SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-5667-14T3

PHILIP SCHUBERT and
HEATHER SCHUBERT,

Plaintiffs-Respondents/
Cross-Appellants,

v.

CHRISTINE COSTER and
WOLFGANG HOFGAERTNER,

Defendants-Appellants/
Cross-Respondents.

Argued September 20, 2016 – Decided April 4, 2017

Before Judges Koblitz, Rothstadt and Sumners.

On appeal from Superior Court of New Jersey, Law Division, Morris County, Docket No. L-2894-13.

Bob Kasolas argued the cause for appellants/cross-respondents (Brach Eichler, LLC, attorneys; Mr. Kasolas, of counsel and on the briefs).

Barry A. Kozyra argued the cause for respondents/cross-appellants (Kozyra & Hartz, LLC, attorneys; Mr. Kozyra, of counsel and on the brief; Michael J. Rankin, on the brief).

PER CURIAM

Defendants, Christine Coster and Wolfgang Hofgaertner, appeal from a June 25, 2015 final judgment entered against them by the Law Division in the amount of $1250 in favor of their neighbors, plaintiffs Philip Schubert and Heather Schubert. Plaintiffs cross-appeal, challenging the amount of damages the court awarded on their claim, and the court's entry of a $1262.50 judgment in favor of defendants against plaintiffs. We affirm.

The parties' dispute arose from their joint, failed plan to design and build a shared driveway between their properties and an agreement relating to the relocation of a 150-year-old well house from defendants' property to plaintiffs' property. The trial judge found that defendants were entitled to recover $1262.50 from plaintiffs because they had agreed to share costs that were incurred for professional fees related to the driveway. The judge also determined that defendants were not entitled to recover fees and costs incurred in a prerogative writ case they brought relating to the municipality's granting permits to plaintiffs, even though the court initially denied plaintiffs' motion for summary judgment seeking to dismiss that claim. The judge also found that defendants had to pay $1250 to reimburse plaintiffs for the cost of relocating the well house that defendants ultimately destroyed, but would not award plaintiffs additional damages because they

failed to prove them. He also found that plaintiffs were not entitled to punitive damages.

On appeal, defendants contend that the judgment against them should be vacated because the judge made "erroneous" credibility findings and conclusions of law, and the evidence did not support his findings of fact. They also contend that the judge should not have enforced the "conditional gift" they made of the well house because plaintiffs' version of their agreement rendered it illegal, and, in any event, plaintiffs breached the agreement. Defendants also argue that the trial judge erred by barring the rebuttal testimony of a necessary witness, and he improperly reconsidered, sua sponte, his interlocutory order denying plaintiffs' motion for summary judgment as to one of their claims.

Plaintiffs argue there was no basis to hold them liable for the costs incurred by defendants' hiring of an architect and that the trial judge erred in his determination of the amount of plaintiffs' damages to which they were entitled for the destruction of the well house. As to the judgment against them, plaintiffs contend that they should not have been obligated to pay for the architect because they never authorized or approved the work in advance. As to the judgment in their favor, while they believe the judge properly determined that they were unaware the well house was placed within the setback on their property and that the

agreement to transfer the well house to them was enforceable, they contend the trial judge improperly rejected their evidence of the structure's replacement cost, and their claim for punitive damages.

The facts giving rise to the parties' claims are discerned from those found by the trial judge and can be summarized as follows. The parties own neighboring residential properties located on two lots that had been a unified lot before its subdivision in 2005. When the property was subdivided, an existing well house became located on defendants' property, situated within the twenty-foot side yard setback for accessory structures required by the local zoning ordinance.

In July 2010, plaintiffs applied for a building permit for the construction of an addition to the home on their property. The application contained plans with zoning charts that included the "Detached Accessory [B]uilding Setbacks" applicable to the well house. At the same time, defendants were also involved with construction on their property.

