IN THE SUPREME COURT OF MISSISSIPPI
COURT OF APPEALS OF THE STATE OF MISSISSIPPI

2010-CA-01624-COA

MATT BROWN & HOLLI BROWN — APPELLANTS

VS.

RP AUTO LLC & RANDY WAYNE PARKS — APPELLEES

BRIEF OF APPELLEES

RP AUTO, LLC AND
RANDY WAYNE PARKS

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ARGUMENT NOT REQUESTED

IN THE MISSISSIPPI SUPREME COURT
COURT OF APPEALS OF THE STATE OF MISSISSIPPI

MATT BROWN & HOLLI BROWN	**APPELLANTS**
VS.	**NO. 2010-CA-01624-COA**
RP AUTO LLC & RANDY WAYNE PARKS	**APPELLEES**

CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the justices of this Court may evaluate possible disqualifications or recusal.

1. Matt Brown, Appellant
2. Holli Brown, Appellant
3. Ronald D. Michael, Attorney for Appellants
4. Seth Pounds, Attorney for Appellants
5. RP Auto, LLC, Appellee
6. Randy Wayne Parks, Appellee
7. Regan S. Russell, Attorney for Appellee
8. Honorable Henry L. Lackey, Retired Circuit Court Judge

Respectfully submitted,

RP Auto, LLC and Randy Wayne Parks

BY: _____

Regan S. Russell, MSB[redacted]

Attorney for RP Auto, LLC

and Randy Wayne Parks

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I

STATEMENT OF THE FACTS

The Plaintiffs and Appellants, Matt and Holly Brown, first noticed a problem with their 2006 Ford Expedition when they heard a "ticking" sound, so he took the vehicle to Long Lewis Ford in Corinth, Mississippi to be examined. [T. 12]. Long Lewis Ford diagnosed a problem with the cam-phasers and gave a repair estimate of $1,750. [T. 13]. Mr. Brown ultimately hired Defendant Randy Brown, of RP Auto, LLC, also a Defendant, to repair the problem diagnosed by Long Lewis Ford for $1,200. [T. 15].

Matt Brown later picked-up the car, and the problem seemed to be fixed. [T. 16]. After driving approximately three hundred (300) miles to Louisiana and then attempting to return home on the same day that the car was picked-up from RP Auto, the vehicle started "clattering and shaking", a problem that "was totally new". [T. 17]. The car was returned to RP Auto and left for about three (3) weeks. When it was picked-up, the "clattering and shaking" problem started again before he could get back home to Ripley. [T. 19]. Mr. Brown was presented with a bill for $1,496.85, but refused to pay more than the $1,200 originally agreed to. [T. 33]. The vehicle was then taken to Long Lewis Ford, which kept the vehicle another two weeks and charged $3,161.30 for repairs and $1,693.30 for car rental fees. [T. 20-22]. When Mr. Brown picked-up the vehicle, the car "shut down again" when he attempted to leave Long Lewis Ford. [T. 22]. Long Lewis Ford stated that they had fixed the mechanical problems, "but there's something more going on to it." [T. 23]. They then gave an estimate for $8,556.02 for replacement of the engine. [T. 26., Exhibit P-3].

Mr. Brown testified that the car was worth about $18,000 at the time it was taken to RP Auto. [T. 24] He relied upon two (2) Kelley Blue Book estimates, one for a 2006 Ford

Expedition in good condition at $15,800 and the second for a 2007 Ford Expedition in good condition at $18,150. [Exhibits 4, 5]. There was no testimony or proof as to the effect upon the value of the vehicle of replacing the engine with a new engine or of the ultimate value of the vehicle if no such repairs were performed.

Instead of repairing the vehicle, Mr. Brown decided to get another vehicle and worked out a deal with Long Lewis Ford and the bank where the car was financed so that the vehicle went back to the bank. [T. 39]. There was no proof as to any valuation of the vehicle at that time by the bank or to any subsequent sale price of the vehicle.

Benny Carter, a master mechanic at Long Lewis Ford, testified as an expert witness that the car came back to Long Lewis Ford with other problems than it originally had when the cam-phaser problem was diagnosed. [T. 49]. These problems included cut electrical wires, leaking oil from the VCT solenoid valve covers and warped valves. [T. 52]. For these problems a "worst case scenario" estimate was prepared. He identified Exhibit 3 as this estimate. [T. 51]. Mr. Brown instead paid for the repairs evidenced by Exhibit 2. [T. 51]. These repairs did not fix the damage to the vehicle. [T. 56-59]. He later testified that to fix the vehicle the repairs stated in Exhibit 3 would have to be done, but he was unable to testify to the effect this would have on the value of the vehicle. [T. 62].

