IN THE SUPREME COURT OF MISSISSIPPI
COURT OF APPEARS OF THE STATE OF MISSISSIPPI
NO. 2010-CA-01624

MATT BROWN AND WIFE, HOLLI BROWN **APPELLANTS**

VS.

RP AUTO LLC AND RANDY WAYNE PARKS **APPELLEES**

BRIEF OF APPELLANTS MATT BROWN AND WIFE, HOLLI BROWN

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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. Honorable Henry L. Lackey

Respectfully submitted,

Matt Brown and wife, Holli Brown, Appellants

BY: _____

Seth W. Pounds, MSB No. 102948
Attorney for Appellants,
Matt Brown and wife, Holli Brown

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STATEMENT OF THE CASE

Matt and Holli Brown brought suit against RP Auto LLC and Randy Wayne Parks for damages arising out of negligent repair. The Trial Court, sitting without a jury, entered a judgment in favor of the Defendants, finding that the Plaintiffs failed to meet their burden of proof by a preponderance of the evidence.

STATEMENT OF FACTS

Matt and Holli Brown were experiencing problems with their 2006 Ford Expedition. [T.12]. Matt Brown took the vehicle to Long Lewis Ford in Corinth, Mississippi. [T.12}. Long Lewis told Brown that the cam phasers in the vehicle needed to be replaced and quoted him an estimate of One Thousand Seven Hundred Fifty ($1,750.00) Dollars. [T.18]. Brown also consulted Randy Parks, (RP Auto LLC), about repairing his vehicle. [T.13-14]. Parks told Brown that he could replace the cam phaser for less money than Long Lewis. [T.14]. Based on a later estimate, Brown decided to have Parks repair his vehicle. [T.14].

Approximately one week later, Parks called Brown and told him that his vehicle was ready to be picked up. [T.15]. Brown paid Parks One Thousand Two Hundred ($1,200.00) Dollars for the work Parks said he would do; which also included some additional parts Parks said were needed. [T.34].

Brown traveled in the vehicle to Louisiana and during the return trip the vehicle began to clatter and shake. [T.16-17]. Brown took the vehicle back to Parks and told him what was now happening. [T.18]. Parks had the vehicle approximately two weeks and during that time he attempted to repair the vehicle. [T.18-19]. At one point during the two week period, Parks called Brown and told him that he did not know what was going on with the vehicle. [T.35]. Eventually, Parks called Brown again and informed him that he had fixed the vehicle. [T.19].

Brown picked up his vehicle from Parks in New Albany, Mississippi. [T.19]. Before he arrived at home in Ripley, Mississippi, the vehicle started shaking again. [T.19]. This is the same problem Brown experienced coming back from Louisiana. [T.19]. Before taking his vehicle to Parks the first time, Brown was only aware of a clicking sound coming from the vehicle. [T.12]. After

Parks worked on the vehicle, Brown started experiencing a clatter and shaking. [T.16-17,19].

The day after picking up his vehicle from Parks, Brown called Parks and told him that his vehicle was doing the same thing. [T.20]. Parks told Brown that he did not know what was going on with it. [T.20,50]. Brown decided to take the vehicle back to Long Lewis Ford in Corinth, Mississippi. [T.20].

After looking at the vehicle, Benny Carter, a master mechanic at Long Lewis Ford, noticed that the vehicle did have more problems than it did when Brown originally brought the vehicle to Long Lewis. [T.49]. Carter told Brown that whomever had attempted to repair the cam phaser had crossed and cut electrical wires. [T.52]. Carter said that the damage was the worse that he had ever seen and that someone had created these problems based on a lack of training, guess work, and desperation. [T.54-55,58].

