

SUPREME COURT OF THE STATE OF MONTANA

Varano v. Hicks

366 Mont. 171, 2012 MT 195 (2012) · No. DA 12-0031 · Decided September 5, 2012

SUMMARY

The Montana Supreme Court affirmed a district court judgment awarding Anthony Varano \$616.33 plus costs for damages, gasoline, and oil arising from Micheal Hicks's use of Varano's snowmobile. The court held that substantial evidence supported the finding of an enforceable oral agreement and the judgment amount, and declined to disturb the district court's credibility determinations.

CASE DETAILS

COURT	Supreme Court of the State of Montana
WRITING FOR THE COURT	Justice Patricia O. Cotter; Patricia O. Cotter; Mike McGrath; Jim Rice; Michael E. Wheat; Brian Morris
JURISDICTION	Montana
DECIDED	September 5, 2012
DOCKET	DA 12-0031
DISPOSITION	affirmed
PROCEDURAL POSTURE	Hicks appealed the Nineteenth Judicial District Court's judgment awarding Varano \$616.33 plus costs following a bench trial concerning damage to Varano's snowmobile and the cost of gasoline and oil.
STANDARD OF REVIEW	Findings of fact from a bench trial are reviewed for clear error. A finding is clearly erroneous if it lacks substantial evidence, the factfinder misapprehended the effect of the evidence, or the reviewing court is left with a definite and firm conviction that a mistake was made. Evidence is viewed in the light most favorable to the prevailing party when determining whether substantial credible evidence supports the findings. Conclusions of law are reviewed for correctness.
PRECEDENTIAL VALUE	Published Montana Supreme Court opinion; precedential.
PARTIES	Micheal Hicks v. Anthony F. Varano

TOPICS

contracts

contract formation

damages

standard of review

appellate procedure

PRACTICE AREAS

Contract law

Civil procedure

Appellate procedure

Remedies

QUESTIONS PRESENTED

1. Whether sufficient evidence supported the District Court's finding that the parties formed an enforceable oral contract concerning responsibility for snowmobile damage and operating expenses.
2. Whether sufficient evidence supported the amount of the District Court's judgment.

HOLDINGS

1. The District Court did not clearly err in finding that the parties entered an enforceable oral agreement under which Hicks would be responsible for damage to the snowmobile and would pay for gasoline and oil.
2. The District Court's award of \$500 for the agreed repair amount and \$116.33 for gasoline and oil was supported by substantial evidence and was not clearly erroneous.

KEY QUOTATIONS

“We will not disturb on appeal a district court’s determination of witness credibility as this determination rests exclusively within the province of the finder of fact.” (¶ 9)

“We affirm the judgment of the District Court.” (¶ 11)

FACTUAL BACKGROUND

Varano loaned Hicks a snowmobile for a snowmobiling trip in Lincoln County. Varano testified that Hicks agreed to pay for damage caused while using the snowmobile and later agreed to pay \$500 for damage after driving it off an embankment and into a tree. The District Court also found that Hicks owed \$116.33 for gasoline and oil consumed during the outing, although neither party presented qualified mechanic testimony establishing the precise repair damages or their cause.

PROCEDURAL HISTORY

Varano initially sued Hicks in Lincoln County Justice Court for \$2,681.58 in alleged snowmobile damage. After a bench trial, the Justice Court awarded only gasoline, oil, and court costs, and declined to award repair damages. Varano appealed to the Nineteenth Judicial District Court, which held a de novo bench trial, found an enforceable oral agreement and damages, and awarded Varano \$500 for repairs, \$116.33 for gasoline and oil, and costs. Hicks appealed to the Montana Supreme Court, which affirmed.

DISPOSITION

affirmed

CASES CITED

- Olsen v. Milner, 2012 MT 88, ¶ 16, 364 Mont. 523, 276 P.3d 934
- Micone v. Dep't of Pub. HHS, 2011 MT 178, ¶ 10, 361 Mont. 258, 258 P.3d 403
- Eldredge v. Asarco Inc., 2011 MT 80, ¶ 30, 360 Mont. 112, 252 P.3d 182
- Hendricks v. State, 2006 MT 22, ¶ 16, 331 Mont. 47, 128 P.3d 1017

OPINION

Varano v. Hicks 2012 MT 195

COTTER, J.

September 5 2012 DA 12-0031

IN THE SUPREME COURT OF THE STATE OF MONTANA

2012 MT 195

ANTHONY F. VARANO,

Plaintiff and Appellee, v.