On cross examination, Mr. Carter admitted that vehicles can and sometimes do develop new problems after repairs are done on something other than the part being repaired. [T. 75-76]. During a second cross following questioning by the trial judge, he additionally testified that "playing with the wires" or "dealing with the timing" are not a part of changing cam-phasers. [T. 80].

II

SUMMARY OF ARGUMENT

Under Mississippi law, in the absence of a finding of a lack of substantial, credible evidence or of a manifestly erroneous decision by the Trial Court, the judgment below must be upheld.

Appellants list five (5) rather mundane and unimpressive allegedly erroneous factual findings which they contend amount to "substantial evidence" of such character so as to invalidate the reasonableness of the Trial Court's ruling that the Plaintiffs failed to meet their burden of proof of negligence, causation and reasonably certain damages.

These alleged erroneous factual findings are as follows: (1) that Benny Carter, an expert witness, testified that a rattling cam-phaser is a normal thing; (2) that the defendant confirmed that his work was done properly with another mechanic; (3) that Long Lewis Ford informed the Browns that the vehicle was "ready"; (4) that Benny Carter testified that a new wiring harness could not be installed but gave no reasonable explanation why it was impossible; and (5) that the Defendant was a Master-Mechanic.

The first allegation misconstrues the findings of fact. When read in context with the entirety of the Opinion and Order, the term "common event" references the replacement of the Cam Phasers as being common, not a "rattling Cam Phaser". The second and fifth allegations apparently relate to references in the Opinion and Order to statements in questions by Defendant Randy Parks, who appeared *pro se* and may therefore have been given abnormal latitude in his presentation of evidence to the Court. Even if the Appellants are correct that these items of proof are not technically in evidence, nothing in the Court's "Conclusions" in its Opinion and Order referenced these findings as determinative. Thus the errors, if any, are harmless. The

third allegation references the word "ready" in the Opinion and Order", referencing a vehicle being ready following repairs, which actual word may not have appeared in the testimony, but which nevertheless accurately represents the gist of the testimony. The fourth allegation involves a judgment call as to whether the testimony was a "reasonable explanation" or not. Appellants contend that it was. The Trial Judge clearly deemed the explanation to be inadequate. Appellees agree with the Trial Judge, but further suggest that the factual point in contention is largely an non-determinative issue based upon the Trial Judge's more compelling findings that the proof of causation and certainty of damages are inadequate.

In summary, none of these allegations as to error, even if taken as true, are a basis for a finding of "manifest error" by the Court. Rather, the clear deficiencies in the proof presented by the Plaintiffs as to causation and certain and accurate proof of the amount of damages are such that the Court's ruling is the only reasonable determination that could have made upon the evidence presented.

IV

ARGUMENT

A.

STANDARD OF REVIEW

"'A circuit court judge sitting without a jury is accorded the same deference with regard to his findings as a chancellor,' and his findings are safe on appeal where they are supported by substantial, credible, and reasonable evidence." *Wilson v. Greyhound Bus Lines, Inc.*, 830 So.2d 1151, 1155 ¶9 (Miss. 2002) (quoting *Illinois Cen. R.R. v. Travis*, 808 So.2d 928, 931 (Miss. 2002)). See also *City of Jackson v. Perry*, 764 So.2d 373 (2000). "The Court will not

disturb those findings unless they are manifestly wrong, clearly erroneous or an erroneous legal standard was applied." *Wilson v. Greyhound Bus Lines, Inc.*, 830 So.2d 1151, 1155 ¶9 (Miss. 2002) (quoting *Bell v. City of Bay St. Louis*, 467 So.2d 651, 661 (Miss. 1985)).

Thus, in the absence of a finding of a lack of substantial, credible evidence or a manifestly erroneous decision by the Trial Court, the judgment below must be upheld.

B.