Carter also told Brown that based on what he could see, he (Brown) may have to end up replacing the entire engine and gave him an estimate of Eight Thousand Five Hundred Fifty-six Dollars and Ten Cents ($8,556.10). [T.51]. Ultimately, Long Lewis repaired the damage which they could see as opposed to replacing every engine component which resulted in a charge to Brown of approximately Three Thousand One Hundred ($3,100.00) Dollars. [T.51}. Unfortunately, Long Lewis' repair did not fix all the damage done by Parks. [T.56-59]. Carter said that because of the amount of damage and complex wiring in the vehicle, that it was not surprising, in the end, that Long Lewis was not able to repair the vehicle. [T.56-59]. Carter told Brown that, in the end, he would have to pay approximately Eight Thousand Five Hundred Fifty-six Dollars ($8,556.00) Dollars to repair the damage created by Parks. [T.62].

As a result of the damage caused by Parks' negligent repair, Brown's vehicle depreciated

greatly in value. [T.62].

Matt and Holli Brown instituted this action because of the damages caused by Randy Wayne Parks and RP Auto LLC.

SUMMARY OF THE ARGUMENT

This case comes before this Honorable Court on appeal from the Circuit Court of Union County, Mississippi, concerning the judgment in favor of the Defendants, RP Auto LLC and Randy Wayne Parks.

The Trial Court, sitting in a bench trial, made several incorrect findings of fact, that it then relied upon in reaching its conclusion, which were not supported by the substantial, credible, and reasonable evidence.

The Trial Court erred in concluding that no proper proof of the vehicle's value was adduced at trial. The Plaintiff, Matt Brown, along with Benny Carter, testified as to the value of the vehicle, both before and after the damage caused by the Defendant, Randy Wayne Parks. Brown's testimony was corroborated by an accurate and appropriate estimation tool in which the Trial Court took judicial notice.

The Trial Court erred by concluding that the proof adduced during trial failed to prove by preponderance of the evidence that the Defendants, Randy Wayne Parks and RP Auto LLC, were the cause of the vehicle's problems. Plaintiffs' expert, Benny Carter, testified that the Defendants, Randy Wayne Parks and RP Auto LLC, did in fact proximately cause the damage to the vehicle which is the subject of this cause of action.

ARGUMENT

ISSUE NO. 1: THE TRIAL COURT MADE FIVE INCORRECT FINDINGS OF FACT NOT SUPPORTED BY THE RECORD, WHICH IT THEN RELIED UPON IN REACHING ITS CONCLUSION

(a) Contrary to the Trial Court, Plaintiffs' expert, Benny Carter, never testified that a rattling cam phaser was a normal thing on the Ford engine, even though vehicles change every three months. [Opinion and Order, P.122]. Carter did testify that a knocking cam phaser was normal on a Ford and that for a trained mechanic it is not difficult at all to replace them. [T.39-50]. Carter also testified that as a master mechanic, Ford requires him to continually update his training because vehicles, in general, change every three months. [T.36-38].

""A Circuit Judge sitting without a jury is accorded the same deference with regard to its findings as a Chancellor," and his findings are safe on appeal if they are supported by substantial, credible, and reasonable evidence." *City of Jackson v. Perry*, 764 So.2d 373, 376 (Miss. 2000) (quoting *Puckett v. Stuckey*, 633 So.2d 978, 982 (Miss. 1993).

In the case at bar, the Trial Court's above finding of fact is clearly not supported by substantial, credible, or reasonable evidence. Ultimately, the Trial Court relied upon this incorrect finding, along with several others, in reaching its judgment for the Defendants.

(b) Contrary to the Trial Court, the record fails to properly reflect any testimony that the Defendant, Parks, confirmed that his work was properly done. [Opinion and Order, P. 2]. No witness for the Plaintiffs ever testified that the Defendants' work was properly done. [T.82]. Therefore, because the Defendant did not introduce any testimony, the record fails to reflect any evidentiary basis for the Trial Court's findings. [T.82].

