

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

October 14, 1998

Marilyn L. Graves  
Clerk, Court of Appeals  
of Wisconsin

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A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

**No. 98-0820**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT II**

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**JEFFREY KENNETH KROHN,**

**PLAINTIFF-APPELLANT,**

**V.**

**DEBBIE JEAN KROHN (CRUZ),**

**DEFENDANT-RESPONDENT.**

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APPEAL from a judgment of the circuit court for Washington County: ANNETTE K. ZIEGLER, Judge. *Affirmed.*

BROWN, J. This is a dispute between a brother and sister over alleged items gratuitously left at the sister's residence by the brother with the brother claiming that the items were not returned as requested. Jeffrey Kenneth Krohn appeals from a trial court judgment dismissing his replevin complaint against Debbie Jean Krohn (Cruz).

Jeffrey argues: (1) that Debbie's answer failed to deny a number of Jeffrey's allegations, and therefore, they should have been deemed admitted; (2) that the trial court erred in finding that Jeffrey failed to satisfy his burden of proof; and (3) that the trial court erred in finding that Jeffrey failed to prove the value of his property. We hold that Jeffrey waived his first issue except for one item and that one item was adequately denied in Debbie's answer. As to the other two issues, we hold that these are questions of fact and the trial court's findings of fact are not clearly erroneous. We affirm.

The facts giving rise to the dispute began when Jeffrey went to Texas to stay with Debbie and find work there. Both parties agree that he brought some personal belongings with him. After approximately a month's time, Debbie decided that she did not want her brother to stay at her apartment anymore and asked him to leave with his belongings. At that time, she also discovered that Jeffrey was violating his probation by being in Texas. Therefore, she cooperated with the police in having her brother arrested while he was removing his belongings from her apartment.

Jeffrey had managed to take at least some of his things to his car before his arrest. The arresting officer showed Debbie a release that Jeffrey had signed giving her possession of his things and asked her to remove Jeffrey's belongings from his car so that the car would not be broken into. Debbie testified that she removed a few items from the car but left most of Jeffrey's belongings in it. Jeffrey's car was picked up the next day by his girlfriend. It is disputed by the parties what belongings were in the car when it was picked up by Jeffrey's girlfriend. Thereafter, there were a number of phone calls and letters by Jeffrey asking his sister to return his belongings. She did eventually send a number of things to him while he was in prison in Wisconsin in August 1996.

The dispute at trial centered upon whether Debbie had kept any of Jeffrey's belongings, what belongings she kept, if any, and the value thereof. The trial court found Debbie to be credible when she testified that she returned everything that she had to Jeffrey in the August 1996 shipment other than a number of computer discs that the Texas police had asked her to keep. The trial court also found that Jeffrey failed to prove the value of any of the items that he claimed Debbie had wrongfully detained.

Jeffrey's first claim is that Debbie's answer was insufficient in that it failed to deny a number of his allegations, and therefore these allegations should be deemed admitted. Jeffrey claims that Debbie failed to deny that she had the property in her possession, that the property was wrongfully detained by her, that she caused the detention and that he was entitled to this property.

But, except for one instance, Jeffrey did not raise the insufficiency of pleadings argument in the pleadings or at trial. Thus, the issue has been waived as to all claims except the one instance. See *State v. Gove*, 148 Wis.2d 936, 940-41, 437 N.W.2d 218, 220 (1989). Jeffrey did argue at trial that Debbie failed to deny that all of the items listed in his complaint were at her apartment in Texas. But the trial court determined that because Debbie stated in her answer that she had already sent Jeffrey all of his belongings she knew she had and that she did not know about any of the other items listed in Jeffrey's complaint, her answer served as a denial.

We agree. Her response that she sent everything she had in her possession acts as a denial. Further, a statement that a party does not have knowledge regarding a plaintiff's allegations constitutes a denial. See § 802.02(2), STATS. Debbie's claim that she did not know the existence of certain items

required Jeffrey to prove that those items were in Debbie's possession. We find no error.

