliott, frequently consulted for Elliott, diagnosing problems and recommending fixes for vehicles at Elliott's shop for repair. In October 2012, Scott examined the plaintiff's Ford F350 pickup truck and determined that it "wasn't building high pressure oil." Scott suggested a course of action for repairing the oil system. Scott testified that he told the plaintiff by telephone that the camshaft needed to be replaced. Scott also mentioned to Elliott that the truck's engine's camshaft needed to be replaced and that he owned a used camshaft that would suffice, but the camshaft matter was not pursued any further.

¶ 15 Scott received another telephone call from Elliott's shop after the plaintiff's truck stopped running near Champaign. Scott examined the truck again. Its oil system was fine. However, when Scott pulled the EGR valve out of the engine, he saw that the engine was "all gummed up" with a thick substance throughout. This engine problem

was completely unrelated to the earlier oil-pressure problem, Scott opined. Scott spoke by telephone with the plaintiff, who stated that he had been using "stop leak" in his truck. Stop leak, Scott explained at trial, is a product marketed as a way to plug leaks in an engine's EGR cooler, but it takes on the consistency of mud when it comes into contact with water and heat, causing a "gummy mess" in diesel engines such as the plaintiff's. A proper fix of this problem, according to Scott, would involve either cleaning out the engine or replacing the engine; a third, and far cheaper, approach is to perform an "EGR delete" in order to get the engine running, and then use intake cleaner to clean the engine without taking it apart. However, there is only "a 50/50 shot" that an EGR delete will succeed in getting an engine running. Scott recommended the "EGR delete" procedure to the plaintiff. At trial, Scott examined the November 7, 2012, invoice from Elliott's shop and testified that its entries were consistent with the problem he had diagnosed and with his recommendation for an EGR delete.

¶ 16 The plaintiff's wife, Linda Fritz, testified that she was present when Elliott and Buatte arrived for the service call in Vandalia. At that time, she heard the plaintiff tell them that he had been having trouble with his EGR system and that he wanted that problem fixed. On the way to Elliott's shop, Elliott told the plaintiff that he could perform a "bypass" of the EGR cooler, and the plaintiff replied, "whatever you have to do, I want it done." In the days afterward, while the truck was at Elliott's shop, Elliott personnel assured the plaintiff that they would perform the "bypass" and that they would install a camshaft they intended to obtain from an acquaintance.

¶ 17 The plaintiff testified that at the time he first encountered Elliott during the service call in Vandalia, he informed Elliott that his truck's EGR cooler had been leaking. He also informed Elliott that he had used a product called "stop leak." The plaintiff had used the stop leak in order to plug a radiator leak, and it apparently worked, but the plaintiff knew all along that he would need to take the truck to a mechanic for a proper fix of the leak. As Elliott drove the plaintiff from Vandalia to Elliott's shop, Elliott told him that a "bypass" could be installed in order to solve the EGR cooler problem, at a cost of approximately $700, and the plaintiff immediately instructed Elliott to perform the bypass.

¶ 18 Sometime later, the plaintiff received a telephone call from Elliott. The plaintiff asked Elliott whether he had performed the bypass on the EGR cooler, and Elliott replied that he "believed" the EGR cooler problem had been fixed. When the plaintiff went to Elliott's shop to pay the bill, Elliott told the plaintiff, "well, I guess we didn't fix it." According to the plaintiff at trial, these conversations established that Elliott, from the start of his dealings with the plaintiff, was aware of the EGR cooler problem and of the plaintiff's prior use of stop leak. The plaintiff was happy to have his truck back in his possession. He signed the invoice, but he neither examined it nor was given a copy of it.

¶ 19 The plaintiff drove the truck back to the motel where he had been staying for the several days that the truck was being repaired at Elliott's shop. The truck's engine light was on. The plaintiff drove back to the shop and asked Elliott about the engine light, and Elliott responded that it was "nothing." According to the plaintiff, Elliott never gave any

indication that he had done only enough to permit the truck to "get down the road," and he never stated that the truck would need additional work.

¶ 20 The plaintiff further testified that when his truck broke down again, north of Effingham, and was towed back to Elliott's shop, the plaintiff informed Brandon Buatte that a clicking sound had been emanating from the truck's engine. The plaintiff asserted that Buatte responded that the clicking sound was due to the camshaft that he had installed. The plaintiff claimed he had thought all along that Elliott's shop had installed a camshaft, and he was shocked to hear at trial that in fact a camshaft had not been installed. The plaintiff orally authorized additional repairs.

¶ 21 The plaintiff noted that the November 2012 bill for the second round of repairs included charges for a new starter and two batteries. According to the plaintiff, the truck's old starter had worked fine, and one of the truck's old batteries was less than one year old and had a three-year warranty. The plaintiff asserted that he did not authorize installing a new starter or new batteries. He testified that he never paid for the second round of repairs, for the simple reason that Elliott never fixed the engine and the truck did not run.