""A Circuit Judge sitting without a jury is accorded the same deference with regard to its

findings as a Chancellor," and his findings are safe on appeal if they are supported by substantial, credible, and reasonable evidence." *City of Jackson v. Perry*, 764 So.2d 373, 376 (Miss. 2000) (quoting *Puckett v. Stuckey*, 633 So.2d 978, 982 (Miss. 1993).

In the case at bar, the Trial Court's above finding of fact is clearly not supported by substantial, credible, or reasonable evidence. Ultimately, the Trial Court relied upon this incorrect finding, along with several others, in reaching its judgment for the Defendants.

(c) Contrary to the Trial Court, Long Lewis Ford never informed the Plaintiff (Brown) that the vehicle was "ready." [Opinion and Order, P.2]. Benny Carter, a master mechanic at Long Lewis, told the Plaintiff that Long Lewis had repaired the damage they could see. [T.56-57]. Carter testified that even though he repaired the shorted wires, the wires nevertheless were still shorted. [T.56]. Carter also testified that with 180 miles worth of wiring, the short in the wires could be anywhere. [T.57].

""A Circuit Judge sitting without a jury is accorded the same deference with regard to its findings as a Chancellor," and his findings are safe on appeal if they are supported by substantial, credible, and reasonable evidence." *City of Jackson v. Perry*, 764 So.2d 373, 376 (Miss. 2000) (quoting *Puckett v. Stuckey*, 633 So.2d 978, 982 (Miss. 1993).

In the case at bar, the Trial Court's above finding of fact is clearly not supported by substantial, credible, or reasonable evidence. Ultimately, the Trial Court relied upon this incorrect finding, along with several others, in reaching its judgment for the Defendants.

(d) Contrary to the Trial Court, Benny Carter did give a reasonable explanation as to why installing a new wiring harness on the existing engine would not be advisable. [Opinion and Order, P.3].

In response to a question from the Trial Court, Carter, an expert witness and master mechanic, testified that installing a new wiring harness would not fix the existing engine problem. [T.80]. Carter gave the Plaintiffs an estimate of what it would cost to replace the engine and wiring harness, a worse case scenario. [T.51]. However, in an attempt to mitigate the damage created by Parks, Long Lewis attempted to repair the engine and the wiring problems they could see. [T.51, 56-57]. In the end, the damage done to the vehicle was what Carter called a worse case scenario. [T.51]. Therefore, Carter's explanation as to why only replacing the wiring harness on the existing engine would not fix the existing engine, was reasonable. At that point, Carter believed that based on the amount of damage the only way to repair the vehicle would be to replace the entire engine and wiring harness. [T.51].

""A Circuit Judge sitting without a jury is accorded the same deference with regard to its findings as a Chancellor," and his findings are safe on appeal if they are supported by substantial, credible, and reasonable evidence." *City of Jackson v. Perry*, 764 So.2d 373, 376 (Miss. 2000) (quoting *Puckett v. Stuckey*, 633 So.2d 978, 982 (Miss. 1993).

In the case at bar, the Trial Court's above finding of fact is clearly not supported by substantial, credible, or reasonable evidence. Ultimately, the Trial Court relied upon this incorrect finding, along with several others, in reaching its judgment for the Defendants.

(e) The Trial Court erred in finding that the Defendant, Randy Wayne Parks, was a master mechanic. [T.2]. As previously mentioned, Parks failed to introduce any sworn testimony in this case. [T.83]. The only reference to Parks being a master mechanic technician came from Parks' cross-examination of Plaintiffs' expert, Benny Carter. [T.65-66]. The Plaintiffs contemporaneously objected to Parks attempting to put on any testimony, which the Trial Court sustained. [T.65-66].

""A Circuit Judge sitting without a jury is accorded the same deference with regard to its findings as a Chancellor," and his findings are safe on appeal if they are supported by substantial, credible, and reasonable evidence." *City of Jackson v. Perry*, 764 So.2d 373, 376 (Miss. 2000) (quoting *Puckett v. Stuckey*, 633 So.2d 978, 982 (Miss. 1993).

