[Cite as *Mozingo v. Harris* , 2003-Ohio-606.]

STATE OF OHIO, BELMONT COUNTY

IN THE COURT OF APPEALS

SEVENTH DISTRICT

CYNTHIA A. MOZINGO, PLAINTIFF-APPELLEE, VS. GREGORY HARRIS, JR., D.B.A. BEST AUTO & HOME SALES, LLC, DEFENDANT-APPELLANT.	)	CASE NO. 02-BA-20 OPINION

CHARACTER OF PROCEEDINGS:	Civil Appeal from County Court, Eastern Division, Case No. 02SCI00014
JUDGMENT:	Affirmed
APPEARANCES:	
For Plaintiff-Appellee:	(no brief filed)
For Defendant-Appellant:	Attorney Thomas A. Hampton 160 East Main P.O. Box 310 Barnesville, Ohio 43713

JUDGES:

Hon. Gene Donofrio
Hon. Joseph J. Vukovich
Hon. Cheryl L. Waite

Dated: February 10, 2003

DONOFRIO, J.

{¶1} Defendant-appellant, Gregory Harris, Jr., d.b.a. Best Auto & Home Sales, LLC ("Best Auto"), appeals a decision of the Belmont County Court, Eastern Division, awarding judgment to plaintiff-appellee, Cynthia A. Mozingo, following a bench trial.

{¶2} Appellant is in the business of selling used cars and used mobile homes. On or about October 25, 2001, appellee purchased a used van from appellant. Appellant's father, Gregory Harris, Sr., handled the sale. Appellant understood the purchase price to be $2,400. Appellee made a down payment of $500 by check and traded in a vehicle for $100. She also paid $206 cash towards the tax and title. She understood that the remainder, approximately $2,048, was to be made in payments of $200 per month for approximately eleven months, which included interest at a rate of 24.9%.

{¶3} Following the sale, appellant delayed filing the title. The temporary tags subsequently expired and appellee needed the title in order to obtain permanent license plates. Appellee filed a complaint with the title office and, in response, appellant finally filed the title. However, the title listed a purchase price of $3,695.

{¶4} Appellee returned to Best Auto in an attempt to acquire copies of the paperwork concerning the sale. Appellee acquired a copy of a "security agreement" from the office manager. The top half was a security agreement listing a purchase price of $4,266.50 with payments set at $203.15 per month. It also indicated that tax and title fees had not been paid. The bottom half was a statement indicating that the vehicle was sold "as is" with no written or implied warranty and that the buyer was responsible for any fees associated with a repossession. Appellee's signature appears at the bottom of the page. Appellee acknowledged her signature but maintained that only the bottom half of the document was presented to her for her signature and that appellant subsequently added the top half concerning the security

agreement. In the meantime, the van also broke down and appellee had to spend money in an effort to get it repaired.

{¶5} On November 27, 2001, appellee filed a small claim complaint seeking $2,545, along with supporting documents. Appellee also spoke with the sheriff's department and they advised her that appellant had been known to deal in stolen vehicles. When appellee returned home to inspect the van for its vehicle identification number (VIN), she could not locate one where it customarily would be found, either on the dash or the door. Fearing she may have been in possession of a stolen van, she had it towed back to Best Auto.

{¶6} The case proceeded to a bench trial on February 25, 2002. Appellee appeared along with a supporting witness. Appellant did not appear. Instead, two of appellant's employees appeared, an office manager and a mechanic. Appellant presented testimony akin to the facts recited herein. The office manager, who did not witness the transaction, simply confirmed what was contained in the "security agreement". She also indicated that there was a criminal investigation concerning the lack of a VIN. The mechanic confirmed that the van did not have a VIN. After hearing all the testimony, the trial court entered judgment in favor of appellee against appellant in the amount of $1,500 with interest of 10 percent per annum from the date of judgment plus court costs of $40. This appeal followed.

{¶7} Appellant's sole assignment of error states:

{¶8} "The trial court erred to the prejudice of appellant by deciding the matter based upon its personal opinion and bias regarding one of the person's involved in the

disputed facts and based upon the court's personal opinion about matters outside the record of this action."

