

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Megan Rose,
Appellant-Respondent,

v.

Cole L. Winters,
Appellee-Petitioner

January 28, 2022

Court of Appeals Case No.
21A-SC-1390

Appeal from the La Porte Superior
Court

The Honorable Jeffrey L. Thorne,
Judge

Trial Court Cause No.
46D03-1912-SC-2343

May, Judge.

[1] Megan Rose appeals following the small claims court's denial of her motion to correct errors. She argues the small claims court abused its discretion in denying her motion because its underlying order incorrectly determined Cole L. Winters was the owner of the disputed property, a dog named Krato. Additionally, she argues the small claims court violated her right to due process when it denied her request to present two additional witnesses during trial. We affirm.

Facts and Procedural History

[2] Between August 2016 and August 2019, Rose and Winters were involved in an on-again, off-again romantic relationship. On February 15, 2019, Rose and Winters went to the Lakeshore PAWS animal shelter. Winters filled out paperwork to adopt a dog that they later named Krato; Rose was listed on the application as an emergency contact. Rose, Winters, and Krato lived together in Winters' residence from April 2019 to August 2019.

[3] In August 2019, Rose moved out of Winters' residence. Krato remained primarily with Winters, but from August 2019 to November 2019, Winters allowed Rose to care for Krato in twenty-four-hour increments while he worked as a firefighter. In November 2019, Winters allowed Rose to care for Krato for five days while he was working, and then Winters would have Krato for the four days he was not working. Rose explained Winters "works every other day, so he would work one day on twenty-four hours, the next day he would be off, the next day he's on and that schedule continues for a five-day period. After

that, he has four days off and that's when he received the dog.” (Tr. Vol. II at 20.)

[4] Winters testified that, in December 2019, Rose “[r]egistered and microchipped” Krato, (*id.* at 11), and that “she had registered his micro-chip in her name[.]” (*Id.* at 13.) Winters also testified that Rose told him “that she had gone to a psychiatrist . . . and that she was deemed mentally unstable and needed [Krato] as an emotional support animal.” (*Id.*) Around the same time, Rose refused to release Krato to Winters’ care unless Winters signed a note indicating Rose could visit Krato on December 24, 2019. Winters testified he signed the note.

[5] On December 24, 2019, Winters requested Rose sign a similar document before he would release Krato to her as previously scheduled. She did not respond to his request. When Rose arrived at Winters’ residence to retrieve Krato on December 24, Winters testified he

received a phone call about 9:15 from [his] girlfriend stating that the LaPorte City Police Department had knocked on the door and that [Rose] was standing outside the chain link fence and that the police officer urged [his girlfriend] to give the dog back to [Rose]. And [his girlfriend] felt pretty pressured so she did[.]

(*Id.* at 14-5.)

[6] On December 27, 2019, Winters filed a notice of claim asking the small claims court to declare him Krato’s owner. The small claims court held an initial hearing on February 7, 2020, and set a bench trial for February 19, 2020. The court held the bench trial as scheduled, during which Rose and Winters offered

testimony. On February 28, 2020, issued its order declaring Winters the owner of Krato.

- [7] On March 6, 2020, Rose filed a motion to correct errors in which she alleged Winters had not been truthful in his testimony during the bench trial and reasserted many of her arguments made during the bench trial. Due to several COVID-19-related continuances, the small claims court held a hearing on Rose’s motion to correct error on June 4, 2021. On June 9, 2021, the small claims court issued its order denying Rose’s motion to correct error.

Discussion and Decision

1. Denial of Motion to Correct Errors

- [8] We generally review a trial court’s ruling on a motion to correct error for an abuse of discretion. *Ind. Bureau of Motor Vehicles v. Watson*, 70 N.E.3d 380, 384 (Ind. Ct. App. 2017). An abuse of discretion occurs if the trial court misinterpreted the law or if the court’s ruling is against the logic and effect of the facts and circumstances before it. *Id.* Our review of the small claims court’s ruling on Rose’s motion to correct error necessarily involves review of the underlying order. *See In re Paternity of H.H.*, 879 N.E.2d 1175, 1177 (Ind. Ct. App. 2008) (review of motion to correct error includes review of underlying order).
- [9] “Our standard of review in small claims cases is particularly deferential in order to preserve the speedy and informal process for small claims.” *Heartland*

Crossing Found. Inc. v. Dotlich, 976 N.E.2d 760, 762 (Ind. Ct. App. 2012). We do not reweigh the evidence; nor do we assess the credibility of the witnesses. *Id.* However, the burden of proof in a small claims civil lawsuit is the same as the burden in a civil action not on the small claims docket. *Harris v. Lafayette LIHTC, LP*, 85 N.E.3d 871, 876 (Ind. Ct. App. 2017). The party bearing the burden of proof must demonstrate it is entitled to the recovery sought. *Id.* We will affirm a judgment in favor of the party bearing the burden of proof “if the evidence was such that from it a reasonable trier of fact could conclude that the elements of the party’s claim were established by a preponderance of evidence.” *Eagle Aircraft, Inc., v. Trojnar*, 983 N.E.2d 648, 657 (Ind. Ct. App. 2013).

