COURT OF APPEALS
DECISION
DATED AND FILED

May 5, 2005

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 2004AP1377 **Cir. Ct. No. 2004SC668**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT IV

BUFFY B. BROWN,

PLAINTIFF-APPELLANT,

V.

MICHAEL J. GROSCH AND ERIN M. GROSCH,

DEFENDANTS-RESPONDENTS.

APPEAL from a judgment of the circuit court for La Crosse County: MICHAEL J. MULROY, Judge. *Affirmed.*

¶1 DEININGER, P.J.[1] Buffy Brown appeals a small claims judgment in the amount of $600 plus statutory costs that was entered against her in favor of

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(a) (2003-04). All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

Michael and Erin Grosch. The parties' dispute arises out of a real estate transaction. Brown bought the Grosches' home and claimed that a kitchen "island" was to have been included in the price of the home but was removed by the Grosches prior to closing. The Grosches counterclaimed for the value of a swing set and a refrigerator that they claim Brown had agreed to let them retrieve after closing, which Brown allegedly did not allow them to do. After a bench trial, the circuit court entered judgment for $600 in favor of the Grosches, being the value the court determined for the refrigerator and swing set, less the value of the kitchen island. Brown appeals, claiming that the court erred in entering the judgment it did. We affirm.

BACKGROUND

¶2 We summarize below the testimony and exhibits at trial.

¶3 A Multiple Listing Service (MLS) description of the Grosch home when it was being marketed included the following language: "large living room & big eat-in kitchen with island & computer desk." The offer to purchase that Brown submitted and the Grosches accepted does not specifically mention the kitchen island. The agreement lists only the following as "additional items included in purchase price": "dishwasher, garage door opener, window treatments." Items identified as "not included in the purchase price" are "sellers' personal property."

¶4 The parties originally scheduled closing date was postponed for four days due to a delay in preparing paperwork required for Brown's purchase money loan. The parties worked out an agreement that permitted Brown to occupy the premises prior to closing. Upon arriving at the premises, Brown discovered that the kitchen island had been removed. She complained to the selling real estate

agent, who told her she would see if something could be done with respect to the kitchen island. No specific proposals were apparently made, however, and no action on the issue was taken prior to or at the real estate closing.

¶5 Brown commenced this action seeking to collect $4,429.22 from the Grosches, an amount based on an estimate Brown obtained for a new kitchen island. Her complaint also appears to seek an additional $340 for several other discrepancies in the home she purchased from the Grosches, but Brown did not pursue these claims at trial. The Grosches filed an answer denying that they owed Brown anything and counterclaiming for $900, being the value of a swing set and refrigerator that were left on the premises, allegedly under an agreement with Brown that they could return at a later time to remove these items.

¶6 Brown testified at trial that she understood from the MLS description that the kitchen island she had observed when viewing the home would be included in the purchase price. She submitted an estimate for the cost of a new island which she asserted would be comparable to the one that was removed from the home. At the conclusion of her testimony, the court inquired whether there was "anything else you're asking for," to which Brown replied "no."

¶7 On cross-examination, Brown admitted she had removed the swing set from the property despite the fact, which she also admitted, that she "had an agreement with Mike Grosch that he was to pick up the swing set when the weather was better." Brown said that she did this because "I never heard anything from them as to when they were going to come to pick it up." As for the refrigerator, Brown responded to a question from the court that she had sold it.

¶8 The Grosches' realtor testified that the MLS description of "big eat-in kitchen with island" was simply meant to convey the size of the kitchen. She

said that the island was not a fixture, but was personal property like a kitchen table, and that it was not included in the sale of the house per the accepted offer. The realtor also said that the topic came up at closing, and she informed Brown that the island was "never included." The realtor also stated that no "attempt to renegotiate the price" was made at closing and that Brown nonetheless closed on the transaction.

¶9 Erin Grosch testified at trial that the sellers never intended to include the island as part of the sale of the home, that it was not attached to the floor in any way and that it had no electrical or other connections. She said that the island was "nine or ten years old," and that it had experienced significant "wear and tear." She also testified that she obtained quotations for a comparable replacement island, and that Brown's estimate called for an island that was significantly different, having more cabinets, drawers and other features. The Grosches' quotations for a comparable replacement island totaled approximately $382.