In the case at bar, the Trial Court's above finding of fact is clearly not supported by substantial, credible, or reasonable evidence. Ultimately, the Trial Court relied upon this incorrect finding, along with several others, in reaching its judgment for the Defendants.

ISSUE NO. 2: THE TRIAL COURT ERRED IN FINDING THAT NO PROPER PROOF OF THE VEHICLE'S VALUE WAS ADDUCED AT TRIAL

The Trial Court erred in finding that no proper proof of the vehicle's value, either before or after repairs, was adduced at trial. [Opinion and Order, P.3]. This finding was contrary to the testimony provided by Matt Brown. [T.24-26]. Brown testified that his 2006 Ford Expedition would have been worth about Eighteen Thousand ($18.000.00) Dollars at the time he took his vehicle to Parks. [1] [T.24-26]. In addition, Brown's testimony was validated by Kelly Blue Books' value which the Trial Court took judicial notice of. [2] [T.24-26].

The Mississippi Court of Appeals has indicated that Kelly Blue Book is an appropriate tool in ascertaining the value of a vehicle. *Voyle v. Voyle*, 2008-CT-01927-COA, August 17, 2010 @¶ 20.

""A Circuit Judge sitting without a jury is accorded the same deference with regard to its findings as a Chancellor," and his findings are safe on appeal if they are supported by substantial,

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[1]Benny Carter, a master mechanic and expert witness, also testified that even if Brown's vehicle was completely repaired, the vehicle's value would be severely depreciated. He testified that CarFax would report the vehicle as having mechanical problems, or poor condition.. [T.62-63].

[2]The Trial Court also received into evidence Plaintiffs' Exhibit 7.

credible, and reasonable evidence." *City of Jackson v. Perry*, 764 So.2d 373, 376 (Miss. 2000) (quoting *Puckett v. Stuckey*, 633 So.2d 978, 982 (Miss. 1993).

In the case at bar, the Trial Court's above finding of fact is clearly not supported by substantial, credible, or reasonable evidence. Ultimately, the Trial Court relied upon this incorrect finding, along with several others, in reaching its judgment for the Defendants.

ISSUE NO. 3: THE SUFFICIENCY AND WEIGHT OF THE EVIDENCE ARE CONTRARY TO THE JUDGMENT IN FAVOR OF THE DEFENDANT

The Trial Court erred in finding for the Defendant, and, in denying Plaintiffs' Motion for Judgment Notwithstanding the Verdict and Motion for New Trial. [R.25-28].

The Trial Court held that the Plaintiffs failed to prove by a preponderance of the evidence that the Defendant was negligent in his repair or attempt to repair Brown's vehicle. [Opinion and Order, P.4].

The Trial Court's findings are safe on appeal where they are supported by substantial, credible, and reasonable evidence. *Mason v. State*, 799 So.2d 884, 885 (Miss. Ct. App. 2001).

The only evidence presented at trial showed that; Brown's vehicle only needed its cam phasers replaced when Parks began his repair; Parks caused Brown's vehicle additional damage in his negligent attempt to repair said vehicle; and as a result, the Browns have incurred damages.

Brown, as well as expert witness and master mechanic, Benny Carter, testified that the only problem Brown was initially experiencing with the vehicle was a result of a defective cam phaser. [3] [T.12-14, 46, 49].

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[3]Contrary to the Trial Court, the record fails to reflect any evidentiary basis that Long Lewis mis-diagnosed the initial problem with the vehicle.

