IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

DONNA M. DAVIS,	:	
	:	C.A. No. K11A-04-004 WLW
Appellant,	:	
	:	
v.	:	
	:	
FRONTIER COMMUNICATIONS,	:	
	:	
Appellee.	:	

Submitted: October 7, 2011
Decided: January 4, 2012

ORDER

Upon Appeal of a Decision of the
Court of Common Pleas.
Affirmed.

Donna M. Davis, Appellant, *pro se.*

Adam R. Elgart, Esquire of Mattleman Weinroth & Miller, P.C., Newark, Delaware; attorney for the Appellee.

WITHAM, R.J.

The issue presented to this Court on appeal from the Court of Common Pleas is whether there exists an error of law, and whether the factual findings in this case are sufficiently supported by the record and are a product of an orderly and logically deductive process.

FACTS

On May 17, 2010, Frontier Communications (hereinafter "Appellee") commenced a debt action in the Court of Common Pleas for $21,853 related to a bill that was allegedly left unpaid by Donna M. Davis (hereinafter "Appellant") d/b/a D. Phone Co. Appellant filed a counterclaim for $358,960. Both claims were dismissed under Court of Common Pleas Civil Rule 41. Appellant brings this appeal from the dismissal of her counterclaim, pursuant to 10 *Del. C.* § 1326. For the reasons stated below, the decision of the Court of Common Pleas is affirmed.

Standard of Review

An appeal from a decision of the Court of Common Pleas is "on the record," and is not tried "de novo."[1] "The standard of review by the Superior Court of a civil matter decided by the Court of Common Pleas, in addition to correcting errors of law, is 'whether the factual findings made by the trial judge are sufficiently supported by the record and are the product of an orderly and logically deductive process.'"[2] When

[1]10 *Del. C.* § 1326(c); Super. Ct. Civ. R. 72(g); *Wilson v. First State Contracting Co.*, 2002 WL 524276, at *1 (Del. Super. Apr. 3, 2002).

[2]*Mellon Bank (DE), N.A. v. Dougherty*, 1989 WL 100414, at *1, Steele, J. (Del. Super. Aug. 24, 1989) (*citing Smart v. Bank of Delaware*, No. 201, 1984, Christie, J. (Del. Dec. 5, 1984)).

supported by the record, trial court findings "should be accepted even if the reviewing court, acting independently, would reach a contrary conclusion."[3] In the event that the trial judge's findings are supported by sufficient evidence, Superior Court must affirm.[4]

DISCUSSION

Without specifying the legal theory for the claim, Appellant brought a counterclaim alleging that she had entered into an oral agreement with Appellee to restore phone service for an unspecified period of time to certain pay phones that she owned in exchange for a sum of $6,000. Appellant alleged that Appellee lost the check, later found the check and briefly restored service to the pay phones, and then shut service down again causing lost revenue and eventually the downfall of her business. In addition to the briefs from both parties, the Court conducted extensive review of the record below.[5] In regard to the Appellant's counterclaim, the trial court found as follows:

> I know that she's had some losses but Mrs. Davis hasn't been able to show the requisite connection between the turning off by Frontier and the amounts that she feels that she had to pay as a result of that being

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[3] *Id.* (*citing Besk Oil, Inc. v. Brown & Bigelow, Inc.*, 1988 WL 139953, at *1 (Del. Super. Dec. 16, 1988)).

[4] *Wilson*, 2002 WL 524276, at *1.

[5] The Court notes that in her opening brief, Appellant appears to misapprehend the meaning of *Bro v. Wilkins*, 134 A.2d 636 (Del. Super. Sept. 4, 1957). As Appellee notes, this case pertains to service of process, not a utility's service. Furthermore, even if Appellant was referring to service of process, such a claim was waived pursuant to Court of Common Pleas Civil Rule 12(h).

> turned off, hasn't been able to show specific damages and although certainly there are some damages, I find that they're not over any amount that probably she admitted was left on the bill to Frontier after the $6,000 was paid. So, a lot of information was submitted about bills that still remain owed and the loan and those are probably collateral consequences, but not without a specific showing as to a specific loss and also in light of the fact that it was 125 phones and there were 660 phones that were involved, I don't think we can tie the company's demise to the action of Frontier. So, both claims are dismissed.[6]

Whether under breach of contract or negligence, the proponent of a civil claim bears the burden of proving, by a preponderance, the damages under that theory. Damages based on speculation or guesswork are not recoverable.[7] Thus, as a statement of law, the trial court was correct that speculative damages are not recoverable. Moreover, the facts as found by the trial judge are sufficiently supported by the record and were the product of an orderly and logically deductive process. Time and again, when prodded to be more specific about her damages, Appellant said she would need to refer to her papers,[8] her husband,[9] or other family members not

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[6]Tr. at 139.

[7]*American General Corp. v. Continental Airlines Corp.*, 622 A.2d 1, 12 (Del. Ch. May 14, 1992) (*citing Bigelow v. RKO Radio Pictures, Inc.*, 327 U.S. 251, 264 (1946)).

[8]Tr. at 101.

[9]*Id.* at 130-32 (recess taken for conferral with husband, but no supporting documentation found).

present.[10] At no point did she achieve the specificity necessary to recover the damages requested. The record supports the finding that a causal connection could not be established between Appellee shutting down the phones and the ultimate demise of Appellant's phone company. Finally, the record supports the trial court's finding that any loss that did occur from Appellee shutting down the phones was less than the amount still owed to Appellee for services rendered.[11]

CONCLUSION

Given that this Court finds no error of law and that the factual findings made by the trial judge are sufficiently supported by the record and are the product of an orderly and logically deductive process, the trial court below is hereby affirmed.

IT IS SO ORDERED.

/s/ William L. Witham. Jr.
Resident Judge

WLW/dmh
oc: Prothonotary
xc: Mrs. Donna Davis
Adam R. Elgart, Esquire

[10] *Id.* at 112-13.

[11] *Id.* at 19.