NOT FOR OFFICIAL PUBLICATION

IN THE COURT OF CIVIL APPEALS OF THE STATE OF OKLAHOMA

DIVISION IV

SUSAN GOKOOL,

Plaintiff/Appellant,

vs.

NICOLETTE BRANDVOID and ROBERT BRANDVOID,

Defendants/Appellees.

Case No. 120,996

APPEAL FROM THE DISTRICT COURT OF OKLAHOMA COUNTY, OKLAHOMA

HONORABLE TRENT PIPES, SPECIAL JUDGE

AFFIRMED

Susan R. Gokool
Bethany, Oklahoma — *Pro Se*

Dan Murdock
Oklahoma City, Oklahoma — For Defendants/Appellees

OPINION BY GREGORY C. BLACKWELL, JUDGE:

Susan R. Gokool appeals a decision of the small claims court and the court's subsequent denial of her motion for new trial. On review, we find no record of either hearing in this case, and we cannot therefore find error on any question of fact from the record. *Hamid v. Sew Original,* 1982 OK 46, ¶ 6, 645 P.2d 496, 497. As such, the decisions of the district court are affirmed.

BACKGROUND

This case involves a dispute as to the ownership of a kitten. Plaintiff Susan Gokool lost her kitten, "Frank Blu," in August of 2021. She believed that the residents of a nearby house, the defendants Nicolette and Robert Brandvoid, had taken the animal. Plaintiff sued in small claims court for the return of the kitten. After trial, the small claims court entered judgment for the defendants on a pre-printed form.

On April 18, 2022, plaintiff filed a motion for new trial, and she filed an amended motion for a new trial on June 10, 2022. We find no indication that defendants responded to these motions. Nonetheless, on December 22, 2022, after hearing, the court denied plaintiff's motion for new trial without further comment. Plaintiff appealed. Although defendants did file a response, they filed no brief. On September 15, 2023, the Supreme Court ordered that unless a brief was filed by October 2nd, the case would be submitted for consideration based upon the paperwork filed to date. No brief was filed.

STANDARD OF REVIEW

With respect to determinations of fact in a small claims proceeding, this Court's standard of review is as follows:

> The findings of a trial court sitting without a jury in a case of legal cognizance are to be given on review the same weight as that which would be accorded the verdict of a well-instructed jury. If there is any evidence tending to support the findings and judgment of the trial court at a bench trial of a law case, the findings and judgment will not be disturbed, even if the record might support a conclusion different from that reached at *nisi prius*. The credibility of witnesses and the effect of and weight given to their testimony, as well as the resolution of conflicting or inconsistent testimony, are questions of fact to be determined by the trier.

Sides v. John Cordes, Inc., 1999 OK 36, ¶ 16, 981 P.2d 301, 307 (citations omitted).

ANALYSIS

We must first examine the timing of plaintiff's filings. The appealable order was made and filed on April 5, 2022. Plaintiff filed a motion for new trial on April 18th. Although this is nominally thirteen days after April 6, 2022, the first day counted in a calculation of timely filing, April 6, was a Wednesday, while April 18 was a Monday. There were hence two weekends between the date of the appealable order and the date the motion for new trial was filed. Supreme Court Rule 1.3 provides: "When the period of time prescribed or allowed is less than eleven (11) days, intermediate legal holidays and any other day when the office of the Supreme Court Clerk does not remain open for business until the regularly scheduled closing time, shall be excluded from the computation." Hence, Plaintiff's motion for new trial was filed within 10 days of the judgment.

Pursuant to 12. O.S. § 990.2:

> When a post-trial motion for a new trial, for judgment notwithstanding the verdict, or to correct, open, modify, vacate or reconsider a judgment, decree or final order, other than a motion only involving costs or attorney fees, is filed within ten (10) days after the judgment, decree or final order is filed with the court clerk, an appeal shall not be commenced until an order disposing of the motion is filed with the court clerk.