[10] A small claims court is not required to enter special findings. *Wynne v. Burris*, 105 N.E.3d 188, 192 (Ind. Ct. App. 2018). However, where “a small claims court elects *sua sponte* to enter findings and conclusions, they aid our review by providing us with a statement of the reasons for the trial court’s decision.” *Id.* at 192-193 (emphasis in original). Nonetheless, we evaluate the “evidence in the light most favorable to the judgment, together with all reasonable inferences to be drawn therefrom. We will reverse a judgment only if the evidence leads to only one conclusion and the trial court reached the opposite conclusion.” *Id.* at 193 (internal quotation marks omitted). We accept the small claims court’s unchallenged findings as correct. *See Madlem v. Arko*, 592 N.E.2d 686, 687 (Ind. 1992) (“Because Madlem does not challenge the findings of the trial court, they must be accepted as correct.”).

[11] Rose argues the small claims court erred when it determined Winters was Krato's owner because Rose presented sufficient evidence that Winters gave Krato to Rose as a gift. The elements of a gift *inter vivos* is well-settled:

A gift *inter vivos* of personal property or a chose in action is a voluntary act of transferring the right to and the possession of such chattel or chose in action whereby one person renounces and another acquires the immediate right and title thereto. An agreement, intention, or promise to make a gift effective in the future is void as being without consideration. To make a valid gift *inter vivos* there must be both an intention to give and a stripping of the donor of all dominion or control over the given thing and a change of title must be irrevocable. Words alone, unaccompanied by the delivery of immediate possession, are not sufficient to constitute a gift *inter vivos*, except where the gift is already in the possession of the donee. The transfer must be so complete that, if the donor again attempts to assume control of the property, without the consent of the donee, he becomes liable as a trespasser.

Kraus v. Kraus, 235 Ind. 325, 330, 132 N.E.2d 608, 610-1 (1956). Dogs are considered personal property. *Lachenman v. Stice*, 838 N.E.2d 451, 467 (Ind. Ct. App. 2005), *reh'g denied, trans. denied*.

[12] In determining Winters was Krato's owner, the trial court found:

6. WINTERS claims ownership of KRATO by virtue of the original purchase. In support thereof, Plaintiff's Exhibit #1 is a document entitled, ADOPTION AGREEMENT dated 02/15/19, at which time KRATO (formerly known as Swish) was acquired from Lakeshore PAWS Organization in Valparaiso, Indiana. Said ADOPTION AGREEMENT identifies the adopter as Mr. Cole Winters of LaPorte, Indiana,

and identifies and [sic] Emergency Contact of Megan Rose. The ADOPTION AGREEMENT is signed by WINTERS, as Adopter, and the Receipt for payment in the amount of \$110.00 is in the name of Plaintiff, Cole Winters.

7. WINTERS has established a prima facia [sic] case that as between WINTERS and ROSE, he was the original owner of KRATO.

8. ROSE bases her claim for ownership of KRATO upon an allegation that WINTERS made a gift of KRATO from him to her.

9. In order for ROSE to prevail on her claim that WINTERS made gift of KRATO to her after WINTERS originally adopted KRATO, the burden of proof is on ROSE to establish with a preponderance of evidence the legal elements of a gift.

10. In order to establish that WINTERS made an inter vivos gift of KRATO to ROSE, ROSE must prove WINTERS' voluntary act of transferring the right and possession of KRATO whereby WINTERS has renounced and ROSE has acquired the immediate right and title of KRATO.

11. In order to establish an inter vivos gift, ROSE must establish that the gift was immediate and absolute and that WINTERS' intent to make the gift was immediate and permanent with actual delivery of possession without which title does not pass.

12. ROSE also claims that she should be declared owner of KRATO for the reason that she requires the dog as an emotional support animal which is neither an element of nor consistent with the claim of a gift.

13. The Court finds that based upon the evidence presented, the testimony of the parties and the conduct of the parties, ROSE has failed to establish with a preponderance of the evidence that WINTERS did, in fact, make a gift of KRATO to her.

(App. Vol. II at 12-3) (internal case citations omitted).

[13] Rose likens the facts of this case to those of *Brackin v. Brackin*, 894 N.E.2d 206 (Ind. Ct. App. 2008). In that dissolution action involving a prenuptial agreement, the husband, William, appealed the award of an automobile to the wife, Peggy, as part of the trial court's dissolution order. *Id.* at 207. At some time during their marriage, William bought Peggy a Buick Lucerne. *Id.* at 208. William titled the car in both his and Peggy's names. *Id.* When William purchased the Lucerne, he "drove the Lucerne home, went into the house and said, 'Peggy, come out and see the car I bought you.'" *Id.* (internal citation to the record omitted).

