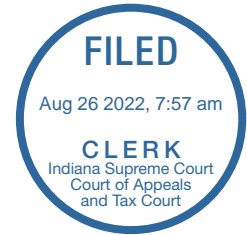


MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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IN THE COURT OF APPEALS OF INDIANA

Katrina Pomart,
Appellant-Petitioner,

v.

John Shamp and Jennifer
Shamp,
Appellees-Respondents

August 26, 2022

Court of Appeals Case No.
22A-SC-356

Appeal from the Montgomery
Superior Court

The Honorable Daniel G. Petrie,
Judge

Trial Court Cause No.
54D02-2201-SC-4

Crone, Judge.

Case Summary

- [1] Katrina Pomart appeals the small claims judgment entered in favor of John Shamp and Jennifer Shamp on her claim against them for damages to her property and livestock allegedly caused by their dogs. Her sole argument on appeal is that the judgment is contrary to law. We conclude that she fails to carry her burden to show that the judgment is contrary to law and therefore affirm.

Facts and Procedural History

- [2] In accordance with our standard of review, the evidence most favorable to the Shamps follows. Since 2011, Pomart and the Shamps have owned adjacent properties. Pomart owns three dogs, a schnauzer, a shih-tzu, and a black lab. She also owns chickens and goats. The Shamps have two pit bulls and a chiweenie. The Shamps' dogs are "very friendly," they "don't chase people" or "attack people," and "[t]he most they're going to do is run up to you to get petted." Tr. Vol. 2 at 24. Both Pomart and the Shamps have had issues confining their animals to their respective properties.
- [3] In April 2011, Pomart installed a wire fence to contain her three dogs and other animals in her yard. Later that year, the Shamps installed a wire fence on the north, south, and east sides of their property, and used Pomart's fence on the west side of their property to complete the enclosure. In 2013, Pomart installed a shadow fence between the properties. The fence blew over twice into the Shamps' yard due to faulty installation and weather. *Id.* at 21. The fence was

chewed by both parties' dogs. *Id.* at 20-21. To ensure that their dogs did not chew the shadow fence, in 2016, the Shamps installed an electric fence about six feet back from Pomart's fence. *Id.* at 21.

[4] In July 2017, Pomart discovered mutilated goats floating in her swimming pool. In September 2017, Pomart filed a police report, alleging that the Shamps' dogs had chewed through the fence and two dogs had gotten onto her property. Ex. Vol. 4 at 85. She indicated that she "feared for her chickens and goats but the dogs had not attacked them at this time." *Id.* The report also shows that the responding police officer contacted John McClanahan, who was at the Shamps' property, about the problem, and that McClanahan stated that he was preparing to put up new fencing that should stop the problem. *Id.* Subsequently, another fence was installed on the Shamps' property. Tr. Vol. 2 at 6. During 2018 and 2019, Pomart had up to sixteen chickens and multiple goats killed. *Id.*

[5] On January 7, 2020, Eric Swank was working on Pomart's property when he saw the Shamps' pit bulls on the property and observed what he believed to be blood on one of the dog's "nose and snout." *Id.* at 17. He informed Pomart, who called the sheriff and animal control. When they arrived, one dog had already returned to the Shamps' property, and according to Swank, the responding officers saw the other dog crawl underneath the fences to return to the Shamps. *Id.* at 18. The officers attempted to contact the Shamps, but no one was home.

[6] Later that day, Pomart discovered that six of her goats had been mutilated. Two goats were dead, and two others died later of their injuries. An animal control officer responded to Pomart's call, spoke to John Shamp, and observed the Shamps' dogs. *Id.* at 22. John showed animal control that the dogs had been able to get out where a tree branch had fallen on the electric fence and shorted it out. *Id.* One of the Shamps' dogs had blood on its nose from scratching it on the Shamps' fence. *Id.* There was blood on the Shamps' side of the fence where the dog had crawled under it. *Id.* at 22-23. That dog also suffers from a skin condition, which results in red spots on its skin. *Id.* at 23. The other dog is light colored, and "[i]f she had blood on her from killing goats, it would be in her fur and would not come out." *Id.* On or about January 7, 2020, native predators such as bobcats and coyotes were reported in the area. *Id.* at 23. According to John, these predators can kill goats. *Id.*

[7] In January 2022, Pomart filed a claim against the Shamps for damage to her fence, injuries to her livestock, and associated costs. At trial, Pomart presented her testimony, Swank's testimony, police reports, veterinary bills, and photographs of damage to her fence and injuries to her livestock. Pomart testified that in July 2017, she found mutilated dead goats in her pool, but stated that she was "not accusing anybody," and it was "kind of odd that these little goats were mutilated and then made it to the pool." *Id.* at 6. Pomart did not present evidence that she or anyone else ever witnessed the Shamps' dogs near her goats or attack them or her chickens. The Shamps presented John's testimony, pictures of the fence line between the properties, reports of native

predators in the area, and pictures of the Shamps' pit bulls. John testified that he knew nothing about Pomart's livestock deaths until it was brought to his attention in 2020. *Id.* at 20. At the end of trial, the court took the matter under advisement. On January 21, 2022, the trial court entered an order of judgment in favor of the Shamps. This appeal ensued.