The order denying the new trial was made on December 22, 2022, and plaintiff filed her appeal on January 13, 2022. Plaintiff therefore appealed within thirty days of the underlying judgment becoming final and preserved her appeal of that judgment. Pursuant to statutory law, however, Plaintiff is limited on

appeal to the allegations of error made in her motion for new trial. 12 O.S. § 991(b) ("If a motion for a new trial be filed and a new trial be denied, the movant may not, on the appeal, raise allegations of error that were available to him at the time of the filing of his motion for a new trial but were not therein asserted.").

Plaintiff sought a new trial pursuant to 12 O.S. § 651(1)(irregularity in the proceedings); § 651(2)(misconduct of the jury or a prevailing party) and § 651(7)(newly discovered evidence). The motion made the following arguments. First, defendants brought paperwork showing that they had visited the vet with the kitten on August 18, 2021, and claimed that this showed they had possession of a similar cat before plaintiff's kitten was lost, and it was therefore a different cat. Plaintiff stated that she checked with the vet after trial and was told that no kitten was brought to the August 18, 2021, visit, and the paperwork from that date showed only that a flea collar was purchased over the phone. Plaintiff argued that this constituted both newly discovered evidence and evidence of irregularity and misconduct. R. 28-29. Second, Plaintiff argued that the two defendants gave contrary testimony as to how long as they had owned the kitten. R. 30. Third, Plaintiff argues that the false record of the vet visit was not provided to her as evidence to allow her to question it at trial but was only handed over after the court made its judgment. R. 34-35.

This case highlights the substantial difficulties that can arise in reviewing a small claims appeal, especially one brought by a *pro se* litigant. In small claims proceedings, the technicalities of evidentiary and procedural rules are relaxed, and the simplified procedure makes the need for an attorney unnecessary, or

less necessary, with regard to those issues. *See Black v. Littleton*, 1975 OK CIV APP 1, ¶ 6, 532 P.2d 486. *See also Thayer v. Phillips Petroleum Co.*, 1980 OK 95, ¶ 5, 613 P.2d 1041 ("The exegesis behind the small claims court is to open the courts to the citizenry. A person does not need a lawyer to appear. The normal rules of evidence are not applied. The jurisdiction may be invoked by payment of a nominal fee. The small claims court provides redress for the ordinary person.").

The same relaxed procedure that allows a *pro se* litigant to try their case without negotiating a host of procedural hurdles also inherently produces little or no record to enable meaningful review of the court's findings of fact. Neither documentary evidence nor testimony is generally preserved for review. Beyond plaintiff's own submissions, the total record we have consists of a generic court form on which "defendant is entitled to judgment" has been circled and an order denying all post-trial relief without further comment. No narrative statement of either hearing was filed.[1]

Two hearings were conducted here, and we have no record of either hearing. The order from the first hearing states no rationale and consists of a generic court form on which "defendant is entitled to judgment" is ticked. As such, no review of the factual basis of the original decision, or procedural error at trial, is possible. Although plaintiff's motion for new trial appears to raise a *prima facie* case of newly discovered evince or irregularity, this motion was also

[1] The procedural hurdles that are lessened by the small claims process are reinstated when the appellate stage is reached. Unless a *pro se* appellant is aware of and understands the relatively complex narrative statement process of Supreme Court Rule 1.30, the creation of any record for review is unlikely.

subject to a later hearing in court, attended by plaintiff and counsel for the defendants and we have no record of this hearing. As such, we have no record of what counter-arguments were presented. "Legal error may not be presumed in an appellate court from a silent record. The opposite is true. Absent a record showing otherwise, this court presumes that the trial court did not err." *Hamid v. Sew Original,* 1982 OK 46, ¶ 6, 645 P.2d 496, 497.

CONCLUSION

Although plaintiff's motion makes a *prima facie* case for a new trial, the matter was subsequently heard before the judge with plaintiff and defendant's counsel present. We have no record of what counter-arguments were presented in that hearing. As such the rule of *Hamid v. Sew Original* applies here, and we cannot find error.

AFFIRMED.

HUBER, J., and HIXON, J., concur.

June 3, 2024