

[Cite as *Oswalt v. Ingram*, 2010-Ohio-5754.]

IN THE COURT OF APPEALS FOR DARKE COUNTY, OHIO

FAWN R. OSWALT	:	
	:	
Plaintiff-Appellee	:	C.A. CASE NO. 2010 CA 8
v.	:	T.C. NO. 10CV10010137 10CVII137
JAMES D. INGRAM	:	
	:	(Civil appeal from
Defendant-Appellant	:	Municipal Court)
	:	

**OPINION**

Rendered on the 24<sup>th</sup> day of November, 2010.

FAWN R. OSWALT, 301 Harrison Street, Pittsburg, Ohio 45358  
Plaintiff-Appellee

JAMES D. INGRAM, 947 Gray Avenue, Greenville, Ohio 45331  
Defendant-Appellant

FROELICH, J.

{¶ 1} James D. Ingram, pro se, appeals from a judgment of the Darke County Municipal Court, which awarded \$2,875, with four percent interest, to Fawn R. Oswalt on her small claims complaint for reimbursement for home improvement expenses. In a separate entry, the court rejected Ingram’s counterclaim for \$3,000, representing

alleged rent payments from November 2006 to August 2007.

{¶ 2} Ingram claims that the trial court erred in crediting Oswald's testimony and in entering judgment against him. For the following reasons, the trial court's judgment will be affirmed.

#### I

{¶ 3} On March 24, 2010, the trial court held a bench trial on the parties' claims. The parties' testimony reveals the following facts:

{¶ 4} Ingram and Oswald began a romantic relationship in the spring of 2006. That summer, Ingram moved into Oswald's home in Troy. They lived there together with Oswald's three children until November 4, 2006, when Ingram purchased a house on Gray Avenue in Greenville, Ohio. Following the purchase, Ingram, Oswald, and Oswald's children relocated to Ingram's home. Oswald testified that she paid for groceries, utilities, and her children's expenses at both locations.

{¶ 5} In December 2006, the roof on Ingram's home began to leak. After obtaining several repair proposals from roofers, Ingram hired a company to complete the roofing work. Because Ingram did not have sufficient money to pay for the work himself, his grandmother paid the contractor on his behalf. Ingram asked Oswald to reimburse his grandmother with money from her income tax refund. In February 2007, Oswald wrote a check to Ingram's grandmother in the amount of \$2,875, reimbursing her for the roofing work.

{¶ 6} According to Oswald, Ingram agreed that he would get a home equity loan to reimburse her for the \$2,875 roofing expense. Oswald testified that Ingram completed the

paperwork to obtain a loan and was approved for the loan, but he decided not to take the loan and the couple later broke up. Oswald did not consider her payment of the roofing expense to be a gift. (Oswald also testified regarding other improvements she had made to the home and the money and other items she had lost as a result of the couple's canceled wedding, but she acknowledged that this testimony was not related to her roofing claim.)

{¶ 7} During his testimony, Ingram denied that Oswald had asked to be reimbursed for the roofing work and that he had sought a home improvement loan for that purpose. Ingram stated that he tried to get a loan in June 2007 in order to “get more money to put into the house.” Ingram testified that he was supporting Oswald's family, and he considered Oswald's roof payment to be “her way of contributing to this partnership that we were in.” Ingram considered Oswald's roof payment to be a gift.

{¶ 8} Ingram also sought \$3,000 from Oswald as rental payments. He explained that “if indeed she's saying that I owe her money for this [the roof], then, you know, she needs to pay me for supporting her that entire time that she lived there.” Ingram calculated his claimed rental amount by multiplying half of his mortgage payment (\$300) by ten months (November 2006 to September 2007). Upon questioning by the court, Ingram acknowledged that he had not required Oswald to pay rent and did not enter into a rental agreement with her.

{¶ 9} At the conclusion of the trial, the trial court took the matter under advisement. The same day, the trial court entered judgment in favor of Oswald on her claim and awarded her \$2,875, with interest of four percent from March 24, 2010, and costs of \$78. On April 6, 2010, the court entered judgment on Ingram's counterclaim, awarding \$0

and taxing costs to Ingram.

{¶ 10} Ingram timely appeals from the trial court's judgment on Oswald's claim.

## II

{¶ 11} Ingram's sole assignment of error states:

{¶ 12} "THE TRIAL COURT COMMITTED AN ABUSE OF DISCRETION IN ITS INTERPRETATION OF MS. OSWALT'S EVIDENCE."

{¶ 13} Ingram claims that "it [was] unreasonable for the court to assume that Ms. Oswald and I made an agreement about the money without evidence showing that." In essence, Ingram asserts that the trial court's judgment was against the manifest weight of the evidence.

