

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR GRAND TRAVERSE COUNTY

KENNETH W. MARTIN,

Plaintiff/Appellee,

v

Case No. 07-25907-AV
HON. PHILIP E. RODGERS, JR.

HENRY A. HUSTED III,

Defendant/Appellant.

Kenneth W. Martin
Plaintiff/Appellee in Pro Per

Matthew C. Connolly (P66456)
Attorney for Defendant/Appellant

DECISION ON APPEAL

This is an appeal from a judgment of the 86th District Court. The Plaintiff/Appellee and his wife were employees of the Defendant/Appellant and his business A-1 Professional Tree Service. They both filed small claims actions against the Defendant/Appellant that were removed by the Defendant/Appellant to the general civil division. The cases were consolidated and tried on January 23, 2007 before the Court.

The issues that were tried were for payment on insufficient funds payroll checks, bank fees incurred, unpaid wages for hours worked, and damage to the Plaintiff's truck that was used on the job. Following the trial, the District Court found in favor of the Plaintiffs on all of the issues that were tried.

The Defendant/Appellant filed a Claim of Appeal. He appealed the District Court's ruling on all issues. On July 30, 2007, this Court heard the oral arguments and denied the appeal on the issue of the insufficient funds payroll checks, granted the appeal on the issue of damage to

the truck to the extent that the award exceeded the \$500 Plaintiff/Appellant could have recovered for a "mini" tort, and took the issue of the unpaid wages for hours worked under advisement.

The Court has now thoroughly reviewed the file, including the trial transcript, as well as the Defendant/Appellant's brief on appeal and issues this written decision. For the reasons stated herein, the District Court's ruling on this issue is affirmed.

When ruling on this issue, the District Court well summarized the evidence that had been presented and stated the reasons for his ruling, as follows:

With respect to the wages, again, I've got to find by a preponderance of the evidence to find for the Plaintiff that they are owed this money and Mrs. Martin was the record keeper.

She has the records. She's gone over the records and Mr. Connolly makes up the point to say, "Well why did they wait until after they left to say they owed them the money?" But her testimony clearly was that she didn't.

She had talked to Mr. Husted a number of times and in the past there had been a number of problems where they didn't get paid and Mr. Husted always said, "I'll take care of it."

And he always did so there was no--for her to say, "I wasn't paid. I'm going to file a lawsuit," she relied on the statements that he made, "Hey, we'll take care of it," because he always did take care of it.

But the records that have been brought to court--and I haven't gone over them--they have been made available to use and it's pretty clear that from Mrs. Martin's calculations that they were shorted on that money so I'm going to rule in favor of Mrs. Martin for the \$945 and Mr. Martin for [\$]2,241.

MR. CONNOLLY: Your Honor, I'm just going to have to ask, without looking at the records how can the Court determine those are the right numbers?

THE COURT: She told me.

MR. CONNOLLY: Well--

THE COURT: We had a chance to look at them. She told me she's been through them and I believed her. I mean, I think she knows what she's talking about. And clearly there was a problem with the pay situation in the company because somehow this record keeping was developed because foreman indicated, "Yeah, there'd been problems in the past and people would come in and say, 'Yeah, this isn't right.' So what did we do? We created a system to do it."

And it sounds like Ms. Martin created that system and she documented it, she went through the figures, I'm taking her word for it. I believe her.

MR. CONNOLLY: I understand, you Honor, but she also testified that she sat down with the foreman using that and that's what they used to submit the time slips with so those numbers were the ones submitted, your Honor. How can those be damages now? I don't understand how that's possible.

THE COURT: What she says is that the numbers from the records did not result in the same numbers when the checks were written and the foreman would see that, whoever wrote the checks would know that, but all I can say is I'm satisfied by a preponderance of the evidence that the time worked as reflected by the company records was not paid and that's all I can go by. [TT at 162-163].

It is clear from this excerpt from the trial transcript that the District Court Judge, the trier of the facts, carefully assessed the credibility of the witnesses and believed the Plaintiff/Appellant.

This Court reviews the findings of fact in a bench trial for clear error. *Alan Custom Homes, Inc v Krol*, 256 Mich App 505, 512; 667 NW2d 379 (2003). A finding is clearly erroneous when, after reviewing the entire record, this Court is left with a definite and firm conviction that a mistake has been made. *Id.* The clear error standard is highly deferential to the trial court and requires that regard be given to the trial court's special opportunity to judge credibility. MCR 2.613(C); *People v McSwain*, 259 Mich App 654, 683; 676 NW2d 236 (2003). This Court may not reverse the findings of the trier of fact simply because it is convinced that it would have decided the case differently. *Beason v Beason*, 435 Mich 791, 803; 460 NW2d 207 (1990), citing *Anderson v Bessemer City*, 470 US 564, 573-574; 105 S Ct 1504; 84 L Ed 2d 518 (1985). On the contrary, if, on the record as a whole, the trial court's account of the evidence is plausible, this Court may not reverse. *Beason, supra* at 803. However, this Court will give less deference to the factual findings of trial judges than to the factual findings of juries and will not tacitly endorse obvious errors under the guise of deference. *McSwain, supra* at 682-683.

Therefore, this Court will not second guess the credibility determination of the District Court. In fact, the Court agrees with his decision. Based on the record, the District Court's account of the evidence is accurate and compelling.

CONCLUSION

The District Court's ruling on the issue of unpaid wages for hours worked is affirmed.
This Decision resolves the last pending claim and closes the cases.



HONORABLE PHILIP E. RODGERS, JR.
Circuit Court Judge

Dated: 8/22/07