

SUPREME COURT
OF THE
ROSEBUD SIOUX TRIBE

2011 JUL 7 PM 1 03

Marlene R. Shortbull,
Plaintiff/Appellant
v.
Michael Stover, and
Sharly Stover,
Defendants/Appellees.

CA 2010-04
MEMORANDUM OPINION
AND ORDER

Per Curiam (Cheryl Three Stars Valandra, Chief Justice and Associate Justices Frank Pommersheim and Pat Donovan)

I. Introduction

This appeal involves a dispute between the parties for the repair of a vehicle. The transcript of the trial court is indecipherable and is of little use in this appeal record. The trial court did issue Findings of Facts and Conclusions of Law. We can piece together some of the undisputed facts from the Findings of Facts and the trial record documents introduced.

Appellant was experiencing car trouble and on June 6, 2008 had her vehicle towed to Appellees' repair shop located within the exterior boundaries of the Rosebud Sioux Indian reservation for unknown repairs. Appellee required Appellant to sign a document (which was properly introduced as evidence at the trial and is part of the appeal record) and agree to how the repairs would be paid for and waiving all of Appellant's "... rights to claims of theft or damage to my vehicle. I am fully aware of uncontrolled vandalism. No police patrol or protection. Let it be known I am leaving my vehicle at Smoky's own Shop at my own risk. I do not hold Smoky's/Pokey or Smoky's Own Shop responsible what so ever for theft or damage to my

vehicle that my accrue! If I didn't agree with this statement I would take my vehicle someplace else! . . . Note: a \$10.00 a day storage fee starts 15 days after repairs are done.”

The parties disagree on what transpired thereafter but it is undisputed that Appellant's vehicle sat at Appellant's shop for some time. Appellees allege the long period of delay in the vehicle being towed to their place of business was because Appellant said she would obtain a battery so a diagnostic test could be done on the vehicle to ascertain the mechanical problem and that she would purchase the necessary parts for Appellee to repair the vehicle. Appellant alleges Appellee failed to timely contact her to purchase a battery in order to perform the diagnostic testing.

On March 16, 2010 Appellees mailed Appellant notice that it was charging her storage fees for her vehicle and demand for payment

At some point thereafter, Appellant asked Appellees for the return of the vehicle.

On April 1, 2010 Appellant files a summons and complaint for replevin for return of the vehicle. Appellees filed an Answer denying most of the claims in the Appellant's complaint. A review of the Answer reveals that on the prayer for relief Appellees ask the court to award them \$1,407.12 in storage fees although they do not provide for a counterclaim in their answer.

On November 16, 2010 the court held a hearing on the complaint for return of the vehicle. After the hearing the court filed its order that contained Findings of Facts and Conclusions of Law. After the hearing the court made the following finding of facts:

1. That on 6 June 2008 the plaintiff (Appellant herein) had her 1996 Pontiac Grand Am towed to the defendant's (Appellee herein) repair shop known as Smokey's Own Shop for repairs.
2. Plaintiff (Appellant herein) executed a document detailing the shop's guidelines as to liability for thefts, vandalism, shop charges and storage fees.
3. Defendants (Appellees herein) ran a diagnostic scan on the vehicle and informed the plaintiff of the parts needed for the repair at which time the parties agreed that plaintiff would secure the parts necessary for the repair.
4. That plaintiff did not provide the needed parts and the vehicle is still unrepaired.

5. That there was no contact between the parties until a certified letter was sent to the plaintiff on March 6, 2010 informing the plaintiff to call the shop for a total balance of the costs to include the storage fees.
6. That plaintiff received the notice and did not communicate with defendants until 14 April 2010.
7. That plaintiff filed her action on 1 April 2010 requesting judgment in an unspecified amount as well as the vehicle's return.
8. Defendants responded with an answer and counterclaim in the amount of \$1407.12 for the diagnostic scan and the storage fees.
9. Plaintiff argues that the defendant's (sic) are running a "scam" as they should have sent her monthly invoices.
10. Defendants' (sic) argue that plaintiff was negligent in furnishing the needed parts for repair and for not providing communication for a period of nine months.

