[Cite as *Kelm v. McArdle*, 2004-Ohio-6378.]

STATE OF OHIO, COLUMBIANA COUNTY

IN THE COURT OF APPEALS

SEVENTH DISTRICT

HEIDI KELM,	)	
	)	
PLAINTIFF-APPELLEE,	)	CASE NO. 04-CO-6
	)	
VS.	)	OPINION
	)	
PAUL McCARDLE,	)	
	)	
DEFENDANT-APPELLANT.	)	

CHARACTER OF PROCEEDINGS:	Civil Appeal from Columbiana County Municipal Court, Northwest Division Case Nos. 04CVI842N, 04CVI936N
JUDGMENT:	Affirmed
APPEARANCES:	
For Plaintiff-Appellee:	Heidi Kelm, Pro Se P.O. Box 389 Salem, Ohio 44460 (No Brief Filed)
For Defendant-Appellant:	Paul McArdle, Pro Se 529 E. Main St. B10 Ravenna, Ohio 44266

JUDGES:

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

Dated: November 24, 2004

DONOFRIO, J.

{¶1} Defendant-appellant, Paul McArdle, appeals from a Columbiana County Municipal Court, Northwest Division, judgment in favor of plaintiff-appellee, Heidi Kelm, for $945, plus interest.

{¶2} The facts pertinent to this case center on appellant's horse, "Jettin Josephine." Josephine is a six-year-old thoroughbred mare. According to appellant, Josephine had some injuries to her leg and he no longer wanted to race her. So he inquired with his local veterinary clinic to see if anyone was interested in "borrowing" Josephine to use as a 4-H horse. (Tr. 13). According to appellee, she responded to a flyer posted on a bulletin board at the veterinary clinic. (Tr. 4). The flyer stated that Josephine was free to a good home, that she could be taken on a trial basis, and that her papers would go with her as long as she was never raced. Appellant stated he did not post the flyer. (Tr. 4). He stated that it has been his practice to loan out retired racehorses, free of charge, for children to use in 4-H projects. (Tr. 13-14). He also stated he never authorized anyone to post the flyer appellee referred to. (Tr. 14-15).

{¶3} While it is unclear what the parties' agreement was regarding Josephine, appellee took the horse on December 30, 2002. Appellee's understanding was that after she kept Josephine for a while and made sure she wanted to keep her, appellant would give her the horse's papers. (Tr. 5). She planned to breed Josephine. Apparently, appellee wanted the papers before spending the money to breed her. (Tr. 4-5). Appellant's understanding was that he loaned the horse to appellee. (Tr. 13). He stated he told appellee he would give her Josephine's papers only if she presented him with a veterinary certificate stating that she was in foal. (Tr. 15). Otherwise, appellee was to return Josephine to him when she no longer wanted the horse.

{¶4} Appellee kept Josephine until sometime in September 2003, when she tried to sell the horse. She contended that during this time, she contacted appellant

on numerous occasions requesting that he give her Josephine's papers. (Tr. 6-7). Appellant stated that the deal was clear, no papers unless the horse was in foal. Appellee sold Josephine for $850. (Tr. 9). The buyer contacted appellant and he informed her that he was Josephine's rightful owner. The buyer stopped payment on her check to appellee and returned Josephine to appellant. (Tr. 10-11). Upon Josephine's return to appellant, he alleges he discovered that she had lost a great deal of weight and had been abused by another horse. (Tr. 19).

{¶5} On November 3, 2003, appellee filed a complaint against appellant seeking damages for boarding and veterinarian bills incurred caring for the horse. On November 24, 2003, appellant filed a complaint against appellee seeking damages for eight-months use of the horse, a horse blanket, horse transportation, a veterinarian bill, horse rehabilitation, and court costs. The trial court held a consolidated hearing on both complaints on December 5, 2003.

