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NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2016-CA-001290-MR

BENNIE STANLEY — APPELLANT

v.

APPEAL FROM BELL CIRCUIT COURT
HONORABLE ROBERT COSTANZO, JUDGE
ACTION NO. 15-CI-00038

DEAN KNUCKLES — APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: JONES, NICKELL, AND TAYLOR, JUDGES.

JONES, JUDGE: Appellant, Bennie Stanley, brings this appeal challenging the Bell Circuit Court's Findings of Fact, Conclusions of Law, and Judgment, which awarded Appellee, Dean Knuckles, $19,402.22 in damages on claims of trespass to chattel and trespass to personal property. After review of the record and applicable law, we affirm.

I. BACKGROUND

Until the events giving rise to this litigation occurred, Bennie Stanley ("Bennie") and Dean Knuckles ("Dean") had been close friends for approximately forty years. Both are manual laborers – Bennie being in the asphalt/concrete business and Dean being in the construction business. Sometime in the winter of 2009-2010, Dean was at an estate sale in Tennessee where he saw a paver, roller, and broom attachment (collectively, the "Equipment") up for auction. Dean contacted Bennie to seek his opinion on the value of the Equipment and to see if Bennie might be interested in it. The parties disagree as to what estimate Bennie gave. Bennie testified that he told Dean the Equipment would be worth around $18,000-$20,000, perhaps $25,000 if in good condition. Dean testified that Bennie told him the Equipment was worth about $80,000. Dean ended up purchasing the Equipment that day and invited Bennie to come to his property in Arjay, Kentucky, to inspect it and see if he might be interested in purchasing it.[1]

Both parties agree that Bennie came to Dean's property to inspect the Equipment and used the Equipment to help Dean asphalt his driveway. After this point, however, the parties' accounts of what occurred diverge. Bennie alleges that, while they did use the Equipment to pave Dean's driveway, the Equipment was in poor condition and lacked a heater, torch, and other mechanisms necessary to do the job efficiently. Nonetheless, Bennie stated that he still planned on

[1] The parties also dispute how much Dean paid for the Equipment at the estate sale. Bennie testified that Dean told him he paid $24,100 for it. Dean testified that he purchased the Equipment for $35,000. Neither party offered proof of the sale at trial.

purchasing the Equipment from Dean, to help him out as a friend, for about $18,000. Once the parties had loaded the Equipment onto Bennie's trailer, however, Bennie stated that Dean's secretary came out with a scrap of paper indicating that Dean was seeking $47,000 for the sale of the Equipment. Bennie rejected this offer. At this point, Dean told him not to unload the Equipment, but to take it to Florida with him and try to sell it at an auction there. Bennie did take the Equipment with him to Florida, where he states he was unable to sell it. Bennie further alleges that he took the Equipment to a repair shop in Florida to see about getting it fixed. He did not do so, however, as the price quoted to him for repair was around $16,000. Bennie testified that he never used the Equipment on any paving jobs.

Dean contends that the Equipment was in good shape and worked well when he and Bennie used it to pave his driveway. He further contends that the parties made an oral agreement where Bennie would purchase the Equipment from him for $65,000. Dean instructed Bennie to take the Equipment back to Florida with him, where Bennie worked laying asphalt in the winter months. Dean alleges that the parties agreed that every time Bennie used the Equipment on a job, he would pay Dean half of his gross profits for that job until the $65,000 purchase price was paid in full.

When Bennie returned to Kentucky, he brought the Equipment with him and took it to his residence in Lancaster, Kentucky. Around this time, the parties had a falling-out when Bennie discovered that Dean had only paid $24,100

for the Equipment, but had tried to sell it to him for substantially more. Dean testified that he attempted to contact Bennie on numerous occasions – either by telephone or by driving to Bennie's home – to try and get the Equipment back from him. Dean stated that Bennie would never return his phone calls, but that he saw the Equipment in Bennie's yard on at least two occasions and that both times it was loaded onto a trailer and in a different spot, leading Dean to believe that Bennie had been using it. Bennie was only able to recall one instance where Dean had contacted him to retrieve the Equipment. Bennie stated that he told Dean that he could come get the Equipment from him if he paid the amount he believed he was owed for paving Dean's driveway. Bennie stated that Dean never made another formal request or attempt to retrieve the Equipment.