Brown testified that he took his vehicle to Parks and that Parks indicated that he could fix the cam phasers. [T.14]. After a week, Parks called Brown and told him that he had his vehicle fixed. [4] [T.15]. Brown picked up his vehicle and drove it to Louisiana. [T.15-16]. When Brown returned, the vehicle started knocking. [T.16-17]. Brown took his vehicle back to Parks where Parks kept it for approximately three weeks. [T.18]. At some point during that three weeks, Parks informed Brown that he did not know what was going on with the vehicle and that he had even tried to get someone else to help him repair it. [T.18,35,36]. Eventually, Parks called Brown to inform him that he had fixed his vehicle. [T.19,36]. On Brown's way home from picking up the vehicle, the vehicle started knocking; the same way it had when Brown was returning from Louisiana. [T.36]. Brown called Parks to inform him that the vehicle was still experiencing problems and Parks said that he should take it back to Long Lewis because he (Parks) could not figure out what was going on with it. [T.36].

Once at Long Lewis, master mechanic, Benny Carter, testified; that the damage done to Brown's vehicle was the worse that he had ever seen; [T.56], that it looked like someone had butchered the vehicle's engine; [T.73], that there were numerous wires that had been cut and crushed by someone; [T.52,76], that the cutting and crushing of these wires was the result of someone, who for lack of training, created this damage as a result of guess work and desperation. [T.52-59].

Based on the amount of damage, Long Lewis gave Brown two quotes of what it could take to repair his vehicle. [T.51]. The first quote Long Lewis gave Brown was the worse case scenario; (Eight Thousand Five Hundred Fifty-six ($8,556.00) Dollars. [T.51, Plaintiffs' Exhibit No. 3]. The second quote Long Lewis gave Brown was a quote to attempt to repair the damage that Long Lewis

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[4] At this time, Brown paid Parks One Thousand Two Hundred ($1200.00) Dollars.

could actually see. [5] [T.51, Plaintiffs' Exhibit No. 2].

In an attempt to mitigate the damage or cost, Brown had Long Lewis try and repair the amount of damage that was done. [T.51,57]. Once Long Lewis had finished repairing what they could find, Brown was called to come pick up his vehicle. [T.22]. Brown was able to crank the vehicle but it soon shut down again. [T.22]. Long Lewis fixed the mechanical damage but because of the amount of the electrical damage, Long Lewis was not able to repair the vehicle without replacing the entire engine and all of the wiring harnesses. [T.59,57,79-80]. Carter testified that at that point, it would cost Brown about Eight Thousand Five Hundred ($8,500.00) Dollars to repair the vehicle; all engine components would need to be replaced. [T.61].

As previously mentioned, the Trial Court's findings of fact are clearly not supported by substantial, credible, and reasonable evidence. Ultimately, the Trial Court relied upon its findings in reaching its conclusion and judgment.

In the case at bar, the record fails to reflect any evidentiary basis to support the Trial Court's judgment in favor of the Defendant and, therefore, this Court should reverse the Trial Court's denial of said Motion and render a judgment in favor of the Plaintiffs, or alternatively, to grant a new trial. *Mason v. State*, 799 So.2d 284 (2001).

CONCLUSION

The Plaintiffs' provided sufficient proof that the Defendant (Parks) had a duty to repair the Plaintiffs' vehicle and not to cause further damage and that the Defendant breached that duty which approximately resulted in the Plaintiffs sustaining a great amount of damage. [T.83-88].

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[5] The repair bill was Three Thousand One Hundred Forty-one Dollars and Thirty Cents ($3,141.30). There is also a rental car cost of Seven Hundred Eighteen Dollars and Thirty Cents ($718.30).

CORRECTED CERTIFICATE OF SERVICE

I, Seth W. Pounds, do hereby certify that I did on the 14th day of March, 2011, mailed, by first class mail, postage prepaid, a true and correct copy of the Appellants' Brief to the following:

RP Auto LLC and Randy Wayne Parks
1027 West Bankhead Street
New Albany, MS 38652

Honorable Henry L. Lackey
Circuit Court Judge
P. O. Drawer T
Calhoun City, MS 38916

This the 16th day of March, 2011.

SETH W. POUNDS