

Cite as 2022 Ark. App. 519

ARKANSAS COURT OF APPEALS

DIVISION II

No. CV-21-554

MICHAEL ROBERTS

APPELLANT

Opinion Delivered December 14, 2022

V.

APPEAL FROM THE CRAWFORD
COUNTY CIRCUIT COURT
[NO. 17CV-18-567]

CRABTREE RV CENTER, INC.

APPELLEE

HONORABLE, MARC MCCUNE
JUDGE

AFFIRMED

MIKE MURPHY, Judge

Appellant Michael Roberts appeals from the Crawford County Circuit Court’s order denying his claim against appellee Crabtree RV Center. On appeal, Roberts argues that the court erred in finding that there was no breach of contract and the exclusion of the express and implied warranties. We affirm.

On July 3, 2015, Roberts purchased a used 2011 recreational vehicle from Crabtree and took delivery on July 14. On September 14, 2018, Roberts, a resident of Connecticut, filed a complaint against Crabtree, located in Alma, Arkansas, alleging breach of contract, breach of warranty, fraud, and an unfair-trade-practice claim. Crabtree responded, raising several affirmative defenses. In the pretrial scheduling order dated February 27, 2019, the parties were ordered to mediate, which was unsuccessful. Roberts was additionally ordered

to transport the RV to Crawford County, as it was in Connecticut at the time, or pay half of Crabtree's expenses to inspect the vehicle itself. On September 3, 2019, Crabtree filed a motion to compel asking the court to order Roberts to comply with the court's pretrial scheduling order requiring Roberts to allow inspection, which the court granted. Crabtree traveled to Connecticut and inspected the RV on January 14 and 15, 2020.

The following testimony and evidence was presented at the bench trial held on June 24, 2021. Roberts introduced the purchase-sale agreement, a warranty-service agreement purchased through a third party, a presale agreement, and a tire-protection warranty through a separate company. He testified that he had been at a convention in Little Rock and "decided to take a little cruise to look for campers" because he intended to travel throughout the country. He stated that he purchased a warranty that he thought was supposed to cover all necessary repairs. Roberts introduced photos and explained the list of grievances he had with the RV once he took delivery. He testified about some of the repairs he had done by another party and those he had done personally. He stated the repairs totaled \$22,703.26. He testified that he never made a payment on the RV and engaged in litigation with the finance company and reached an agreement to pay them \$20,000 for a "mutual release."

Steven Lyons, an expert witness on vehicle forensics, testified on Roberts's behalf. Lyons stated that he has been doing vehicle examinations for thirty-one years. He prepared a report based on a personal and site investigation of the RV as well as a list of problems and photographs from different dates and locations given to him from Roberts. Lyons testified

that the issues were not ones of sudden incident and that Roberts did not have possession of the RV long enough for these types of problems to develop.

Judy Hawk, the finance manager at Crabtree, testified that Roberts requested the warranty documents several times and that she sent them to Roberts multiple times via UPS.

Bert Adams, president and majority owner of Crabtree, testified that he knew Roberts could not get approved financing at other dealerships. Adams said he was contacted by the finance company when payments were not being made. Due to the lack of payments, Crabtree attempted to locate the RV, which consisted of an extensive search outside of the state. He acknowledged there was an agreement between him and Roberts about doing some corrective measures to the RV. Adams explained that the corrections were taken care of, Crabtree delivered the RV to Roberts in Oklahoma, and Roberts accepted the RV upon delivery. Adams testified he was not aware of what happened from the time the RV left the dealership to when the pictures that Roberts submitted were taken. Despite one of Roberts's complaints being that the RV jacks on the trailer were not intact when he received the RV, he did not reach out to Adams until eight to ten months later. When asked if the RV was roadworthy, Adams responded, "I know that it was driven from our dealership to four hours . . . to Oklahoma because our dealership delivered it," and the jacks were intact at that time. Adams testified that he made arrangements to have an RV dealership in Connecticut inspect the unit, but Roberts would not let them fulfill that obligation.