¶10 Michael Grosch testified that he had a conversation with Brown at the home in question on the day that she moved in. He stated that he told Brown that he would come back at a later date with a dolly to pick up the refrigerator. He also testified that he attempted to do so "twice within the next week and a half" but that Brown wasn't home. After hearing of her complaints regarding the island and other matters, he said that "I just kind of let it be." As to the value of the refrigerator, he testified that the Grosches had priced new ones, and, allowing for wear and tear "for the last eight years or so," arrived at the figure of $600 for the value of their refrigerator. He testified as follows regarding the value of the swing set: "[I]t was like 500 bucks and we took off a couple hundred for the wear and tear," placing the value of the swing set left behind at $300. Michael

acknowledged on cross-examination that he had not attempted to telephone Brown to arrange to pick up the refrigerator.

¶11 In response to the court's question at the close of the Grosches' testimony, "do you have anything else?" Brown replied that she had two witnesses she wished to call. One, a friend of Brown's, testified that she was at the house when Brown and Michael spoke to each other about the refrigerator. The witness verified that Brown was very upset about the missing island. She testified that Michael "asked if it was OK if he left them because he wasn't going to move them," referring to the refrigerator and several other appliances. According to this witness, Brown agreed and there "was no indication that he was going to come back and get them in the future at all."

¶12 Brown also called the real estate agent who had shown her the property and who had apparently prepared her offer to purchase. This agent testified that if she would have known that the island was not a fixture, she would have "written it in" the offer.

¶13 At the conclusion of this testimony, the court again inquired of Brown, "anything else, Ms. Brown?" to which she replied, "no, that's it." The court then gave its decision from the bench. The court first found that the island "was a part of the contract and it was part of the consideration that Ms. Brown anticipated paying for." The court found it significant that the MLS advertising of the property specifically referred to the kitchen as being "with island." As to the value of the island, the court found that Brown's intended replacement was "a Cadillac," while the missing island was "a Pinto." The court also took into consideration the fact that the missing island was several years old, finding its value to be $300.

¶14 The court also concluded that it was "clear … that the refrigerator and the swing set were not included" in the purchase price of the home. The court determined that these two items had not been "returned by Ms. Brown as she was supposed to have returned them." Noting that Brown had apparently sold or gotten rid of them, the court awarded the Grosches the amounts that they were seeking for the items: $300 for the swing set and $600 for the refrigerator. The net result was a judgment in favor of the Grosches in the amount of $600 plus statutory costs. Brown appeals.

ANALYSIS

¶15 Both parties are pro se in this appeal. Brown's opening brief contains no citations to legal authority, and neither, for that matter, does the Grosches' responsive brief. Brown presents a one-and-one-half-page, bulleted list of "reasons why I feel this was an unfair decision." Brown's points are, in general, claims that the trial court either erred in its factual findings or precluded her from presenting evidence.

¶16 Generally, this court will not consider arguments that are unsupported by legal analysis or citations to authorities. *See* ***State v. Shaffer***, 96 Wis. 2d 531, 545-46, 292 N.W.2d 370 (Ct. App. 1980) (explaining that "[s]uch an appellate argument is inadequate and does not comply with" appellate rules). We have nonetheless reviewed the trial transcript and the exhibits. We find no merit in any of Brown's claims. We briefly explain why, addressing Brown's points in the order she lists them.

¶17 Brown claims that the refrigerator was fifteen years old and not worth $600, but there is no evidence in the record to support this assertion. She claims that she had information on the age of the refrigerator but "was unable to

disclose the information to the judge." Our review of the record indicates that Brown made no effort to testify regarding the age or value of the refrigerator, nor did she proffer any evidence on this topic.

¶18 Brown complains that the trial court "did not take the age or wear and tear into effect" with respect to the values of the refrigerator and swing set, while it did so in determining the value of the missing island. A trial court's factual finding will not be disturbed on appeal unless it is "clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses." *See* WIS. STAT. § 805.17(2). Michael testified that he had taken the age of the swing set and refrigerator into account in arriving at the values he testified to. His testimony is the only evidence in the record regarding the value of these items, and we cannot conclude that the court's finding adopting these unrefuted values was clearly erroneous.

¶19 Brown claims that Michael agreed to leave the refrigerator behind because the Grosches' new home had all necessary appliances. The substance of the conversation between Brown and Michael regarding the refrigerator was disputed by the witnesses at trial, and the court implicitly accepted Michael's version. It is for the trier of fact, and not this court to assess witness credibility. ***Rohl v. State***, 65 Wis. 2d 683, 695, 223 N.W.2d 567 (1974). Under the clearly erroneous standard of review, we are to search the record for evidence to support findings reached by the trial court, not for evidence to support findings the trial court did not but could have reached. *See* ***Estate of Dejmal***, 95 Wis. 2d 141, 154, 289 N.W.2d 813 (1980). Because Michael's testimony supports the trial court's determination of the ownership of the refrigerator, we cannot conclude that the court's finding was clearly erroneous.

