SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-4011-21

AVICON BROWN,

Plaintiff-Respondent,

v.

OCEAN CASINO RESORT,

Defendant-Appellant.

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Submitted May 31, 2023 – Decided August 7, 2023

Before Judges Sumners and Susswein.

On appeal from the Superior Court of New Jersey, Law Division, Atlantic County, Docket No. SC-000245-22.

Reilly, McDevitt & Heinrich, PC, attorneys for appellant (Michelle B. Cappuccio and Charles Hoyt III, of counsel and on the brief).

Respondent has not filed a brief.

PER CURIAM

Defendant Ocean Casino Resort appeals from a judgment awarding $326.61 in damages plus court costs to plaintiff Avicon Brown following a

virtual trial in the Special Civil Part of the Law Division. After reviewing the record in light of the governing legal principles and defendant's arguments,[1] we affirm.

The matter arises from an incident at defendant's casino in which a cocktail waitress spilled beer on plaintiff's dress. Plaintiff filed a complaint claiming damages in the amount of $500. The trial was held in August 2022. At trial, plaintiff testified the dress was so damaged that it could not be cleaned.[2] She testified the dress cost her "200-and-somethin[g] dollars." The trial court permitted plaintiff to display a crumpled receipt from T.J. Maxx in the amount of $299 plus sales tax to support her claim for the cost of the dress.[3] The judge, sitting as the trier of fact, found plaintiff credible and entered judgment for plaintiff in the amount of $326.61 plus costs.

Defendant raises the following contentions for our consideration:

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[1] Plaintiff did not file an appellate brief.

[2] We note plaintiff did not preserve the dress, so the trial court could not verify the extent of the damage.

[3] Although defendant's brief repeatedly states this was done over its objection, no such objection was made on the record. Defendant merely refused to stipulate to the authenticity of plaintiff's oral reading of the receipt. Once an image of the receipt was offered by plaintiff, defendant's only contention was that plaintiff had not corroborated her testimony that the dress listed on the receipt was irreparably damaged by the spill.

POINT I

THE TRIAL COURT FAILED TO CONDUCT THE PROPER TEST FOR ADMISSIBILITY OF HEARSAY AND AUTHENTICATION OF A CREDIT CARD RECEIPT TO SUPPORT PLAINTIFF'S BURDEN OF PROOF.

POINT II

THE TRIAL COURT IMPROPERLY FOUND THAT PLAINTIFF SATISFIED HER BURDEN OF PROOF WITH REGARD TO IRREPARABLE DAMAGE TO THE DRESS BECAUSE PLAINTIFF PRESENTED ZERO EVIDENCE TO SUPPORT THE FINDING THAT THE DRESS WAS IRREPARABLY DAMAGED.

I.

We need only briefly acknowledge the legal principles governing this appeal. "Our review of a judgment following a bench trial is limited." Accounteks.net, Inc. v. CKR Law, LLP, 475 N.J. Super. 493, 503 (App. Div. 2023) (citing Seidman v. Clifton Sav. Banks, S.L.A., 205 N.J. 150, 169 (2011)). "The trial court's factual findings are entitled to deference on appeal so long as they are supported by sufficient credible evidence in the record." Ibid. (citing Rova Farms Resort, Inc. v. Invs. Ins. Co. of Am., 65 N.J. 474, 482–83 (1974)). "Deference is particularly appropriate when the court's findings depend on

credibility evaluations made after a full opportunity to observe witnesses testify." Ibid. (citing Cesare v. Cesare, 154 N.J. 394, 412 (1998)).

Likewise, appellate courts defer to a trial court's evidentiary ruling absent an abuse of discretion. Rowe v. Bell & Gossett Co., 239 N.J. 531, 551 (2019). Additionally, "the rules of evidence are relaxed" in small claims hearings. Fin. Servs. Vehicle Tr. v. Panter, 458 N.J. Super. 244, 257 (App. Div. 2019) (citing Triffin v. Quality Hous. Partners, 352 N.J. Super. 538, 543 (App. Div. 2002)); see also N.J.R.E. 101(a)(3)(A). As a result of that relaxation, "the fact that hearsay evidence is proffered does not automatically require its exclusion." Penbara v. Straczynski, 347 N.J. Super. 155, 162 (App. Div. 2002). Instead, "[t]he test is relevance and trustworthiness." Ibid.