WHETHER THE TRIAL COURT ERRED

WHEN IT MADE FIVE FINDINGS OF FACT

In their brief, Appellants allege five incorrect findings of fact: (1) that Benny Carter, an expert witness, testified that a rattling cam-phaser is a normal thing; (2) that the defendant confirmed that his work was done properly with another mechanic; (3) that Long Lewis Ford informed the Browns that the vehicle was "ready"; (4) that Benny Carter testified that a new wiring harness could not be installed but gave no reasonable explanation why it was impossible; and (5) that the Defendant was a Master-Mechanic.

The first allegation misconstrues the findings of fact. In his Opinion and Order the Trial Judge stated that "the cause of the rattle was the Cam Phasers and they needed to be replaced. Long-Lewis gave Plaintiff's an estimate of $1,750.00 to replace the defective parts. Apparently this is a common event...." [Opinion and Order, R. 16]. Clearly the term "common event" references the replacement of the Cam Phasers. The point is mundane as this finding was marginally material at best, but the allegation of error in incorrect.

Regarding the second allegation of error, in his Opinion and Order the Trial Judge stated that "Defendants had a mechanic from the Ford dealership in New Albany inspect Defendants work who confirmed Defendants work was properly done. [Opinion and Order, R. 17]. This

statement may reference a question by the Defendant, but as the Defendant did not call any witnesses, technically the Appellants are correct that this proof is not in evidence. Nevertheless, nothing in the Court's "Conclusions" in its Opinion and Order referenced this finding as determinative. Thus the error, if any, is harmless.

The third allegation of error is that Long Lewis Ford informed the Browns that the vehicle was "ready". While the transcript may not include the actual word "ready," semantically the Judge's finding was correct. Mr. Brown testified that the car was taken to Long Lewis Ford for repairs and that Long Lewis performed repairs taking a couple of weeks. [T. 20]. He then paid them $4,859.60 for repairs and a rental car and went to pick-up the vehicle, at which time as they "were leaving Long Lewis Ford and the thing shut down again". [T. 22]. Thus, semantically the word "ready" appears to be correct, if not a direct quote from the transcript.

The fourth allegation is that the Opinion and Order incorrectly states that Appellant's expert witness failed to explain why a new wire harness costing $282.72 could not be installed on the existing engine, thereby avoiding the "worst case scenario" estimate of $8,556.02 for the replacement of the engine. [Opinion and Order, R. 18]. Appellants generally allege in their brief that the witness did testify that "installing a new wire harness would not fix the existing engine problem." [Brief of Appellants, 7; T. 80]. More specifically, the expert testified as follows:

"By the Court: Could you have, not you, or anyone, have installed another wire harness and would that have -- you think that would have fixed the problem?

A: Well, not the engine problem, no. It was multiple problems. You just about would have had to replace the whole -- every single harness on that vehicle because the ones at

the PCM was going to the body harness too and that's why I didn't understand, you know -- you know, I don't know who done it." [T. 79-80].

Appellants argument is incorrect for the following reason, the Court referenced a lack of "a reasonable explanation" as to why a wire harness could not be repaired. [Opinion and Order, R. 18]. It did not say there was no explanation. This was the very type of judgment call for which trial judges are afforded great deference. It is not the job of the appellate courts to review each such judgment call *de novo*, but only for "manifest error" or lack of substantial, reasonable evidence. *Bell*, 467 So.2d 651 at 661; *Travis*, 808 So.2d 928 at 931. Thus, the Appellants allegation is without merit. Nevertheless, it is perhaps more telling that the witness testified that "I don't know who done it." [T. 79-80]. This testimony goes specifically to the more compelling finding in the Opinion and Order that as to "who or what caused the problem with Plaintiff's vehicle....under the proof adduced the Court can reach no conclusion." [Opinion and Order, R. 18, 19].

The fifth allegation, like the second, apparently relates to a reference in the Opinion and Order to a statement in a question by Defendant Randy Parks, who appeared *pro se* and may therefore have been given abnormal latitude in his presentation of evidence to the Court. [T. 65, lines 25-27]. Again, the Appellants are correct that this proof is not technically in evidence. Nevertheless, nothing in the Court's "Conclusions" in its Opinion and Order referenced this finding as determinative. Thus the error, if any, is harmless.

C.

WHETHER THE TRIAL COURT ERRED IN FINDING INSUFFICIENT PROOF OF DAMAGES

The Opinion and Order stated as follows: "The vehicle was repossessed by the lien

holder and its present condition is unknown to the Court and no proper proof of its value, either before repairs or after repairs, was adduced, relying on a document said to be gleaned from the internet." [Opinion and Order, R. 18]. Appellants argue that the proof presented during the testimony of Matt Brown [T. 24-26], specifically the Kelly Blue Book estimates introduced as Exhibits 4 and 5, met the burden for such proof.