The court then entered the following conclusions of law:

1. The court has continuing jurisdiction over the parties and this action.
2. That plaintiff was negligent in that she failed to deliver the parts necessary to repair the vehicle and or make any effort to communicate with the defendant's (sic) concerning her vehicle storage.
3. That defendant's (sic) are entitled to judgement in the amount of \$1407.12 for the cost of repairs and storage of plaintiff's vehicle.

The court then ordered that judgment is entered on behalf of the defendants and against the plaintiff in the amount of \$1407.12.

Appellant now appeals the trial court's decision.

II. Issues

This appeal raises 2 issues:

1. Did the trial court err in not ruling on the Appellant's replevin request?
2. Did the trial court err in awarding monetary damages to Appellees?

Each issue will be discussed in turn.

III. Discussion

A. The court erred in failing to rule on the Appellant's replevin complaint.

Although not specifically identified in the Rosebud Sioux Tribal Code, the proper standard of review on the question of the sufficiency of the evidence is the clearly erroneous standard. Rule

52(a) of the Federal Rules of Civil Procedure define the appropriate factual standards as follows: Findings of fact, whether based on oral or documentary evidence shall not be set aside unless clearly erroneous. *Moran v. Rosebud Housing Authority*, CA 90-03 (1991).

This Court reviews questions of law *de novo*. *First Computer Concepts, Inc. v. Rosebud Sioux Tribe*, CA 89-02 (1990). Under *de novo* review, the decision of the trial court is accorded no deference by the appellate court and the appellate court is free to decide the issue presented to it as if it had not come before the trial court in the first place. The appellate court reappraises the evidence as presented by the record and reaches its own independent conclusions. *Salve Regina Coll. v. Russell*, 499 U.S. 225,226 (1990).

The court below only made passing mention of Appellant's complaint for replevin (or complaint for the return of the vehicle) in its findings of fact. The court neither discusses the complaint nor any evidence related to the replevin complaint in any further detail. The court provides no factual finding nor any conclusions of law why the replevin request was rejected or whether it was in fact ruled upon.

Overall this court finds the lower court's findings of fact are insufficient and lacking in detail or specificity. Without a clear transcript of the hearing, we are unable to decipher what evidence was produced by the Appellant in support of replevin and what evidence the Appellees produced to refute the replevin claim.

With only the court's findings of facts available, we find that the court was clearly erroneous and that the findings of facts are insufficient to support the judgment.

With only the court's conclusions of law available, we are not able to conduct a *de novo* review of the courts conclusions of law on the issue of why Appellant's replevin complaint was rejected or not ruled upon by the court.

B. The trial court erred in awarding monetary damages to Appellees?

Appellant argues that the court erred in finding that Appellees' answer was also a counterclaim. She also argues that the agreement to charge storage fees did not take affect until 15 days after the repairs to the vehicle were completed.

Appellees argue that their answer is a valid counterclaim and that the agreement for storage fees took affect once the diagnostic test was performed on the vehicle and she failed to bring the necessary parts to the Appellees for the necessary repairs.

The lower court found in finding 8. Defendants responded with an answer and counterclaim in the amount of \$1407.12 for the diagnostic scan and the storage fees.

Again the only record of the hearing held in this matter is the lower court's Findings of Fact and Conclusions of Law. There is no decipherable transcript of the hearing.

There is no way for this court to determine on review what analysis, if any, the lower court used to rule that the Appellees' answer to be construed as an answer and counterclaim.

There is no way for this court to determine on review what analysis, if any, the lower court used to determine when the agreement between the parties for storage fees took affect.

With only the court's findings of facts available, we find that the court was clearly erroneous and that the findings of facts are insufficient to support the judgment.

With only the court's conclusions of law available, we are not able to conduct a *de nova* review of the courts conclusions of law on the issue of why the lower court considered the Appellees' answer a counterclaim and whether the lower court made the proper analysis of when the agreement between the parties for storage fees took affect.

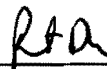
IV. Conclusion

For all the above-stated reasons, the case is reversed and remanded to the lower tribal court for further proceedings to include whether Appellant has a valid claim in her complaint for replevin or return of the vehicle, whether Appellees' answer can be construed as a counterclaim and if so when did the agreement between the parties become operative and what, if any, damages should be awarded.

IT IS SO ORDERED.

Dated this 7th day of July, 2011.

FOR THE COURT:



Pat Donovan
Associate Justice