{¶6} The court found in appellee's favor. It awarded her damages of $445.08 for veterinarian bills, $60 for a blacksmith bill, and $500 for boarding, for a total of $1,005.08. It further found that appellant was not entitled to recover from appellee except for $60, which was the value of the horse blanket that appellee never returned to appellant. Thus, the court granted appellee a judgment of $945.08 plus interest. Appellant filed a timely notice of appeal on January 9, 2004.

{¶7} Appellant is proceeding with this appeal pro-se. And appellee has failed to file a brief in this matter. While appellant has filed a brief, it fails to comply with numerous provisions of the Appellate Rules. First, it fails to include a table of cases, statutes, and other authorities in violation of App.R. 16(A)(2). This appears to be so because appellant has failed to raise any legal arguments or to cite to any legal authority whatsoever, which violates App.R. 16(A)(7). Additionally, appellant failed to include assignments of error or a statement of the issues presented for review, as is required by App.R. 17(A)(3) and (4). Appellant mostly rehashes the facts and spends a considerable amount of time attacking appellee's credibility. He also adds many additional facts, which are not found in the record.

{¶8} Even though appellant is proceeding pro se, he is bound by the same rules and procedures as litigants who retain counsel. *Jancuk v. Jancuk* (Nov. 24, 1997), 7th Dist. No. 94 CA 221, citing *Meyers v. First Natl. Bank of Cincinnati* (1981), 3 Ohio App.3d 209, 210, 444 N.E.2d 412; *Dawson v. Pauline Homes, Inc.* (1958), 107 Ohio App. 90, 154 N.E.2d 164. As we noted in *Jancuk*:

{¶9} "This court has, of course, made some allowances for pro se litigants, such as in the construction of pleadings and in the formal requirements of briefs. There is, however, a limit. 'Principles requiring generous construction of pro se filings do not require courts to conjure up questions never squarely asked or construct full-blown claims from convoluted reasoning.' *Karmasu v. Tate* (1992), 83 Ohio App.3d 199, 206. Furthermore, this court will not become appellate counsel for pro se litigants. Such action would be inherently unjust to the adverse party." Id.

{¶10} In the interests of justice, however, we will examine the merits of appellant's argument. Appellant's contentions focus on factual issues. "Factual questions rest within the exclusive domain of the trier of fact, and, as an appellate court, we may not substitute our judgment for that of the fact finder." *Domigan v. Gillette* (1984), 17 Ohio App.3d 228, 229, 479 N.E.2d 291.

{¶11} The trial court found that there was no written agreement between the parties. It relied upon the flyer, finding that it was posted by appellant or someone on his behalf and that a reasonable person, relying on the flyer, would be justified in believing that after some reasonable trial period the papers would be transferred to him or her. It further found that the parties' conversations regarding the horse were vague at best, and gave appellee no reason to believe she would not eventually become Josephine's owner, as indicated in the flyer. The court concluded that appellee incurred expenses in the horse's care and keeping, all the while believing that she would eventually own the horse. It then added up the reasonable value of the expenses incurred by appellee for veterinarian and blacksmith bills and boarding for a total of $1,005.08. The court then subtracted from this total the amount of appellant's horse blanket ($60), which it found appellee never returned to appellant.

{¶12} Appellant focuses much of his argument on credibility issues, specifically pointing out numerous instances where he alleges appellee lied and he told the truth at trial. The parties testified as follows.

{¶13} Appellee testified that she responded to a flyer posted at a veterinary clinic for the horse. (Tr. 4). The flyer instructed interested persons to call appellant about Josephine and stated: "Paul is most concerned about her getting a good home! He said you could take her on trial. Her papers will go with her ONLY if she is never raced again." (Kelm Exh. A). Appellee stated that when she went to look at Josephine, appellant told her he would give her the horse's papers after she had the horse for awhile. (Tr. 4). Appellee took the horse. (Tr. 5). She testified that she later contacted appellant numerous times about getting Josephine's papers because she wanted to breed the horse. (Tr. 5-7). However, appellee testified, appellant refused to give her the papers unless the horse was in foal. (Tr. 7-8). When appellant would not give her Josephine's papers, appellee then attempted to sell the horse. (Tr. 9). But the buyer stopped payment on the check once appellant told her he still owned the horse. (Tr. 9-10). Finally, appellee testified that during the time she had Josephine she incurred veterinarian bills, blacksmith bills, and boarding expenses. (Tr. 11-12). Appellee claimed she was willing to incur these expenses only because she believed that she would come to own the horse after a trial period.