Discussion and Decision

[8] As the party bearing the burden of proof on her small claims action, Pomart appeals from a negative judgment. As such, we will not reverse unless she establishes that the judgment is contrary to law. *Romanowski v. Giordano Mgmt. Grp., LLC*, 896 N.E.2d 558, 562 (Ind. Ct. App. 2008). A judgment is contrary to law if “the evidence points unerringly to a conclusion different than that reached by the trial court.” *Universal Auto, LLC v. Murray*, 149 N.E.3d 639, 642 (Ind. Ct. App. 2020) (quoting *Wilson v. Huff*, 60 N.E.3d 294, 298 (Ind. Ct. App. 2016)). “In determining whether a judgment is contrary to law, we consider the evidence in the light most favorable to the appellee, together with all the reasonable inferences to be drawn therefrom.” *Kim v. Vill. at Eagle Creek Homeowners Ass’n, Inc.*, 133 N.E.3d 250, 252 (Ind. Ct. App. 2019). Indeed, “[t]he small claims court is the sole judge of the evidence and the credibility of witnesses, and on appeal we neither reweigh the evidence nor assess the credibility of the witnesses.” *Heartland Crossing Found., Inc. v. Dotlich*, 976 N.E.2d 760, 762 (Ind. Ct. App. 2012). “Our standard of review in small claims cases is particularly deferential in order to preserve the speedy and informal process for small claims.” *Id.* Further, we note that the trial court’s judgment is

a general judgment, unaccompanied by findings and conclusions, which may be affirmed on any legal theory consistent with the evidence. *Estate of Kappel v. Kappel*, 979 N.E.2d 642, 652 (Ind. Ct. App. 2012).

[9] In arguing that she is entitled to damages, Pomart relies on Indiana Code Section 15-20-2-1, which provides,

If a dog kills or injures any livestock while the livestock is in the care, custody, and control of the livestock’s owner or the owner’s agent, the owner or harbinger of the dog is liable to the owner of the livestock for all damages sustained, including reasonable attorney’s fees and court costs.

Livestock includes goats but not poultry other than an exception that is inapplicable here.¹ Ind. Code § 15-17-2-47.

[10] Pomart argues that the dispute centers around whether the Shamps’ dogs injured and/or killed her livestock. She acknowledges that no one witnessed the dogs attack her livestock. Nevertheless, she appears to argue that the evidence shows that the dogs attacked her livestock between 2011 and 2020, that the dogs were seen on her property on January 7, 2020, and that she discovered that her goats had been injured or killed later that day. She asserts that “[i]t would be an extreme evidentiary and logical leap to hold that the evidence

¹ Pomart’s argument on appeal appears to focus solely on damage to her livestock.

holds any other conclusion than the Shamp's [sic] dogs causing the injury and death to [her] livestock." Appellant's Br. at 13.

[11] Considering the evidence in the light most favorable to the Shamps, as we must, we observe that it does not show that their dogs attacked Pomart's livestock between 2011 and 2020. The evidence shows that their dogs are very friendly and do not chase or attack people. Pomart testified that she had found mutilated goats in the summer of 2017 but was "not accusing anybody." Tr. Vol. 2 at 6. Pomart's September 2017 police report shows that she believed that the dogs had gotten onto her property but that they had *not* attacked her chickens and goats. Ex. Vol. 4 at 85. Pomart cites no evidence that the dogs were responsible for the deaths of her chickens and goats during 2018 and 2019.

[12] As for January 7, 2020, while the evidence establishes that the dogs were on Pomart's property, the dogs did not appear to have the signs of blood on them that would be expected had they attacked the goats. One had a small scratch on the nose from the Shamps' fence, and the other was light colored and had no signs of blood on it. There were reports of bobcats and coyotes in the area, both of which are capable of killing goats. The evidence supports a reasonable inference that Pomart's livestock was attacked by natural predators. We conclude that Pomart has failed to show that the evidence points unerringly to the conclusion that the Shamps' dogs injured and/or killed her livestock. Pomart's argument is merely a request to reweigh the evidence, which we must decline. Accordingly, we affirm the trial court's judgment in favor of the Shamps.

[13] Affirmed.

Vaidik, J., and Altice, J., concur.