[14] Peggy was the primary driver of the Lucerne, though William drove it on occasion, both alone and with Peggy as his passenger. During an argument, William used a hammer "and repeatedly struck the door handle of the Lucerne until the handle fell off." *Id.* Peggy replaced the missing handle at her own expense. In its dissolution order, the trial court determined the Lucerne was a gift from William to Peggy based on William's actions of presenting the car to Peggy, Peggy's primary use of the Lucerne, and the incident during which William damaged the Lucerne. *Id.* at 209. Regarding that incident, the trial court found:

It lacks the ring of truth for [William] to assert that in the exercise of an outward act of anger against [Peggy], for what he perceived to be some insult by [Peggy], that [William] would take a hammer and damage what he considered to be his own property. Such an explanation defies human nature and the life experiences of the court. When someone is getting even by means of damaging property, they damage the property of their antagonist, not their own.

Id.

[15] William appealed and argued the Lucerne was joint marital property because his name was on the title of the Lucerne. *Id.* Applying the elements of an *inter vivos* gift, our Court reasoned:

There is no evidence in the record suggesting that William was not competent to make a gift. Similarly, there is no evidence to suggest that the gift was incomplete or conditional. It reasonably can be inferred that William effectively delivered the Lucerne to Peggy and that she accepted the gift because Peggy regularly drove the Lucerne and considered it her own. Additionally, William's statement, "Peggy, come and see the car that I bought for you," supports an inference that William intended to make a gift[.]

Id. at 210. However, the trial court noted that while the fact that William left his name on the Lucerne's title would seem to indicate the transaction involving the Lucerne did not strip him of all dominion and control over the vehicle,

where . . . there is uncontroverted evidence of clear and decisive words of gift and an absence of any evidence to negate donative intent, such evidence clearly and convincingly establishes

donative intent despite the presumption to the contrary created by the donor retaining his name on the certificate of title.

Id. at 212. Based thereon, our Court affirmed the trial court's award of the Lucerne to Peggy. *Id.*

[16] Rose contends the same is true here – despite the fact that Winters' name is on the adoption application and Winters was granted adoption of Krato, Winters gave Krato to Rose as a gift for Valentine's Day 2019 and she was Krato's primary caregiver. However, Rose's argument ignores the evidence that Winters and Rose agreed to share custody of Krato after their romantic relationship ended. When Rose moved out of Winters' residence, Krato remained with Winters. Shortly thereafter, Winters allowed Rose to care for Krato while he was at work because he worked twenty-four hour shifts as a firefighter. Eventually, Winters and Rose agreed that Krato could stay with Rose for five days while Winters worked and then Krato would live with Winters for four days when he was not working. The evidence indicates that, while Winters recognized Rose's interest in caring for Krato, he did not intend to relinquish dominion and control over Krato as to fully establish the donative intent required for an *inter vivos* gift. Rose's alternate version of the facts is an invitation for us to reweigh the evidence, which we cannot do. *See Heartland Crossing*, 976 N.E.2d at 762 (appellate court does not reweigh evidence or judge the credibility of witnesses). The small claims court did not err when it determined Winters did not complete an *inter vivos* gift of Krato to Rose and thus Winters was Krato's owner. *See Hopping v. Wood*, 526 N.E.2d 1205, 1207

(Ind. Ct. App. 1988) (daughter’s unrestricted access to bank safe deposit box did not constitute *inter vivos* gift because mother, who could revoke daughter’s access at any time, did not completely relinquish control over the safe deposit box), *reh’g denied, trans. denied*.

2. Admission of Evidence

[17] Rose argues she was not given her constitutionally protected “opportunity to be heard” when the small claims court did not allow her to present the testimony of two witnesses. (Br. of Appellant at 13.) As in cases before a trial court, admission of evidence in a small claims case is within the small claims court’s discretion, “and the decision whether to admit evidence will not be reversed absent a showing of manifest abuse of the trial court’s discretion resulting in the denial of a fair trial.” *Elrod v. Brooks*, 910 N.E.2d 231, 233 (Ind. Ct. App. 2009). When a constitutional violation is alleged, we review that claim *de novo*. *Crabtree v. State*, 152 N.E.3d 687, 696 (Ind. Ct. App. 2020), *trans. denied*.

[18] Here, the small claims court allowed Rose and Winters to testify regarding their version of the events. The trial court then asked Winters to declare any other witnesses he wished to present and indicate what they would testify to. Winters dialogued with the court:

[Winters]: First off would be Shannon Garrison would be for the 24th for the exchange. And that would be her talking about what happened that day.