Following the trial, the court found that Roberts had failed to establish his burden of proof by a preponderance of the evidence for the following reason:

That, specifically, the Court finds that the defendant was not given the opportunity, in a timely fashion, to do their own inspection or to do their own examination of the issues of which the plaintiff is now claiming. That the subject R.V. was not inspected by the plaintiff's expert, Mr. Lyons, until approximately one (1) year after the plaintiffs purchase of the subject unit. That the Court does not find the plaintiff to be credible, as the jack stands (about which the plaintiff now complains) worked fine when it was delivered to the plaintiff. That, moreover, the Court has concerns over the fact that the plaintiff complains of the jacks and the motor not working, yet the Court was never presented with any repair bills. That there were no witnesses called to support the plaintiff on the issues of the jacks. That, as to the allegation of the tires being dry rotted, that is something that would have been seen when plaintiff purchased the unit in July, 2015 and when he inspected it in April, 2016. That the Court further considers the fact that the defendant had to get an Order from the Court (four (4) years after the sale) to inspect the unit. That the Court further considers that the plaintiff refused to take the unit to a recommended location to have it inspected. That the Court further finds that the plaintiff refused to cooperate and to do some of the things necessary to allow the defendant to inspect the unit and repair it, if indeed repairs were needed.

Our standard of review following a bench trial is whether the trial court's findings are clearly erroneous or clearly against the preponderance of the evidence. *Summers Drilling & Blasting, Inc. v. Goodwin & Goodwin, Inc.*, 2021 Ark. App. 267, at 2, 626 S.W.3d 130, 131. A finding is clearly erroneous when, although there is evidence to support it, the reviewing court on the entire evidence is left with a definite and firm conviction that a mistake has been made. *Id.* Disputed facts and determinations of the credibility of witnesses are within the province of the fact-finder. *Id.*

On appeal, Roberts's first argument is both a breach-of-contract and breach-of-warranty claim. Specifically, he argues that the court erred in finding that Crabtree did not breach its contract with Roberts when it did not repair the RV and that Roberts failed to prove that Crabtree owed him express and/or implied warranties. He explains that he

discusses the two legal theories together under the same point because they are intertwined. His argument consists of a discussion of the issues he had with the RV, yet he does not make a direct argument as to why Crabtree should be held accountable for these issues. He summarizes the court's ruling as finding in favor of Crabtree because he purchased the RV "as is." Notably, the court's order never uses the words "as is," nor does it use the word "warranty." In fact, the only discussion below about warranties concerned Roberts's purchase of an extended warranty and tire protection from third parties that are not involved in this suit.

Due to Roberts's poorly developed argument and lack of evidence that the issues of warranties and breach of contract were ever raised to, or ruled on by, the court, we affirm. Roberts bears the burden on appeal to demonstrate error, and he has not done so. *Roggasch v. Sims*, 2016 Ark. App. 44, at 8, 481 S.W.3d 440, 446; *see also Seth v. St. Edward Mercy Med. Ctr.*, 375 Ark. 413, 420, 291 S.W.3d 179, 184–85 (2009) ("This court has repeatedly held that 'something more than a mere assertion of an argument in the pleadings is required to preserve an issue for appellate review.'" (quoting *Shelter Mut. Ins. Co. v. Kennedy*, 374 Ark. 184, 188, 60 S.W.3d 458, 461 (2001))). Roberts did not, with any specificity, explain how the evidence presented failed to establish each element of any of the claims. When an appellant fails to make a convincing argument, and where it is not apparent without further research that the point is well taken, we will affirm. *Firstbank of Ark. v. Keeling*, 312 Ark. 441, 850 S.W.2d 310 (1993). We will not do appellant's research. *Mikel v. Hubbard*, 317 Ark. 125, 128, 876 S.W.2d 558, 560 (1994).

Moreover, we cannot say the trial court's findings were clearly erroneous. Roberts accepted the RV after his requested repairs had been made, and he did not report issues until eight to ten months later. He refused to take the vehicle to an authorized dealer and was not cooperative in allowing the unit to be inspected. The trial court considered the evidence presented, heard counsel's arguments, and resolved the issues in Crabtree's favor. It is well settled that disputed facts and determinations of the credibility of witnesses and evidence presented are within the province of the fact-finder. *Summers Drilling & Blasting, supra*.

Affirmed.

ABRAMSON and GLADWIN, JJ., agree.

Dusti Standridge, for appellant.

Gean, Gean & Gean, by: *Roy Gean III*, for appellee.