On January 30, 2015, Dean filed a complaint against Bennie in Bell Circuit Court. Therein, Dean alleged breach of contract, trespass to personal property, trespass to chattel, conversion, and common law fraud. Shortly after Bennie was served with summons, Bennie's nephew contacted Dean and told him that the Equipment was at Brandeis Equipment in Lexington, Kentucky. Bennie testified that he did not take the Equipment there, but acknowledged that once he realized the Equipment was at Brandeis he went and removed a heater that he had attached to one of the pieces. Dean was able to retrieve the Equipment from Brandeis after paying $1,809.64 to have it released. The invoice from Brandeis, which was entered into evidence during trial, indicates that the $1,809.64 included maintenance and parts used to install a new fuel tube, new solenoid, and new fuel

injection pump. The Brandeis invoice additionally notes that a Brandeis employee spoke with Bennie and his nephew about the repair work on the Equipment, at which time Bennie agreed to have the work done if his nephew would pay for it. Dean then took the Equipment to a repair shop in Corbin, Kentucky, where he paid $17,592.58 to get it in working order. In May of 2015, Bennie filed his answer to Dean's complaint. Therein, Bennie denied all allegations, contended that the applicable statutes of limitations barred Dean's claims against him, and brought a counterclaim against Dean for breach of contract.

The circuit court held a bench trial on the claims in July of 2016. Bennie and Dean were the only two witnesses to testify. The only documentary proof offered were the repair invoice from Brandeis, the repair invoice from the shop in Corbin, and a copy of a check written by Dean for the payment to the shop in Corbin.

At the close of arguments, the parties agreed to dismiss Dean's claims for conversion and fraud. The circuit court entered its Findings of Fact, Conclusions of Law, and Judgment (the "Judgment") on August 5, 2016. In the Judgment, the circuit court found that Dean's contract claim was barred by the applicable statute of limitation. Additionally, the court dismissed Bennie's counterclaim for breach of contract, finding that there was insufficient evidence to show that a contract had been formed. The court then addressed Dean's claims for trespass to chattel and trespass to personal property, which the court merged and

treated as one claim. After stating the required elements to bring a trespass to chattel claim, the circuit court found as follows:

> Clearly, sufficient proof was shown that [Bennie] dispossessed [Dean] of the three pieces of equipment. By [Bennie's] own testimony he, at one point, told [Dean] that [Dean] could come get his equipment if [Dean] paid the him [sic] five or seven thousand dollars towards the paving job completed at [Dean's] personal residence. Moreover, the fact that the original taking was done so with [Dean's] consent does not change the fact that a deprivation of property has occurred. *See Mansback v. Prescott, Ball & Turben*, 598 F.2d 1017 (6th Cir. 1979). Furthermore, the deprivation was for approximately four (4) years, a substantial time period by all measures. And finally, the equipment was impaired as to its condition and quality. Proof was presented that the equipment was in good working order and, according to both Parties' testimony, it was used to sufficiently pave [Dean's] residence shortly after it was purchased. When [Dean] ultimately recovered the equipment, he was forced to incur the expense of repairing the paver. Thus, the Court finds that a Trespass to Chattel has occurred.

R. 80-81.

The circuit court additionally addressed Bennie's contention that the statute of limitations had run on Dean's trespass to chattel claim. The circuit court noted that actions for trespass on real or personal property are required to be commenced within five years after the cause of action accrues.[2] The circuit court found that, at the earliest, the deprivation of property occurred in February of 2010. As the complaint was filed in January of 2015, the circuit court found that the

[2] In the Judgment, the circuit court indicates that Kentucky Revised Statutes (KRS) 413.125 is the applicable statute; however, the language the court uses is pulled from KRS 413.120(4). KRS 413.125 states that "[a]n action for the taking, detaining or injuring of personal property . . . shall be commenced within two (2) years from the time the cause of action accrued."

statute of limitations had not yet run on Dean's trespass to chattel claim. Therefore, the court awarded Dean a judgment of $19,402.22, which is comprised of the amount Dean paid to retrieve the Equipment from Brandeis and the amount he paid to restore the Equipment to working order.