[Court]: Okay, I don’t think that’s a critical issue. I think I have a good idea.

[Winters]: Okay. Several days after February 7th her dad approached my dad, they work at LaPorte County EMS, and offered to pay for the dog. He said . . . he stated that is there anything I can do to resolve this, can I pay you for the dog. My dad can testify to that. Chip Winters, he's here.

[Court]: Alright, well that's one dad and another dad.

[Winters]: Exactly, I understand that, but . . .

[Court]: Anyone else that you would want to call?

[Winters]: My other witness would just be to the talk about the time where she did stay at the house and how absent she was. She was never around, that's the problem and so I was the sole caretaker of the dog. I played with him, I did everything with him. She was out with her friends, or whatever she was doing. You know, that's not here or there.

[Court]: What period time we talking about there?

[Winters]: That was the entire time that she lived . . . so from April when she moved into my house to August.

[Court]: Alright.

[Winters]: And he can witness that, he can testify to that.

[Court]: Well you can testify to it, and you just did.

(Tr. Vol. II at 58-9) (errors in original). The court asked Rose the same question and she dialogued with the court:

[Court]: Alright, and for you, what other witnesses would you call and what would they testify to?

[Rose]: Yes. My initial two witnesses are my mother and father, Jeff and Jody Rose. And they would be stating that they heard Cole say Krato was a gift for me, that he did not like the breed pit bull and that he did not like rescue animals and that it was made clear in their home during the foster period of time that Krato was a gift for me.

[Court]: Okay, I'm going to let you call one of your witnesses. I'm going to let you cross-examine them.

[Winters]: Okay.

[Court]: I'm going to let you call one of your parents to testify on the issue of their understanding of the dog being a gift. So pick which one you want, or which one wants to.

(*Id.* at 59-60.) Rose's father took the stand and testified that he heard Winters say he was adopting Krato as a gift to Rose. The court then asked Rose if she had any other witnesses and she dialogued with the court:

[Rose]: Yes, I have Grace who has been my best friend for years and she was at the house on numerous occasions while Cole was at work. When he wasn't around and she witnesses me being the main provider and sole caretaker of the dog and she would witness that.

[Court]: Okay, you've testified to that.

[Rose]: Okay.

[Court]: We are limited in time and it's good of all these folks to come and be supportive and be available to testify. As far as I'm concerned you two are the ones that are the main witnesses. What other witnesses would you have and what would they testify to?

[Rose]: The only other witness that I would have is my current boyfriend, Justin Biller, who now I live with and he can testify to me taking complete care of the dog. Cole has mentioned in his statements that I didn't take care of the dog and I do have two witnesses that would say that I did take care of the dog fully and that I can be the sole owner and caretaker of the dog and I'm physically able to provide for him.

[Court]: I don't think the ability, as far as I'm concerned, that has not been put into question. So, I didn't know if you intended it or not, but I've not heard anything that tells me that you shouldn't have the dog because you're not capable. So that's not an issue for me, so you wouldn't need somebody to testify that . . . to convince me of it, because I don't find that to be an issue.

(*Id.* at 64-5.) As there was no more testimony to be heard, the court allowed the parties to summarize their arguments.

[19] Rose consistently testified throughout the hearing that she believed Winters gave her Krato as a gift and, thus, she was Krato's owner. Rose also testified she was Krato's main caretaker, and she offered into evidence statements indicating she took Krato to the veterinarian and pictures of Rose and Krato together. As cited *supra*, Rose told the court that her mother would testify that Winters gave Krato to Rose as a gift and that Grace would testify that Rose was

Krato's main caretaker. The testimony of Rose's mother and Grace would therefore have been cumulative, and thus any error the small claims court made in denying Rose's request to present that evidence is harmless. *See Spaulding v. Harris*, 914 N.E.2d 820, 830 (Ind. Ct. App. 2009) ("Where wrongfully excluded testimony is merely cumulative of other evidence presented, its exclusion is harmless error."), *trans. denied*. Moreover, because any error in the exclusion of the witnesses was harmless, Rose cannot demonstrate she was denied a fair trial for purposes of a Due Process analysis. *See, e.g., Woodford v. State*, 544 N.E.2d 1355, 1358 (Ind. 1989) (harmless error does not constitute a due process violation).

Conclusion

[20] Any error made by the small claims court when it denied Rose's request to present her mother and her friend, Grace, as witnesses was harmless because their testimony would have been cumulative of Rose's earlier testimony. As a result, her "right to be heard" was not violated. Further, the small claims court did not err when it determined Winters was Krato's owner because Rose had not demonstrated by a preponderance of the evidence that Winters gave Krato to Rose as a gift. Accordingly, Rose has not demonstrated the small claims court abused its discretion when it denied Rose's motion to correct errors, and we affirm.

[21] Affirmed.

Brown, J., and Pyle, J., concur.