In 2011, before either of the parties' construction projects was completed, defendants approached plaintiffs to discuss potentially "sharing a portion" of their driveways. Through the parties' subsequent exchange of emails, they reached an agreement first about the driveway and then the well house. On June 18,

2011, defendants wrote plaintiffs suggesting that the parties share all costs relating to the design and construction of the shared driveway. The email identified examples of such costs and proposed they share "any other costs pertaining to [the] joint driveway [including those] not yet mentioned." Five days later, plaintiffs responded by stating that they "would split costs related to the shared portion."

The parties agreed to hire a surveyor for the driveway, and, in September 2011, defendants suggested that they hire John Vogel, who had previously done work for defendants. In November 2011, defendants emailed plaintiffs to advise that they paid Vogel in full and to request "a check for [defendants' fifty percent] of the surveyor fees, which amount[ed] to $437.50." Plaintiffs responded that they were unsatisfied with the work but had "[n]o problem cutting half the check as agreed." The same promise to pay was repeated by plaintiffs on numerous occasions in subsequent emails.

In November 2011, defendants hired an architect, Todd Koenig, to design the joint driveway. Defendants did not provide plaintiffs with "any cost estimate for . . . Koenig," asserting the parties' June 2011 email was a "blanket agreement . . . to share the cost of anything" for "the joint driveway work and [plaintiffs] didn't object to it, so there was no need to ask

anything else." During Koenig's rendering of services, he was included on emails exchanged between the parties without objection by plaintiffs, and copies of his various proposals were exchanged by the parties and modified to accommodate plaintiffs' design concerns. Ultimately, the parties could not reach an agreement on the design of the shared driveway, and they abandoned the project. Defendants paid Koenig $1650 for his services and sought reimbursement for half the amount from plaintiffs, who refused to pay any portion.

The relocation of the well house became an issue in November 2011, when defendants were informed by building officials that the well it housed had to be sealed because of the planned construction at defendants' house. Defendants communicated this requirement to plaintiffs in an email stating the well house on their property had to be demolished or relocated. That email prompted a meeting of the parties at plaintiffs' home to discuss how to proceed with respect to the well house. The parties discussed either demolishing the well house or modifying its appearance to match defendants' home. During the discussion, defendants expressed a strong preference to destroy the structure because of its poor condition and because it did not match the appearance of their home. Defendants gave plaintiffs the option to "take the well

house." However, "where the well house [would] be placed" was not discussed.[1]

On January 9, 2012, defendants contacted plaintiffs to advise that the well needed to be sealed "as early as [four] weeks from [then]." They wrote, "Should you be interested in moving the well house to your property that would give you at least [four] weeks lead time to accomplish a move of the well house and organize it." Hours later, after plaintiffs said they would like the opportunity to relocate the well house in the event that it would otherwise be torn down, defendants responded, "Please move the well house then no later than . . . February 6 at your cost and with your own contractors." Defendants did not specify where plaintiffs should locate the well house after moving it.

On January 18, 2012, plaintiffs' contractors moved the well house from defendants' property to plaintiffs' property, situating it within the setback, as it had been on defendants' property. Defendants complained about the location of the well house and, when plaintiffs would not relocate it, interpreted their refusal as a breach of their conditional gift to plaintiffs. Defendants reported to the police that the well house had been stolen and

[1] Previously, in a June 2011 email, plaintiffs had advised that they intended to ask their attorney "about the well" because they maintained "a strong preference to leave the structure intact."

months later destroyed the well house while attempting to move it back to their own property.

Plaintiffs filed suit to recover damages arising from the relocation and destruction of the well house. The complaint also sought, among other relief, punitive damages for trespass. Defendants counterclaimed to recover one-half the cost of professional fees incurred for the shared driveway. In addition, defendants sought to recover fees and costs they incurred in successfully pursuing a prerogative writ action to challenge the approvals the municipality had granted to plaintiffs.

Judge David H. Ironson considered the parties' motions for summary judgment and denied them all, finding questions of material facts. Just prior to beginning trial, he sua sponte reconsidered his denial as to defendants' claims for fees in the prerogative writ action, and granted plaintiffs' motion dismissing that claim.