These estimates addressed only proof of value of the vehicle before the repairs. The Trial Judge found them inadequate as proof of value, even value before the repairs. More compelling is the fact that neither document provided any basis for a determination of proof after the repairs. The only proof adduced as to the value of the vehicle after the repairs performed by the Defendant was the expert testimony of the plaintiffs' witness. For these problems a "worst case scenario" estimate was prepared of $8,556.02. Benny Carter of Long Lewis Ford identified Exhibit 3 as this estimate. [T. 51]. Mr. Brown instead paid for the repairs evidenced by Exhibit 2. [T. 51]. These repairs did not fix the damage to the vehicle as the vehicle broke-down immediately when Mr. Brown tried to leave Long Lewis Ford in the vehicle. [T. 56-59]. Mr. Carter testified that to fix the vehicle the repairs stated in Exhibit 3 would have to be done, but, crucial to the Court's ruling, he clearly and unequivocally stated that he was unable to testify to the effect this would have on the value of the vehicle. [T. 62].

Mississippi law places the burden on plaintiffs to prove damages "with as much certainty and accuracy as was reasonably possible". *Purina Mills, Inc. v. Moak*, 575 So.2d 993 (Miss. 1990) (citing *Mutual Life Ins. Co. of New York v. Estate of Wesson*, 517 So.2d 521 536 (Miss. 1987)). Given the complete lack of proof as to value of the vehicle after repairs, the Plaintiffs in the case *sub judice* have clearly failed to do so.

As the burden is upon the plaintiffs to prove damages, the ruling of the Trial Court as to

lack of proper proof of damages is not only defensible, it is the only reasonable determination that he could have made upon the evidence presented.

D.

THE SUFFICIENCY AND WEIGHT OF THE EVIDENCE

In the "Conclusions" of its Opinion and Order, the Court particularly stated that he was unable to reach a conclusion as to whether the Defendant was "the cause of the problem". The Court further, in the paragraph immediately before the sections titled "Conclusions", stated that "the present condition of the vehicle is unknown to the Court and no proper proof of its value, either before the repairs or after repairs, was adduced." [Opinion and Order, R. 18].

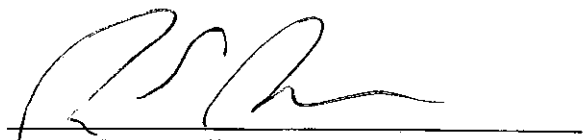
Appellants list five (5) rather mundane and unimpressive alleged erroneous factual findings which they contend amount to "substantial evidence" of such character so as to invalidate the reasonableness of a ruling that the Plaintiffs failed to meet their burden of proof of negligence, causation and reasonably certain damages. None of these allegations as to error, even if taken as true, are a basis for a finding of "manifest error" by the Court. Rather, the clear deficiencies in the proof presented by the Plaintiffs as to causation as well as to certain and accurate proof of the amount of damages are such that the Court's ruling is the only reasonable determination that could have made upon the evidence presented.

E.

CONCLUSION

For the reasons set forth above, it is clear that the Trial Court had substantial, credible, and reasonable evidence upon which to base its opinion and that the Trial Court's opinion is not manifestly wrong or clearly erroneous. The decision of the Trial Court should therefore be upheld.

RESPECTFULLY SUBMITTED this 25th day of May, 2011.



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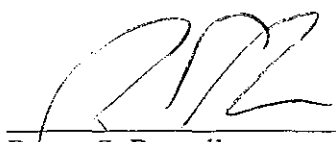
CERTIFICATE OF SERVICE

I, Regan S. Russell, Attorney of records for the Appellees, do hereby certify that I have this day caused to be mailed, postage pre-paid, a true and correct copy of the Brief and Record Excerpts of the Appellees, RP Auto, LLC and Randy Wayne Parks, to:

Honorable Henry Lackey
Retired Union County Circuit Court Judge
Post Office Box T
Calhoun City, MS 38916

Seth W. Pounds, Esq. and
Ronald D. Michael, Esq.
RONALD D. MICHAEL, P.A.
1700 North Second Street
Booneville, MS 38829
Attorneys for Appellants

This the 26th day of May, 2011.



Regan S. Russell