¶ 22 The plaintiff further testified that Elliott never provided the plaintiff with a written estimate for repairs, never presented him with a written waiver of the right to receive written estimates, never gave him a date by which the work would be completed, and never gave him an invoice, and the plaintiff never gave written authorization for any repairs. According to the plaintiff, these omissions constituted violations of various sections of the Illinois Automotive Repair Act, and these violations precluded Elliott

from lawfully placing a lien on the truck, but Elliott effected the lien anyway. Elliott told the plaintiff that the truck would be put in storage, and he also advised that a storage fee would be charged, but he never stated what the charge would be and he never gave the plaintiff any writing about the storage fee. With his truck in storage, the plaintiff was unable to earn money at his occupation, transporting recreational vehicles.

¶ 23 Brandon Buatte testified that he was the mechanic who worked on the plaintiff's truck during the first round of repairs at Elliott's shop. Buatte recalled that the truck's problem was a lack of oil pressure, which prevented the truck from running. He did not remember the plaintiff's inquiring at that time about the truck's EGR cooler or whether a new EGR cooler could be installed.

¶ 24 The court entered judgment on October 24, 2014, finding in favor of Elliott and against Fritz on both the plaintiff's complaint and the defendants' counterclaim, and awarding $15,806.41 in damages, payable within 15 days of the order, and authorizing a sheriff's sale of the truck if not paid within that time period.

¶ 25 The plaintiff filed a notice of appeal on November 21, 2014. A sheriff's report of sale, filed with the circuit court on January 8, 2015, indicated that the truck was sold at a sheriff's sale on December 23, 2014, to C. Elliott Enterprises, Inc., for $500. On January 16, 2015, the circuit court confirmed the sale and entered a deficiency judgment against the plaintiff for $15,306.41.

¶ 26 ANALYSIS

¶ 27 Continuing to act as his own attorney, the plaintiff has presented this court with three arguments: (1) "The trial court erred by ignoring defendant/appelles' [*sic*] multiple

violations of the Illinois Automotive Repair Act." (2) "The trial court erred in awarding damages for storage charges." (3) "The trial court erred in admitting photographic evidence without proper foundation." Unfortunately for the plaintiff's cause, he has presented these arguments in an appellant's brief that falls short of what is required.

¶ 28 The content of an appellant's brief is governed by Supreme Court Rule 341(h) (Ill. S. Ct. R. 341(h) (eff. Feb. 6, 2013)). Every appellant, even a *pro se* appellant, must comply with the requirements of Rule 341(h). *Biggs v. Spader*, 411 Ill. 42, 44-46 (1951), *cert. denied*, 343 U.S. 956 (1952). The plaintiff has failed to comply.

¶ 29 Rule 341(h)(6) specifies that an appellant's brief must include a statement of facts. Ill. S. Ct. R. 341(h)(6) (eff. Feb. 6, 2013). The statement of facts "shall contain the facts necessary to an understanding of the case, stated accurately and fairly without argument or comment, and with appropriate reference to the pages of the record on appeal, ***, or to the pages of the abstract, ***." *Id.* Here, the plaintiff included in his appellant's brief a section labeled "Statement of Facts", but his compliance with Rule 341(h)(6) stopped there. The statement of facts is considerably less than two pages long, and it is not sufficient to allow for an understanding of this case. The statement of facts lacks any description of the parties' pleadings or the claims raised therein. It lacks any description of the procedural history of the case. It lacks any true recitation or summary of the testimony and other evidence presented at trial. It also lacks any reference to the pages of the record or of the abstract. In addition, it contains criticisms of the circuit court's handling of the case. Such a "statement of facts" does not allow for meaningful review. A reviewing court is "within its rights to dismiss [an] appeal for failure to provide a

complete statement of facts." *Hall v. Naper Gold Hospitality LLC*, 2012 IL App (2d) 111151, ¶ 9.

¶ 30 Rule 341(h)(3) requires an appellant to include "a concise statement of the applicable standard of review for each issue [he raises], with citation to authority, either in the discussion of the issue in the argument or under a separate heading placed before the discussion in the argument." Ill. S. Ct. R. 341(h)(3) (eff. Feb. 6, 2013). As previously mentioned, the plaintiff has presented three issues for review. However, for the first two of these three issues, the plaintiff has not suggested any standard of review.

¶ 31 Rule 341(h)(7) demands that the argument section of an appellant's brief contain "the contentions of the appellant and the reasons therefor, with citation of the authorities and the pages of the record relied on." Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013). Points not argued in the appellant's brief are waived. *Id.* Under this rule, a reviewing court is entitled to have issues clearly defined, with "cohesive arguments" presented and pertinent authority cited. *Obert v. Saville*, 253 Ill. App. 3d 677, 682 (1993). An appellant forfeits any contention that is not supported by argument or by citation to authority. *Id.*

¶ 32 In his first argument, the plaintiff asserts that the trial evidence showed that the defendants had violated sections 15, 50, and 60 of the Automotive Repair Act (815 ILCS 306/15, 50, 60 (West 2012)), which require motor vehicle repair facilities to provide consumers with written estimated prices for labor and parts, to provide consumers with itemized invoices, and to post signs describing various consumer rights. However, the plaintiff does not explain the significance of these Automotive Repair Act violations for his case, or how these violations might justify this court's disturbing the judgment below.