Regarding the substantive principles applicable here, "[p]roof of damages need not be done with exactitude, particularly when dealing with . . . wearing apparel." Lane v. Oil Delivery, Inc., 216 N.J. Super. 413, 420 (App. Div. 1987). Plaintiff need only "prove damages with such certainty as the nature of the case may permit, laying a foundation which will enable the trier of the facts to make a fair and reasonable estimate." Ibid. In furnishing that proof, the owner "may give an opinion of worth although he or she is without expert knowledge." Ibid. (citing Vaughn v. Spurgeon, 308 A.2d 236, 237 (D.C. 1973)). Indeed, "it has

consistently been held in this State that the owner of an article of personal property is competent to testify as to his [or her] estimate of the value of his [or her] own damaged property and that the extent of its probative value is for the consideration of the fact-finder." Penbara, 347 N.J. Super. at 162.

II.

Defendant contends the "crumbled" store recipe was unauthenticated hearsay that should not have been admitted. We are unpersuaded.

First, it is long settled that "our appellate courts will decline to consider questions or issues not properly presented to the trial court when an opportunity for such presentation is available 'unless the questions so raised on appeal go to the jurisdiction of the trial court or concern matters of great public interest.'" Nieder v. Royal Indem. Ins. Co., 62 N.J. 229, 234 (1973) (quoting Reynolds Offset Co., Inc. v. Summer, 58 N.J. Super. 542, 548 (App. Div. 1959)). Despite its repeated representations to the contrary, defendant failed to object to this evidence besides requiring plaintiff to provide an image of the receipt. Defense counsel never used the words "object" or "hearsay" at trial, and his only mention of "authentication" was in regard to plaintiff reading from the receipt without showing it. Defendant's argument on appeal does not go to the court's jurisdiction and falls short of concerning a matter of great public interest.

Nevertheless, even putting aside the procedural defect of defendant's novel evidentiary argument, we are not persuaded on the merits.

As discussed, the only requirement for admissibility in a small claims matter is that the evidence is "relevant and trustworthy." Penbara, 347 N.J. Super. at 162; N.J.R.E. 101(a)(3)(A). The relevance of the receipt is obvious; the plaintiff testified that it reflected the value of the damaged article. As for its trustworthiness, the trial court had "no reason to disbelieve" the plaintiff and relied on the value listed on the receipt. We decline to substitute the trial court's credibility findings with our own. See Accounteks.net, 475 N.J. Super. at 503.

Even were we to apply the evidence rules with full force, we are not convinced this receipt would be inadmissible. Considering the wide discretion afforded to judges hearing bench trials, we are satisfied the receipt was adequately authenticated by plaintiff's testimony and was admissible as a business record under N.J.R.E. 803(c)(6). A routinely printed receipt is clearly a record "made in the regular course of business." See N.J.R.E. 803(c)(6). And there is nothing suggesting that the "preparation" of this particular receipt was somehow untrustworthy. Ibid. It was not necessary in these circumstances for plaintiff to subpoena a store employee to authenticate the receipt and testify as to the truth of its contents. See New Century Fin. Servs., Inc. v. Oughla, 437

N.J. Super. 299, 326 (App. Div. 2014). Nor did the trial judge abuse discretion in accrediting plaintiff's testimony that the receipt was made by the retailer who sold the dress and reflected the dress's value.

Finally, we disagree with defendant's assertion that "plaintiff presented zero evidence to support the finding that the dress was irreparably damaged." Plaintiff testified regarding the damage, and the trial judge found her credible. Testimony is, of course, a form of evidence. The credibility and probative value of such is left to the trier of fact. While corroborative evidence is undoubtedly useful, it is not required—particularly in the relatively informal context of a small claims hearing. It is not our role to second-guess the trial judge's weighing of the evidence. See Accounteks.net, 475 N.J. Super. at 503.

To the extent we have not addressed them, any remaining arguments raised by defendant lack sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.