Before reaching the sufficiency of the evidence regarding the replevin issue, we note that Jeffrey's brief on appeal also claims that a bailor-bailee relationship was created between the parties and that Debbie tortiously failed in her duty as bailee to his detriment. We have reviewed the complaint and the proceedings at trial to see whether a bailment issue was raised in either the pleadings or at trial. If it was not, Jeffrey has waived the issue. *See Gove*, 148 Wis.2d at 941, 437 N.W.2d at 220. We acknowledge that the pleading requirements set out in § 802.02(1), STATS., are lenient and do not require that the plaintiff plead a specific cause of action. However, a successful bailment action requires negligent loss or destruction of property. *See* 3 EDWIN E. BRYANT, WISCONSIN PLEADING AND PRACTICE § 20.82 (3<sup>rd</sup> ed. 1998). Read in the most liberal light possible, Jeffrey's complaint sounds more like an allegation that Debbie intentionally withheld his property from him, rather than negligently did so. We question whether the complaint was adequate enough to give Debbie notice that a bailment issue existed.

Any doubt that we have about whether bailment was adequately pled in the complaint is resolved by Jeffrey's posture at trial. It is clear from reading the record that he never raised or argued the issue. This is fatal to Jeffrey's bailment theory for the following reason. Under the facts of this case, there would exist a gratuitous bailment. This type of bailment is only for the benefit of the bailor. *See Smith v. Poor Hand Maids of Jesus Christ*, 193 Wis. 63, 67, 213 N.W. 667, 668 (1927). It is undisputed that Debbie had nothing to gain by safekeeping Jeffrey's belongings. Under a gratuitous bailment arrangement, the bailee is only liable for gross negligence. *See id.* Jeffrey never argued "gross

negligence.” It was never discussed by the parties at trial and the trial court was not asked to determine whether gross negligence existed. Had Jeffrey really meant to initiate a cause of action resting in the tort of negligent bailment, gross negligence would have been a central issue in the case. It was not. Therefore, the bailment issue fails.

We now go to the issue of whether there is sufficient evidence to support the trial court’s findings in the only action before the court—replevin. In order to successfully prove a claim for replevin, the plaintiff must prove that he or she is entitled to possession of the property and that the defendant unlawfully detained the property and the value of the property. *See* § 810.13(1), STATS.

Concerning the items that Debbie claims she never knew about, Jeffrey testified as to what the items were, that they were left with Debbie and the value of the items. Debbie denied ever seeing the items. This presented a credibility question as to which sibling to believe. The trial court found Debbie to be the more credible witness. This is the fact finder’s call, not ours, and we uphold the trial court’s finding because it is not clearly erroneous. *See* § 805.17(2), STATS.

Regarding the items that Debbie admitted she knew about and had possession of, she testified that these items, except for the computer discs, were safely returned to Jeffrey. The trial court found Debbie to be the more credible witness as to this issue as well. Concerning the discs, the trial court found that Jeffrey failed to meet his burden to establish the value of these discs in proving his damages. Jeffrey alleged that there were expensive computer programs on the discs, but the trial court noted that Jeffrey did not provide any objective proof as to what the discs were worth. His proof consisted only of his opinion regarding the

discs' value. The trial court obviously concluded that his opinion lacked credibility. This is a determination for the fact-finder to make, not this court. We will not disturb the finding.

The trial court alternatively held that Jeffrey was unable to prove the value of any allegedly missing items, even if they had been left with Debbie and not returned. Jeffrey did not have receipts for most of the items. While Jeffrey did provide some credit card receipts, the receipts only showed the total amount spent at a store, not whether the claimed items were purchased at the store. We accept this finding as to value as well and hold that it is not clearly erroneous. We affirm the trial court in total.

*By the Court.*—Judgment affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)4, STATS.