This appeal followed.

II. Standard of Review

In actions tried upon the facts without a jury, we review the circuit court's findings of fact under a clearly erroneous standard and "due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses." CR[3] 52.01. Findings of fact are clearly erroneous if they are not supported by substantial evidence. *Patmon v. Hobbs*, 280 S.W.3d 589, 593 (Ky. App. 2009) (citing *Cole v. Gilvin*, 59 S.W.3d 468, 472 (Ky. App. 2001)). "With regard to the trial court's application of law to those facts, we engage in a *de novo* review." *Keeney v. Keeney*, 223 S.W.3d 843, 848-49 (Ky. App. 2007) (citing *Rehm v. Clayton*, 132 S.W.3d 864, 866 (Ky. 2004)).

III. Analysis

On appeal, Bennie contends that the circuit court erroneously applied the statute of limitations under KRS 413.120(4). Based on the facts presented, Bennie contends that the correct statute of limitations is the two-year period found in KRS 413.125. Additionally, Bennie argues that the circuit court erred in finding that he had committed a trespass to chattel, as there was insufficient proof

[3] Kentucky Rules of Civil Procedure.

submitted at trial to show that he intentionally damaged the Equipment and the circuit court relied on inapplicable authority.

KRS 413.125 provides that "[a]n action for the taking, detaining or injuring of personal property . . . shall be commenced within two (2) years from the time the cause of action accrued." KRS 413.120(4), the statute applied by the circuit court, states that "[a]n action for trespass on real or personal property" must be commenced within five years after the cause of action accrued. Bennie argues that, because there was no proof presented that he acted intentionally to harm the Equipment, the circuit court should have applied KRS 413.125. In support of this position, Bennie directs our attention to *Ingram Trucking, Inc. v. Allen*, 372 S.W.3d 870 (Ky. App. 2012).

In *Ingram*, a panel of this Court addressed the question of whether KRS 413.125 or KRS 413.120(4) should apply to a claim for property damage caused by the appellee running a red light and hitting and damaging the appellant's vehicle. The trial court had found that the two-year statute of limitations applied; appellant argued that the five-year statute of limitations was proper. The *Ingram* Court held that there was no conflict between the two statutes – common law negligence suits for damages to personal property, such as the action at issue in *Ingram*, are governed by KRS 413.125; trespass to chattel, an intentional tort, is governed by KRS 413.120(4).[4] *Id.* at 873.

[4] To clarify, at issue in *Ingram* was property damage caused by a negligent act; therefore, the Court addressed only the appropriate statute of limitations as between negligent damage to property and trespass to chattel, which the appellant alleged was the proper cause of action and thus, the appropriate statute of limitations to be applied. This is the same count of error Bennie

In the instant case, Dean at no point claimed that Bennie negligently interfered with the Equipment. His claim was that Bennie intentionally dispossessed him of the Equipment. Therefore, the circuit court was correct in finding that the claim was a claim for trespass to chattel and that the five-year limitations period in KRS 413.120(4) was applicable. Whether there was sufficient evidence of Bennie's intent goes not to the issue of which statute of limitations to apply, but to whether the circuit court was correct in finding that Dean had successfully proven his claim.

Kentucky law concerning the tort of trespass to chattel is sparse. In *Ingram*, a panel of this Court defined the tort by looking to the RESTATEMENT (SECOND) OF TORTS § 217 (1965), which provides that "[a] trespass to a chattel may be committed by *intentionally* (a) dispossessing another of the chattel, or (b) using or intermeddling with a chattel in the possession of another." *Ingram*, 372 S.W.3d at 872. As indicated in the circuit court's Judgment,

> One who commits a trespass to a chattel is subject to liability to the possessor of the chattel if, but only if,
> (a) he dispossesses the other of the chattel, or
> (b) the chattel is impaired as to its condition, quality, or value, or
> (c) the possessor is deprived of the use of the chattel for a substantial time, or

raises in this appeal. This is not to say, however, that KRS 413.125 exclusively covers negligent damage to property and KRS 413.120(4) exclusively covers intentional property torts. Claims for conversion, also an intentional tort, are governed by the two-year state of limitations under KRS 413.125. *See Madison Capital Co., LLC v. S & S Salvage, LLC*, 794 F.Supp.2d 735, 741 (W.D. Ky. 2011) ("The Kentucky legislature amended KRS § 413.120 . . . and specifically removed from its reach actions involving the taking, detaining, and injuring of personal property (actions for conversion). . . . [T]he legislature left actions for trespass to personal property subject to . . . KRS § 413.120.").

