

MEMORANDUM DECISION

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ATTORNEY FOR APPELLANT

David C. Kolbe
Claypool, Indiana

IN THE COURT OF APPEALS OF INDIANA

Maria Jose Hernandez-Arana,
Appellant-Defendant,

v.

Desiderio L. Sanchez,
Appellee-Plaintiff.

May 7, 2021

Court of Appeals Case No.
20A-CT-1963

Appeal from the Kosciusko
Superior Court

The Honorable Christopher D.
Kehler, Judge

Trial Court Cause No.
43D04-1909-CT-55

Riley, Judge.

STATEMENT OF THE CASE

[1] Appellant-Defendant, Maria Jose Hernandez-Arana (Hernandez), appeals the trial court's findings of fact and conclusions thereon, concluding that Hernandez civilly converted property from Appellee-Plaintiff, Desiderio L. Sanchez (Sanchez) and entering judgment for Sanchez and against Hernandez in the amount of \$13,914.92.

[2] We affirm.

ISSUES

[3] Hernandez presents this court with two issues on appeal, which we restate as:

- (1) Whether Sanchez' interpreter was incompetent and biased; and
- (2) Whether the evidence was sufficient to sustain the trial court's decision by a preponderance of the evidence.

FACTS AND PROCEDURAL HISTORY

[4] Sanchez and Hernandez worked together at Rinker Boat Company in Syracuse, Indiana. In 2019, they engaged in some discussions about starting a business buying and selling cars. On May 23, 2019, Sanchez drove Hernandez to Beasley Foreign Parts, Inc. in Holly, Michigan, where Hernandez purchased a salvaged 2018 Chevrolet Equinox for approximately \$10,000. On June 2019, Sanchez withdrew \$10,000 from his Interra Credit Union account and gave that money to Hernandez, which she would use to fund the business. Later that

month, Hernandez informed Sanchez that she was not going to sell the car and he demanded that she return his money.

[5] On September 10, 2019, Sanchez filed a Complaint, sounding in fraud and seeking treble damages and attorney fees. On August 10, 2020, the trial court conducted a bench trial. On September 25, 2020, the trial court issued its findings of fact and conclusions thereon, concluding, in pertinent part, that

6. [Sanchez] brought this action alleging fraud pursuant to Indiana Code [§] 34-24-3-1 seeking treble damages and attorney fees.

7. [Sanchez] failed to produce any corroborating evidence with respect to an agreement that money was to be used for a business to buy and sell cars with [Hernandez] including, but not limited to, no evidence of texts, written agreements, e-mails, or corroborating witnesses. Furthermore, [Sanchez] presented no evidence from [Hernandez'] own bank records or otherwise that [Hernandez] deposited \$10,000 in any accounts.

8. A civil action under the criminal conversion statute is permitted by Indiana Code [§]34-24-3-1, which provides that “if a person suffers a pecuniary loss as a result of a violation of Indiana Code [§] 35-43 ..., the person may bring a civil action against the person who caused the loss for [damages].” I.C. [§] 35-43-4-3 provides that a “person who knowingly or intentionally exerts unauthorized control over property of another commits criminal conversion...” The Plaintiff in a civil conversion action is required to prove these elements by a preponderance of the evidence.

9. To the extent as set forth herein, the [c]ourt finds [Sanchez'] testimony to be credible and the [c]ourt finds [Hernandez'] testimony not to be credible.

10. [Sanchez] has proven [Hernandez] knowingly or intentionally exerted unauthorized control over his property by a preponderance of the evidence.

(Appellant's App. Vol. II, pp. 17-18).

DISCUSSION AND DECISION

[6] We initially note that Sanchez has filed no appellee's brief. Where the appellee fails to file a brief on appeal, we may, in our discretion, reverse the trial court's decision if the appellant makes a *prima facie* showing of reversible error. *In re Visitation of C.L.H.*, 908 N.E.2d 320, 326 (Ind. Ct. App. 2009). "In this context, *prima facie* error is defined as 'at first sight, on first appearance, or on the face of it.'" *Id.* at 326-27.

I. Sanchez' Interpreter

[7] At the bench trial, Sanchez brought his own interpreter. While the trial court did administer the oath, the trial court failed to inquire into the interpreter's qualifications. During Sanchez' testimony, the interpreter editorialized Sanchez' testimony and revealed that she had been personally involved in an attempt to retrieve the money from Hernandez by visiting Hernandez at her place of employment and demanding the funds. Hernandez now contends that her fundamental Due Process rights were violated by the interpreter's

incompetence and bias, resulting in a deficient interpretation of Sanchez' testimony that tainted his entire examination and made it unreliable.