MICHEAL HICKS,

Defendant and Appellant. APPEAL FROM: District Court of the Nineteenth Judicial District, In and For the County of Lincoln, Cause No. DV 11-280 Honorable James B. Wheelis, Presiding Judge COUNSEL OF RECORD: For Appellant: Micheal Hicks (Self-Represented), Eureka, Montana For Appellee: (No Appellee Brief filed.) Submitted on Briefs: June 27, 2012 Decided: September 5, 2012 Filed: _____ Clerk Justice Patricia O. Cotter delivered the Opinion of the Court. ¶1 Micheal Hicks appeals the Nineteenth Judicial District Court's order awarding damages in the amount of \$616.33 plus costs to Anthony Varano. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

¶2 The dispute between Varano and Hicks arose following a snowmobiling trip in Lincoln County. Varano allowed Hicks to borrow his snowmobile. The parties dispute the events that occurred during their outing. ¶3 On March 29, 2011, Varano filed a complaint in Lincoln County Justice Court alleging that Hicks caused \$2,681.58 in damage to his snowmobile. A bench trial was held on October 26, 2011. The Justice Court determined that Hicks agreed to pay Varano for the gasoline and oil he used. Since the snowmobile trip took place more than two years prior to the case being heard, and the only evidence of the alleged damage was an estimate for repairs dated a year after the incident in question, the Justice Court declined to award any sum to compensate Varano for damages to the snowmobile. The Justice Court awarded Varano the gasoline and oil costs and his court costs. Varano appealed the Justice Court's decision. ¶4 The Nineteenth Judicial District Court held a bench trial on December 28, 2011. Both parties represented themselves at trial. Both parties testified and were questioned by the judge. Varano testified that when Hicks borrowed his snowmobile, Hicks agreed to fix any damage he caused while using it. Varano further testified that Hicks drove the snowmobile off the road and hit a tree. Following the

accident, Varano requested \$500 to cover the damages. According to Varano, Hicks agreed to pay the \$500, but then left town and avoided payment. Hicks testified that he only agreed to pay Varano \$25 to cover gasoline, but Varano demanded more and more money when no payment was made. Hicks eventually took out a restraining order to prevent Varano from approaching him and demanding payment. ¶5 On January 4, 2012, the District Court entered its Findings of Fact, Conclusions of Law, and Order. The District Court determined that Varano had loaned his snowmobile to Hicks on the condition that Hicks would pay for the cost of gasoline and would be responsible for any potential costs of repair. The District Court found that Hicks damaged the snowmobile by running it off an embankment. The District Court concluded that after agreeing to the sum of \$500 for the repairs, Hicks failed to pay the agreed-upon amount and had not paid for gasoline or oil. Neither party presented testimony by a qualified mechanic that would have allowed the District Court to determine the amount of damages or the cause of the damages. Based on its findings, the District Court ordered Hicks to pay the \$500 pursuant to the oral contract, \$116.33 as the reasonable cost of gasoline and oil consumed during the outing, and the costs of the lawsuit. Hicks appeals.

ISSUE

¶6 A restatement of the issue on appeal is whether the District Court's decision on the judgment amount and the existence of an enforceable contract between the parties was based on sufficient evidence.

STANDARD OF REVIEW

3 ¶7 We review the findings of fact of a trial court sitting without a jury to determine if the court's findings are clearly erroneous. *Olsen v. Milner*, 2012 MT 88, ¶ 16, 364 Mont. 523, 276 P.3d 934. A factual finding is clearly erroneous if it is not supported by substantial evidence, if the trier of fact misapprehended the effect of the evidence, or if a review of the record leaves the reviewing court with the definite and firm conviction that a mistake has been made. *Micone v. Dep't of Pub. HHS*, 2011 MT 178, ¶ 10, 361 Mont. 258, 258 P.3d 403. We review the evidence in the light most favorable to the prevailing party when determining whether substantial credible evidence supports the district court's findings. *Eldredge v. Asarco Inc.*, 2011 MT 80, ¶ 30, 360 Mont. 112, 252 P.3d 182. We review for correctness a district court's conclusions of law. *Id.*

DISCUSSION

¶8 This matter comes before us solely on the brief of Appellant Hicks. Hicks asserts on appeal that Varano presented insufficient evidence to support the District Court's findings and judgment. Hicks further argues that the District Court's findings are not supported by the trial testimony. Specifically, he denies the existence of an enforceable agreement between the parties and contends that the judgment amount is unsubstantiated. ¶9 Reviewing the record in this case and considering the evidence in the light most favorable to the prevailing party, we conclude that the District Court properly considered the conflicting testimony of the parties and acted within its province in finding the testimony of Varano more credible. It is manifest on the record that the District Court's

findings of fact are not clearly erroneous nor are its conclusions based on those findings incorrect. Hicks admitted to driving the snowmobile off an embankment, and the testimony of Varano established the existence of the contract to settle the resulting damages for \$500. The judgment amount was reasonably supported by the testimony. We will not disturb on appeal a district court's determination of witness credibility as this determination rests exclusively within the province of the finder of fact. *Hendricks v. State*, 2006 MT 22, ¶ 16, 331 Mont. 47, 128 P.3d 1017. ¶10 The District Court's findings of fact are supported by substantial evidence and the legal issues are controlled by settled Montana law, which the District Court correctly interpreted. ¶11 We affirm the judgment of the District Court.

/S/ PATRICIA COTTER

We concur:

/S/ MIKE McGRATH

/S/ JIM RICE

/S/ MICHAEL E WHEAT

/S/ BRIAN MORRIS

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