> (d) bodily harm is caused to the possessor, or harm is caused to some person or thing in which the possessor has a legally protected interest.

RESTATEMENT (SECOND) OF TORTS § 218 (1965). Therefore, contrary to Bennie's contentions, one need not intentionally *damage* the property to commit the tort; the tort is committed so long as one intentionally "dispossesses" another of chattel or "intermeddles" with the chattel while it is in another's possession.

There is no dispute among the parties that Bennie intentionally took the Equipment with him to Florida then intentionally brought it back to his home in Lancaster, Kentucky, where he kept it for several years. While there is a dispute under what premise Bennie took the Equipment with him to Florida, there is no dispute that he originally did so with Dean's permission. Additionally, the parties did not dispute the fact that, on at least one occasion, Dean contacted Bennie to retrieve the Equipment and Bennie informed him that he could have the Equipment back *if* Dean paid him the money he believed he was owed for paving Dean's driveway – an amount that Bennie admitted he did not decide to charge Dean until after their falling-out occurred. It was on these undisputed facts that the circuit court found trespass to chattel had occurred.

The main dispute between the parties, as related to the trespass to chattel claim, is whether Bennie caused damage to the Equipment while it was in his possession. The circuit court found that damage was evinced by the two repair invoices Dean submitted to the circuit court, which, when combined, came to a

total of $19,402.22. Bennie contended that the need for these repairs was not caused by him, but that this was the amount of repair the Equipment needed when first purchased by Dean. Bennie alleges that the fact that he was quoted a comparable price when he sought repair of the Equipment in Florida proves this. We must note, however, that Bennie did not submit any proof of the quote he received from the repair shop in Florida during trial. The parties disagreed on the condition of the Equipment at the time Dean purchased it; however, neither offered any evidence demonstrating the Equipment's condition in 2010.

Considering the parties' testimony and the repair bills, the circuit court concluded that there was sufficient evidence to find that the Equipment had been damaged while in Bennie's possession. "Regardless of conflicting evidence, the weight of the evidence, or the fact that the reviewing court could have reached a contrary finding, 'due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses. . . .'" *Moore v. Asente*, 110 S.W.3d 336, 354 (Ky. 2003) (quoting CR 52.01). The circuit court was within its discretion to give more weight to Dean's testimony than to Bennie's and to consider the repair invoices, including the notation on the Brandeis invoice that a Brandeis employee had spoken to Bennie about the repairs. The testimony, in combination with the repair invoices, constitutes substantial evidence to support the circuit court's findings. Therefore, we will not disturb them.

Bennie additionally contends that the circuit court's reliance on *Mansbach v. Prescott, Ball & Turben*, 598 F.2d 1017 (6th Cir. 1979), to support its

finding that Bennie committed trespass to chattel despite the fact that he originally had Dean's permission to take and use the Equipment was in error. Bennie contends that because that case dealt with securities transactions and focused on the common law tort of conversion, any reliance on *Mansbach* is misplaced. A review of *Mansbach* shows that it is factually distinguishable and dealing with conversion, not trespass to chattel. However, this alone is not grounds for reversal. The circuit court was correct in its conclusion that one who originally had permission to make use of chattel can still be found liable for trespass to chattel if that permission is revoked. *See* RESTATEMENT (SECOND) OF TORTS § 217 cmt. f (1965) ("The actor may commit a new trespass by continuing an intermeddling which he has already begun, with or without the consent of the person in possession. Such intermeddling may persist after the other's consent, originally given, has been terminated.").

IV. CONCLUSION

Based on the foregoing, we affirm the Judgment of the Bell Circuit Court.

ALL CONCUR.

BRIEF FOR APPELLANT:

Jason C. Rapp
Lexington, Kentucky

BRIEF FOR APPELLEE:

Christopher F. Douglas
Pineville, Kentucky