{¶14} Appellant then testified as to his side of the story. He stated that he loans retired race horses out. (Tr. 13). The agreement he makes with the people he loans the horses to is that they are to take care of the horse and when they do not want the horse any longer, they return it to him. (Tr. 12-13). Appellant stated that he never posted the flyer appellee responded to but only asked some people at the veterinary clinic if they knew of anyone who would like to use Josephine. (Tr. 13, 15). Furthermore, he stated that he never boarded the horse with appellee, but that appellee took Josephine and used her for eight months under the same terms that he loans his other horses out on. (Tr. 16).

{¶15} As to damages, appellant testified that he lent appellee a horse blanket, which she did not return. (Tr. 18). Furthermore, he testified that when he got Josephine back she had been neglected and he spent money on veterinary care and rehabilitation to get her healthy again. (Tr. 20-22).

{¶16} While appellant's testimony and appellee's testimony contradict each other, it was up to the trial court, as the trier of fact, to assess their credibility. *Seasons Coal Co. v. Cleveland* (1984), 10 Ohio St.3d 77, 80, 461 N.E.2d 1273. This is because the trial court is in a better position to judge the witnesses' credibility since it can observe the witnesses' demeanor, gestures, and voice inflections, and use these observations in weighing their credibility. Id. The court was free to believe some, all, or none of appellant's testimony. *Ketchum v. Ketchum*, 7th Dist. No. 01-CO-60, 2003-Ohio-2559, at ¶22.

{¶17} The court found that there was no written agreement between the parties. But it found that the flyer was posted by appellant or someone on his behalf and that a reasonable person, relying on the flyer, would be justified in believing that after a trial period the papers/ownership of the horse would be transferred. Because the trial court was in a better position to judge appellant's and appellee's testimony, and because appellee's testimony supports the court's decision, we are not permitted to conclude that appellant was more credible than appellee and reverse for this reason.

{¶18} Furthermore, we cannot consider appellant's added facts as he encourages us to do. "'It is axiomatic that a court of appeals is bound by the record before it and may not consider facts extraneous to the record.'" *Ahmed v. McCort*, 7th Dist. No. 02-BA-8, 2004-Ohio-559, at ¶3, quoting *State v. Morgan* (1998), 129 Ohio App.3d 838, 842, 719 N.E.2d 102.

{¶19} Among his attacks on appellee's credibility and retelling of his side of the story, appellant does allege another error. He claims that he was not given adequate time to present his case and to rebut appellee's testimony. He asserts the court cut him off and did not afford him a fair trial.

{¶20} The court did state that it had other cases waiting and that it was going to go back through all of the testimony. (Tr. 24). However, it listened to additional testimony from appellant and appellee right after it said that. (Tr. 24-25). When the court cut appellant off, appellant was talking about the woman who was caring for the horse now and how he was responsible for the horse. (Tr. 25-26). At this point, the court interrupted stating, "- - yeah, and you know - -." (Tr. 26). The transcript indicates that the tape recorder was then turned off. (Tr. 26). We have no way of knowing whether any further dialogue occurred or if the parties gave any further testimony. We do not have evidence to suggest that the court failed to provide appellant with ample opportunity to present his case. Absent evidence to the contrary, we must presume the regularity of the trial court's proceedings. See *Fields v. Stange*, 10th Dist. No. 03AP-48, 2004-Ohio-1134, at ¶14; *Burke Lakefront Serv. v. Lemieux*, 8th Dist. No. 79665, 2002-Ohio-4060, at ¶23.

{¶21} Accordingly, appellant's arguments are without merit.

{¶22} For the reasons stated above, the trial court's decision is hereby affirmed.

Vukovich, J., concurs.
Waite, P.J., concurs.