{¶ 14} In a civil action, such as this one, both Ingram and Oswald were required to prove their claims by a preponderance of the evidence. "Preponderance of the evidence simply means 'evidence which is of a greater weight or more convincing than the evidence which is offered in opposition to it.'" *In re Starks*, Darke App. No. 1646, 2005-Ohio-1912, ¶15, quoting Black's Law Dictionary (6th Ed.1998) 1182.

{¶ 15} The weight to be given the evidence and the credibility of the witnesses are primarily matters for the trier of fact (in this case, the trial judge) to determine. *In re Guardianship of Smith*, Clark App. No. 09 CA 69, 2010-Ohio-4528, ¶19, citing *State v. DeHass* (1967), 10 Ohio St.2d 230. The court of appeals has an obligation to presume that the findings of the trier of fact are correct. *State v. Wilson*, 113 Ohio St.3d 382, 2007-Ohio-2202, ¶24. "This presumption arises because the trial judge [or finder-of-fact] had an opportunity 'to view the witnesses and observe their demeanor, gestures and voice

inflections, and use these observations in weighing the credibility of the proffered testimony.’ \*\*\* ‘A reviewing court should not reverse a decision simply because it holds a different opinion concerning the credibility of the witnesses and evidence submitted before the trial court. A finding of an error in law is a legitimate ground for reversal, but a difference of opinion on credibility of witnesses and evidence is not.’” (Internal citations omitted.) Id.

{¶ 16} A trial court’s judgment will be reversed only if its factual findings are against the manifest weight of the evidence. *KeyBank Natl. Assn. v. Mazer Corp.*, Montgomery App. No. 23483, 2010-Ohio-1508, ¶36. In the civil context, a judgment will not be reversed by a reviewing court as being against the manifest weight of the evidence if there is some competent, credible evidence going to all the essential elements of the case. *C.E. Morris Co. v. Foley Constr. Co.* (1978), 54 Ohio St.2d 279, syllabus; *State v. Wilson*, 113 Ohio St.3d 382, 2007-Ohio-2202, ¶24.

{¶ 17} Here, the trial court had competent, credible evidence to support its finding that Ingram had agreed to reimburse Oswalt for the roofing expenses. It is undisputed that, at the time of the roofing repairs, Ingram and Oswalt were engaged and shared Ingram’s home, which was titled in his name. It is further agreed that Ingram’s grandmother paid the roofing contractor and that Oswalt later wrote a check in the amount of \$2,875 to reimburse Ingram’s grandmother for the roofing expense.

{¶ 18} It was the role of the trial court to assess the credibility of both parties and to determine whether Oswalt’s check to Ingram’s grandmother was intended as a gift or as a loan. Oswalt provided evidence that Ingram had asked her to reimburse his grandmother

and that he was going to pay her back with funds from a home equity loan. Oswalt provided additional evidence that Ingram had sought and was approved for a home improvement loan in June 2007 and that the loan was intended (as least in part) to pay her back for the roofing costs. Ingram did not obtain the loan and did not reimburse Oswalt for the roofing work. Oswalt testified that she paid for household expenses – including utilities, groceries, her children’s expenses, and her own expenses – which suggested that Oswalt’s check to Ingram’s grandmother was not simply “her way of contributing to [the parties’] partnership.” Upon review of the record, the trial court had competent, credible evidence from which to conclude that Ingram had agreed to pay Oswalt for the roofing expense and that her payment to his grandmother was not a gift, particularly considering that Oswalt had contributed financially to the household expenses and that Oswalt had paid a significant amount of money on roofing repairs on real estate that she did not own. Accordingly, the trial court’s judgment was not against the manifest weight of the evidence.

{¶ 19} In concluding that the trial court’s judgment was not against the manifest weight of the evidence, we are not stating that Ingram’s testimony was wholly unbelievable. Based on the evidence, the trial court could have reasonably found that, based on the parties’ engagement, Oswalt did not expect to be repaid for the roofing costs and, instead, expected to reap the benefit of those expenses during her marriage to Ingram. The trial court could have also concluded that the home equity loan for which Ingram had applied was intended to pay solely for additional improvements to his house (as Ingram had testified) and not, at least in part, to repay Oswalt for the roof repairs.

{¶ 20} In short, the trial court could have reasonably believed either party. The

court chose to credit Oswald's version of events and, based on the evidence, we find no error in the court's decision to do so.

{¶ 21} The assignment of error is overruled.

III

{¶ 22} The trial court's judgment will be affirmed.

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FAIN, J. and GRADY, J., concur.

Copies mailed to:

Fawn R. Oswald  
James D. Ingram  
Hon. Julie L. Monnin