{¶9} Appellant argues that the trial court judge went outside the record and based his judgment upon his personal opinion. Appellant contends that the judge's behavior violated Canon 3 of the Code of Judicial Conduct and constituted an abuse of process. In particular, appellant points to the following comments made by the trial court judge after he had decided in favor of appellee:

{¶10} "THE COURT: [I]t appears to me that – that you were defrauded in this case and that Mr. Harris, either junior or senior, has tried to rewrite all the paperwork, which is the same type of things senior was doing at the other business, and I don't know how he stays out of jail. I really don't.

{¶11} "* * *

{¶12} "THE COURT: If he wants to do this to his son now, I think they're both going to end up in jail. * * *" (Tr. 14.)

{¶13} If appellant believed that the trial judge was biased or prejudiced against him at any stage of the proceedings in the trial court, then his remedy was the filing of an affidavit of interest, bias, prejudice or disqualification with the clerk of the Ohio Supreme Court. R.C. 2701.03. R.C. 2701.03 provides the exclusive means by which a litigant may claim that a common pleas judge is biased and prejudiced. *Berdyck v. Shinde* (1998), 128 Ohio App.3d 68, 81, 713 N.E.2d 1098; *Jones v. Billingham* (1995), 105 Ohio App.3d 8, 11, 663 N.E.2d 657. Only the Chief Justice of the Ohio Supreme Court or his designee has the authority to pass upon the disqualification of a common pleas court judge. *Beer v. Griffith* (1978), 54 Ohio St.2d 440, 441, 8 O.O.3d 438, 377

N.E.2d 775; *State v. Dougherty* (1994), 99 Ohio App.3d 265, 268-269, 650 N.E.2d 495. Thus, an appellate court lacks the authority to pass upon the disqualification of a common pleas court judge or to void the judgment of a trial court on that basis. *Beer*, 54 Ohio St.2d at 441-442, 8 O.O.3d 438, 377 N.E.2d 775; *Dougherty*, 99 Ohio App.3d at 269, 650 N.E.2d 495. Therefore, this court is without jurisdiction to address this issue.

{¶14} Appellant asserts that he had no opportunity to raise the issue beforehand by means of an affidavit of disqualification because the bias was not revealed until the middle of trial. Appellant's argument overlooks the fact that he did not appear at the trial himself or through counsel and thereby, arguably, waived the issue. Nonetheless, to the extent that appellant believes the judge's alleged bias dictated the outcome of the trial, appellant's argument in that regard is likewise without merit.

{¶15} Judgments supported by some competent, credible evidence going to all the material elements of the case must not be reversed, as being against the manifest weight of the evidence. *C.E. Morris Co. v. Foley Constr. Co.* (1978), 54 Ohio St.2d 279, 8 O.O.3d 261, 376 N.E.2d 578, syllabus. See, also, *Gerijo, Inc. v. Fairfield* (1994), 70 Ohio St.3d 223, 226, 638 N.E.2d 533. Reviewing courts must oblige every reasonable presumption in favor of the lower court's judgment and finding of facts. *Gerijo*, 70 Ohio St.3d at 226, 638 N.E.2d 533 (citing *Seasons Coal Co., Inc. v. Cleveland* [1984], 10 Ohio St.3d 77, 10 O.B.R. 408, 461 N.E.2d 1273). In the event the evidence is susceptible to more than one interpretation, we must construe it consistently with the lower court's judgment. Id. In addition, the weight to be given the

evidence and the credibility of the witnesses are primarily for the trier of the facts. *Kalain v. Smith* (1986), 25 Ohio St.3d 157, 162, 25 OBR 201, 495 N.E.2d 572.

{¶16} In this case, there was competent, credible evidence to support appellee's claim. Appellee testified concerning what she believed to be the purchase price of the van. Appellee testified that she never signed the security agreement which listed a different, higher purchase price. She also testified that the van broke down and that she had to spend her own money to make the required repairs. She also provided documentary evidence in support. She also testified that the van did not have a VIN. Indeed, everything appellee testified to and presented went uncontradicted. The testimony presented by appellant's two employees offered nothing relevant to defeat appellee's claim. Rather, what little relevant testimony they offered seemed to support appellee's claim. The office manager did not witness the sales transaction and the mechanic confirmed that the van did not have a VIN.

{¶17} Accordingly, appellant's sole assignment of error is without merit.

{¶18} The judgment of the trial court is hereby affirmed.

Judgment affirmed.

Vukovich and Waite, JJ., concur.