"A reviewing court is entitled to have the issues clearly defined with pertinent authority cited and is not simply a depository into which the appealing party may dump the burden of argument and research." *Pecora v. Szabo*, 109 Ill. App. 3d 824, 825-26 (1982). The plaintiff has forfeited his first argument.

¶ 33 The plaintiff's second argument is that the trial court erred in awarding damages for storage fees. This argument is less than two pages in length. The first two-thirds of the argument consists of block quotes from the decision in *Mobley v. TramCo Transmission, Inc.*, 2014 IL App (1st) 122123, from the Labor and Storage Lien Act (770 ILCS 45/0.01 *et seq.* (West 2012)), and from the Automotive Repair Act (815 ILCS 306/1 *et seq.* (West 2012)). Following the block quotes are three short paragraphs, the last of which reads, in its entirety, "Upon the facts and the Statute, the Trial Court erred in awarding Storage Fees." These three short paragraphs do not include any citation to the record on appeal, and they do not contain any serious attempt to relate the material in the block quotes to the specific case on appeal. In other words, these three paragraphs fail to provide a cohesive legal argument. The plaintiff has forfeited his second argument.

¶ 34 The plaintiff's third argument is that the circuit court erred in admitting into evidence a photograph of a sign that read, "Storage Fee $35 Per Day." Unlike the first two arguments, this third argument includes an applicable standard of review. The plaintiff correctly states that the admission of photographic evidence is generally within the sound discretion of the trial court, and the trial court's determination will not be reversed absent an abuse of that discretion. See, *e.g.*, *Schaffner v. Chicago & North*

Western Transportation Co., 129 Ill. 2d 1, 18-19 (1989). However, the defendant is in no position to present this argument on appeal. The photograph in question was defense exhibit 8. It was one of nine defense exhibits offered into evidence. When the court asked the plaintiff whether he had any objection to the admission of defense exhibits 1 through 9, the plaintiff answered, "No." Because the plaintiff did not object at trial to the admission of the photograph, and did not mention the alleged error in any posttrial motion, he cannot now argue that its admission was erroneous. See, *e.g.*, *Webber v. Wight & Co.*, 368 Ill. App. 3d 1007, 1027 (2006) (to preserve an issue for appellate review, a party must object contemporaneously at trial and in a written posttrial motion).

¶ 35 Despite the severe problems with the appellant's brief, this court has examined the record on appeal and has evaluated the judgment. Because this appeal is from a judgment entered by the circuit court after a bench trial, this court will not disturb the judgment unless it is against the manifest weight of the evidence. See *Northwestern Memorial Hospital v. Sharif*, 2014 IL App (1st) 133008, ¶ 25. "A judgment is against the manifest weight of the evidence when it appears from the record that the judgment is arbitrary, unreasonable, not based on evidence, or the opposite conclusion is apparent." *Id.* As long as there is sufficient evidence to support the judgment, the judgment must be affirmed. *Id.* An award of damages is not against the manifest weight of the evidence if there is an adequate basis in the record to support the trial court's determination of damages. *Schatz v. Abbott Laboratories, Inc.*, 51 Ill. 2d 143, 147 (1972). In order to overturn an award of damages, a reviewing court must find that the trial court either

ignored the evidence or that its measure of damages was erroneous as a matter of law. *MBC, Inc. v. Space Center Minnesota, Inc.*, 177 Ill. App. 3d 226, 234 (1988).

¶ 36 The trier of fact has the burden of determining the weight of the evidence and deciding the credibility of the witnesses on controverted questions of fact. *Chambers v. Rush-Presbyterian-St. Luke's Medical Center*, 155 Ill. App. 3d 458, 466 (1987).

¶ 37 In this case, the detailed testimonies of Charles Elliott and Joshua Scott, described *supra*, were sufficient to support the judgment. In short, Elliott and Scott described a situation in which the plaintiff called upon Elliott to fix his pickup truck after it broke down near Champaign. The problem lay in the engine, which had been "gummed up" due to the plaintiff's use of a product called "stop leak." Elliott tried to fix the problem with a relatively inexpensive procedure called an "EGR bypass," but this approach did not work. At that point, it was necessary to clean out or replace the engine, but the plaintiff declined to authorize either of these expensive fixes. Work on the truck stopped at that point. When the plaintiff refused to pay the bill for repairs that had been performed and for a tow and a motel stay, Elliott placed a lien on the truck, stored the truck on his premises, and charged a daily storage fee of $35 from November 7, 2012, to October 29, 2013. If this testimony was believed by the trier of fact, and apparently it was, it provided an adequate basis to support the judgment and the determination of damages. Accordingly, the judgment of the circuit court is affirmed.

¶ 38 Affirmed.