Judge Ironson proceeded with a five-day bench trial. On June 16, 2015, the judge placed on the record a thorough and comprehensive oral decision, spanning fifty-five transcript pages, in which he analyzed the parties' contentions, described the testimony and evidence he considered, made detailed credibility findings, and analyzed applicable law as to each of the parties' claims. Judge Ironson concluded that the parties' emails established their agreement to share the cost of the professional

fees and that defendants' agreement to allow plaintiffs to move the well house was not conditioned upon its placement in any specific area on plaintiffs' property. In finding the agreement was not conditioned on location, the judge relied upon emails written by defendants that authorized plaintiffs to relocate the well house, which did not mention where it should be located. As to the agreement being illegal because it resulted in the well house being placed in the setback, Judge Ironson analyzed the applicable law, found that despite the fact that the plans plaintiffs submitted to the municipality identified the setback, plaintiffs were unaware of any legal limitations as to where the well house could be located, relying primarily on its location in a setback when it was situated on defendants' property.

As to plaintiffs' damages, Judge Ironson found that although defendants trespassed, plaintiffs did not establish the amount of damages they incurred from defendants' destruction of the dilapidated, 150-year-old structure. Moreover, he found the evidence they adduced as to its purported replacement value to be incredible and, in any event, considering the age and condition of the well house, not a proper measure of damages. Accordingly, he only awarded plaintiffs the cost of relocating the well house to their property, which totaled $1250. The judge declined to award punitive damages because defendants did not act with malice,

finding they "believed that [they were] still the owner[s] of the property and [were] entitled to reclaim same."

Judge Ironson entered judgment in accordance with his decision. This appeal followed.

The scope of our review of a judgment entered in a non-jury case is limited. "Final determinations made by the trial court sitting in a non-jury case are subject to a limited and well-established scope of review: "we do not disturb the factual findings and legal conclusions of the trial judge unless we are convinced that they are so manifestly unsupported by or inconsistent with the competent, relevant and reasonably credible evidence as to offend the interests of justice[.]" Seidman v. Clifton Sav. Bank, S.L.A., 205 N.J. 150, 169 (2011) (alteration in original) (quoting In re Tr. Created By Agreement Dated December 20, 1961, ex rel. Johnson, 194 N.J. 276, 284 (2008)). When "supported by adequate, substantial and credible evidence," a trial court's findings "are considered binding on appeal." Rova Farms Resort, Inc. v. Inv'rs Ins. Co., 65 N.J. 474, 484 (1974). "That the finding[s] reviewed [are] based on factual determinations in which matters of credibility are involved is not without significance." Ibid. "[I]n reviewing the factual findings and conclusions of a trial judge, we are obliged to accord deference to the trial court's credibility determination[s] and

the judge's 'feel of the case' based upon his or her opportunity to see and hear the witnesses." N.J. Div. of Youth & Family Servs. v. R.L., 388 N.J. Super. 81, 88 (App. Div. 2006) (citing Cesare v. Cesare, 154 N.J. 394, 411-13 (1998)), certif. denied, 190 N.J. 257 (2007). Our task is not to determine whether an alternative version of the facts has support in the record, but rather, whether "there is substantial evidence in support of the trial judge's findings and conclusions." Rova Farms, supra, 65 N.J. at 484; accord In re Tr., supra, 194 N.J. at 284. It is the role of the factfinder to sort through conflicting evidence, often with the aid of credibility assessments, to determine what occurred. We will engage in independent fact-finding "sparingly and in none but a clear case where there is no doubt about the matter." Rova Farms, supra, 65 N.J. at 484. Legal conclusions, however, are reviewed de novo. Manalapan Realty v. Twp. Comm., 140 N.J. 366, 378 (1995).

Applying these guiding principles, we conclude the parties' challenges to the court's judgment, evidentiary rulings, and order granting partial summary judgment on reconsideration after denying it earlier are without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E). We affirm the judgments entered substantially for the reasons expressed by Judge Ironson in his detailed oral decision as we are satisfied that the judge's

findings of fact were supported by substantial credible evidence and his legal conclusions were correct.

Affirmed.