¶20 Brown claims that the refrigerator was inoperable and needed to be repaired, but she introduced no evidence to that effect at trial. She also claims that she "had a copy of the bill on the refrigerator" but again was "unable" to disclose this to the judge. Our review of the transcript discloses that, on at least two occasions, the trial court asked Brown if she had anything additional to present, but she offered nothing further.

¶21 Brown points out that Michael admitted in his testimony that he had not tried to telephone her regarding arrangements to pick up the refrigerator. That is indeed what he testified, and the trial court heard that testimony. Nonetheless, as we have noted, the court implicitly credited Michael's version of the parties' understanding with respect to the refrigerator. As we have explained, credibility determinations are exclusively within the trial court's realm, not ours.

¶22 Brown asserts that the refrigerator sat in her garage for about two months, and that she sold it for $100 to get it out of her garage so that she could use the garage. Again, none of this was in evidence at trial. Brown also asserts that she "never received anything" from the Grosches for storage of their belongings. She made no claim at trial for storage costs, however. Brown was specifically asked by the court at the conclusion of her opening testimony whether she was making any claim other than for the value of the missing island, to which she replied "no." Finally, Brown asserts that there was nothing in the parties' contract for the sale of the house that she had to store Grosches' belongings. This may well be true, but again, she made no claim for storage costs.

¶23 Brown claims that she stored the swing set in her backyard until March but the Grosches did not contact her about coming to get it. Again, how long the swing set remained in the yard was not in evidence. Brown also claims

she did not sell the swing set but put it in storage. Again, this fact was not in evidence, nor is it particularly relevant. The swing set remained within Brown's control at the time of trial, and the trial court concluded that the Grosches were entitled to be compensated for the loss of their swing set.

¶24 Brown contends that if the judge would have asked her where the swing set was, she would have told him, and that the Grosches knew its whereabouts "from our mediation." Again, none of this was placed in evidence, and the court was under no obligation to ask Brown where the swing set was. If Brown felt that it was important for the court to know of the swing set's present location, she could have testified to its location. We also note that, generally, parties' "communications in mediation" are not admissible at trial. *See* WIS. STAT. § 904.085.

¶25 Brown asserts that she bought a "brand new" refrigerator for $601.34, suggesting that the $600 allowed for the Grosches' refrigerator was excessive, given its age. She claims that she had a receipt for her refrigerator but, again, "was unable to present this in court." Brown also claims she had ascertained that the Grosches' refrigerator was actually twelve years old but was also unable to present that information to the court. As we have noted several times, Brown made no effort at trial to introduce any evidence regarding the value of the refrigerator, and there is no indication in the record that the court precluded her from doing so.

¶26 Brown points to her own testimony and that of her real estate agent as establishing that the photographs introduced by the Grosches of the missing island were "not the same island we remember being in the home." Whether the photographs admitted into evidence actually depicted the missing island was

contested during the trial. The trial court specifically found that the photographs depicted the island in dispute, as the Grosches contended was the case, and we cannot conclude that the court's finding on this point was clearly erroneous.

¶27 Brown claims her estimate for replacing the missing island was more accurate than the one that the Grosches submitted. Again, however, this point was in dispute at trial and the court found that the value presented by the Grosches was the more accurate estimate of the value of the missing island. As with the trial court's other findings of fact on disputed issues, our review of the record does not persuade us that the court's finding as to the value of the missing island was clearly erroneous.

¶28 Finally, in a summary statement, Brown again asserts that she was not given "the chance to present documentation" or "much of an opportunity to present my case." That is simply not true. As we have noted, the trial court did not refuse to admit any evidence or testimony proffered by Brown, and the court inquired on at least two occasions whether there were additional claims or evidence she wished to present. Brown also makes the unsupported assertion that "the judge determined his decision base[d] on who had an attorney and who did not." As with Brown's other suggestions of unfair treatment, the record refutes her assertion of judicial bias. The trial court gave both parties the opportunity to present their evidence, asked appropriate questions at appropriate times, and, on the main point in dispute regarding Brown's claim of entitlement to the missing island, found in her favor.

CONCLUSION

¶29 We have reviewed the circuit court record in detail and considered each of Brown's contentions. Brown points to no error of law committed by the

trial court, and, as we have explained, this court cannot set aside a trial court's findings of fact unless they are clearly erroneous. *See* WIS. STAT. RULE 805.17(2). This means, essentially, that a trial court's decision following a bench trial comes before us with a presumption that it is correct, and the appellant bears the burden of convincing us that reversible error has occurred. *See, e.g.,* WIS. STAT. § 805.18(2). Based on the submissions to this court and the record before us, we find no reversible error.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.