

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
WOOD COUNTY

Michael T. Homsher II

Court of Appeals No. WD-08-081

Appellee

Trial Court No. 08-CV-I-01590

v.

Thomas Worthington

DECISION AND JUDGMENT

Appellant

Decided: September 30, 2009

* * * * *

Thomas Worthington, pro se.

* * * * *

PIETRYKOWSKI, J.

{¶ 1} Defendant-appellant, Thomas Worthington, appeals the November 24, 2008 judgment of the Bowling Green Municipal Court which granted judgment in favor of plaintiff-appellee, Michael T. Homsher, II, for amounts owed on various construction sub-contracts. For the reasons that follow, we affirm the trial court's judgment.

{¶ 2} On September 22, 2008, appellee filed a small claims complaint alleging that appellant hired him to perform construction work and that he had not been paid in

full. On October 30, 2008, the parties appeared before a magistrate; testimony and evidence were presented.

{¶ 3} On November 5, 2008, the magistrate issued its decision granting judgment in the amount of \$1,983.60, plus interest, in favor of appellee. The magistrate stated that appellee submitted work logs as well as receipts. According to the magistrate, appellant admitted that he owed appellee money but he disputed the amount. Appellant did not submit any evidence.

{¶ 4} Appellant filed objections to the magistrate's decision and, on November 24, 2008, the trial court denied the objections. This appeal followed.

{¶ 5} Appellant, pro se, raises the following assignment of error for our review:

{¶ 6} "The trial court erred in finding that the allegations of the complaint had been established and in finding that appellee was entitled to judgment against appellant."

{¶ 7} In his sole assignment of error, appellant contends that, in the proceedings below, appellee failed to provide "sufficient credible evidence" to sustain his claim. Appellant, as the party challenging the trial court's decision has the duty to file the transcript to ensure that an appellate court can properly evaluate the lower court's decision. *Chambers v. Chambers*, 12th Dist. No. CA2001-06-014, 2002-Ohio-869, citing *Knapp v. Edwards Laboratories* (1980), 61 Ohio St.2d 197, 199. Appellant has further failed to prepare an App.R. 9(C) statement of the evidence, settled and approved by the trial court.

{¶ 8} Absent a transcript to review, we must presume the validity and regularity of the proceedings below with respect to the trial court's determination. *Knapp*, supra. Further, because the trier of fact sees and hears the witnesses and is particularly competent to decide "whether, and to what extent, to credit the testimony of particular witnesses," we must afford substantial deference to its determinations of credibility. *State v. Lawson* (Aug. 22, 1997), 2d Dist. No. 16288. Accordingly, we find that appellant's assignment of error is not well-taken.

{¶ 9} On consideration whereof we find that substantial justice was done the party complaining and the judgment of the Bowling Green Municipal Court is affirmed. Pursuant to App.R. 24, appellant is ordered to pay the costs of this appeal.

JUDGMENT AFFIRMED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

Mark L. Pietrykowski, J.

JUDGE

Arlene Singer, J.

JUDGE

Richard W. Knepper, J.
CONCUR.

JUDGE

Judge Richard W. Knepper, retired, sitting by assignment of the Chief Justice of the Supreme Court of Ohio.

<p>This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at: http://www.sconet.state.oh.us/rod/newpdf/?source=6.</p>