[8] In Indiana, the use of an interpreter to translate court proceedings to a non-English speaking party is mandated by case law. *Mariscal v. State*, 687 N.E.2d 378, 382 (Ind. Ct. App. 1997), *trans. denied*. In accordance with Indiana Evidence Rule 604, it is necessary for a trial court to establish both the qualifications of an interpreter and administer an oath to the interpreter to make an accurate translation. *Id.* at 382. We extended the application of Evidence Rule 604 to instances in which an interpreter translates proceedings to a party, in addition to instances in which an interpreter functions to assist the trier of fact in understanding the evidence. *Id.* With respect to an interpreter's qualifications, we have long held that "where an interpreter is appointed, the manner in which the examination is conducted is largely within the discretion of the trial court." *Cruz Angeles v. State*, 751 N.E.2d 790, 795 (Ind. Ct. App. 2001), *trans. denied*. In *Cruz Angeles*, this court suggested a non-exhaustive list of inquiries that a trial court could use to qualify an expert. *Id.* In *Tesfamariam v. Woldenhaimanot*, 956 N.E.2d 118, 122 (Ind. Ct. App. 2011), we expanded *Cruz Angeles* and made the qualifications inquiry applicable to civil proceedings. Because the manner in which an examination of an interpreter by the trial court occurs is discretionary, we will review the trial court's examination under an abuse of discretion standard. *Id.* A trial court abuses its discretion if its decision is clearly against the logic and effect of the facts and circumstances before the court. *Id.*

[9] Here, it is undeniable that after the trial court administered the oath to the interpreter, the court failed to examine the interpreter's qualifications. However, at no point during the proceedings did Hernandez object to the lack of inquiry or the editorialized interpretations when Sanchez' interpreter started translating references to the parties in the third person and to herself in the first person. Likewise, when it was revealed that the interpreter had actively attempted to get Hernandez to repay the money to Sanchez, Hernandez did not object. Besides questioning whether the interpreter "is going to be a witness here,"—which Sanchez denied—Hernandez did not ask the trial court to otherwise disqualify or remove the interpreter. (Transcript p. 22).

[10] Even though the trial court failed to examine the interpreter's qualification in violation of Evidence Rule 604, it is a general rule in Indiana that matters not raised in the trial court may not be raised in an appellate court. *Id.* at 122. However, although a claim waived by a party's failure to raise a contemporaneous objection can be reviewed on appeal if the reviewing court determines that a fundamental error¹ occurred, in *Tesfamariam* we established that "a failure to establish the qualification of an interpreter or a failure to administer an oath is not a fundamental error." *Id.* Accordingly, as Hernandez failed to raise her objection before the trial court, her argument is waived on appeal.

¹ It should be noted that Hernandez did not raise the fundamental error doctrine in her appellate brief.

II. *Sufficiency of the Evidence*

[11] Hernandez contends that the trial court abused its discretion when it entered a judgment against him based on civil conversion, which, as he maintains, was not supported by a preponderance of the evidence.

[12] Where, as here, the trial court entered findings of fact and conclusions thereon at a party's request, our standard of review is well-settled. *Clark-Silberman v. Silberman*, 78 N.E.2d 708, 714 (Ind. Ct. App. 2017). We may not set aside the findings or judgment unless they are clearly erroneous. *Id.* In our review, we first consider whether the evidence supports the factual findings. *Id.* Second, we consider whether the findings support the judgment. *Id.* Findings are clearly erroneous only when the record contains no facts to support them either directly or by inference. *Id.* A judgment is clearly erroneous if it relies on an incorrect legal standard. *Id.* We give due regard to the trial court's ability to assess the credibility of the witnesses. *Id.* While we defer substantially to findings of fact, we do not defer to conclusions of law. *Id.* We do not reweigh the evidence; rather we consider the evidence most favorable to the judgment with all reasonable inferences drawn in favor of the judgment. *Id.*

[13] Rather than challenging the trial court's conclusions, Hernandez focuses the entirety of her argument on reweighing Sanchez' and her own testimony before the trial court. In an attempt to cast doubt on Sanchez' credibility, Hernandez contends that without presenting any corroborating evidence, Sanchez "claimed that he gave [Hernandez] the money in one hundred dollar bills," which

Hernandez “denied ever receiving[.]” (Appellant’s Br. p. 9). Essentially claiming that it is her testimony against Sanchez’, Hernandez requests this court to reweigh his credibility and determine that his presented evidence fails the preponderance standard.

[14] The record supports that both parties testified that, while they were colleagues, they had discussions about commencing a business of buying and selling cars. Both Hernandez and Sanchez recounted Hernandez’ vehicle purchase in Michigan. Sanchez testified that he withdrew \$10,000 from his account and handed Hernandez the money. To reinforce his testimony, Sanchez admitted into evidence documents establishing that he withdrew the money from his 401K account and deposited it into his Interra Credit Union account, from which he then debited it to give to Hernandez. Sanchez testified that Hernandez told him that she was going to use the funds to start the business. When Hernandez informed Sanchez that she was not going to sell the car, he demanded his money back.

[15] Mindful that the trial court found Sanchez credible, we conclude that the trial court could reasonably infer from Sanchez’ supported testimony that he withdrew the money from his 401K and invested it by giving it to Hernandez to commence the business. As such, we find that Sanchez satisfied his burden by a preponderance of the evidence.

CONCLUSION

[16] Based on the foregoing, we hold that Hernandez waived his argument that Sanchez' interpreter was incompetent and biased for failing to object; and we conclude that the evidence was sufficient to sustain the trial court's decision by a preponderance of the evidence.

[17] Affirmed.

[18] Mathias, J. and Crone, J. concur