

**IN THE COURT OF APPEALS
OF THE
STATE OF MISSISSIPPI
NO. 96-CA-00139 COA**

DONALD R. PIGG

APPELLANT

v.

DONALD R. JOHNSON

APPELLEE

THIS OPINION IS NOT DESIGNATED FOR PUBLICATION AND MAY NOT BE CITED,
PURSUANT TO M.R.A.P. 35-B

DATE OF JUDGMENT:	01/16/96
TRIAL JUDGE:	HON. ROBERT LEWIS GIBBS
COURT FROM WHICH APPEALED:	HINDS COUNTY CIRCUIT COURT
ATTORNEY FOR APPELLANT:	MEL J. BREEDEN JR.
ATTORNEY FOR APPELLEE:	OFFICE OF THE ATTORNEY GENERAL BY: CLAY L. PEDIGO
NATURE OF THE CASE:	CIVIL - TORTS (OTHER THAN PERSONAL INJURY AND PROPERTY DAMAGE)
TRIAL COURT DISPOSITION:	JURY VERDICT OF \$10,000 FOR PLAINTIFF
DISPOSITION:	AFFIRMED - 12/16/97
MOTION FOR REHEARING FILED:	
CERTIORARI FILED:	
MANDATE ISSUED:	2/4/98

BEFORE BRIDGES, C.J., PAYNE, AND SOUTHWICK, JJ.

BRIDGES, C.J., FOR THE COURT:

Johnson filed suit to recover the value of an antique 1966 Chevrolet pickup truck which had been intrusted to a body shop on premises owned by Pigg. Johnson claimed that he attempted to pick up his truck from the property after the tenant left, but Pigg refused to release the truck until he had been paid monies for past due rent of the previous tenant. Johnson agreed to pay Pigg \$500 just to get his truck back, but when he arrived at Pigg's property to retrieve the truck, the truck was gone and has not been seen since. A jury in county court awarded Johnson \$10,000. Pigg appealed to the Hinds County Circuit Court. The circuit court affirmed the verdict and award. On his appeal to this Court, Pigg presents the following issues:

I. THE TRIAL COURT ERRED WHEN IT ALLOWED THE THEORY OF CONVERSION TO BE SUBMITTED TO THE JURY WHEN IT WAS NOT PLED BY THE APPELLEE.

II. THE COURT ERRED IN SUBMITTING JURY INSTRUCTIONS P-5, P-6, P-7, AND P-

11 TO THE JURY.

III. THE TRIAL COURT ERRED IN SUBMITTING INSTRUCTIONS TO THE JURY WHICH AS A WHOLE WERE INCONSISTENT, CONFUSING AND CONTRADICTORY.

IV. THE TRIAL COURT ERRED IN FAILING TO GRANT JURY INSTRUCTION D-12.

V. THE TRIAL COURT ERRED IN GRANTING JURY INSTRUCTION P-12 AND FOR FAILING TO GRANT JURY INSTRUCTION D-7.

VI. THE VERDICT OF THE JURY WAS AGAINST THE OVERWHELMING WEIGHT OF THE EVIDENCE.

After reviewing the findings of the circuit court, operating as an appellate court, we affirm.

FACTS

Johnson owned a 1966 Chevrolet pickup truck valued as an antique and collectible. The truck was special because it had factory installed air conditioning, which was rare in that make and model. Johnson had spent considerable time and money restoring the truck's engine and making it operable. In late summer or fall of 1992, Johnson took his truck to a friend, Steve Sproles, and paid him \$1000 to work on the appearance of the truck and put in a seat. Sproles owned and operated a body shop at 4606 Van Winkle Park in Jackson, Mississippi. Sproles rented the premises from the owner, Pigg. Sproles experienced financial difficulties in early 1993 and fell behind on his rent to Pigg. In April 1993, Sproles vacated Pigg's property, leaving Johnson's truck behind because Sproles did not have a trailer with which to transport it. (The truck, while operable, did not have a seat upon which to sit.) Johnson was contacted by Sproles's brother and told that he needed to pick up his truck.

Johnson contacted Sproles and asked him to get his truck for him. A few weeks later, Sproles called Johnson and told him that the Piggs would not release the truck. Johnson went to get his truck himself in April of 1993, but the new tenants occupying Pigg's property would not release the truck. They told Johnson that Pigg was holding the truck because Sproles owed him money. The truck was still on the property. Johnson called and spoke to Mrs. Pigg who told him they realized Johnson owned the truck and that it did not belong to Sproles, but they were still going to hold it until they got some money. Three different times Johnson went to Pigg's property to retrieve his truck, and every time the tenants told him that Pigg would not release the truck.

Johnson contacted an attorney who knew the Piggs and told Johnson he would talk to them. In August 1993, the attorney told Johnson that the Piggs would release the truck if Johnson would pay them \$500. Johnson agreed because he wanted his truck back so badly. When Johnson went to deliver the check, Pigg told him he would not release the truck until he contacted the bank the next day to see if Johnson's check was good. Only then would he call his tenants and have them release the truck. The next day, Pigg called Johnson and told him he could go pick up his truck. When Johnson arrived at the premises, the truck was gone and has yet to be found.

Several witnesses were presented on both sides during the trial in county court. The jury returned a

verdict in favor of Johnson and awarded him \$10,000 in damages. Pigg perfected his appeal to the Hinds County Circuit Court. The circuit court reviewed the record and relevant law and affirmed the jury verdict from the county court. From that judgment, Pigg appeals to this court.

DISCUSSION

Circuit courts usually sit as appellate courts when reviewing agency or administrative decisions. In that case, the circuit court is allowed to reverse only where the "agency has acted capriciously, unreasonably, arbitrarily; has abused its discretion or has violated a vested constitutional right of the party." *Mississippi Real Estate Comm'n v. Hennessee*, 672 So. 2d 1209, 1213 (Miss. 1996) (citations omitted). Additionally, when this Court "reviews a decision by a chancery or circuit court concerning an agency action, it applies the same standard of review those courts are bound to follow." *Mississippi Comm'n on Envtl. Quality v. Chickasaw County Bd. of Sup'rs*, 621 So. 2d 1211, 1216 (Miss. 1993) (citations omitted). In the instant case, the circuit court sat as an appellate court to review a jury verdict from the county court. Such appeals are governed by statute, Section 11-51-79 of the Mississippi Code Ann. (1972), which states in pertinent part:

Appeals from the law side of the county court shall be made to the circuit court . . . Appeals should be considered solely upon the record as made in the county court . . . If no prejudicial error be found, the matter shall be affirmed and judgment or decree entered in the same manner and against like parties and with like penalties as is provided in affirmances in the Supreme Court.

Such affirmances in the circuit court may then be appealed to the supreme court. *Id.* Such is the case before us now. "The county court was the fact finder, and the circuit court, as well as this Court, are bound by the judgment of the county court if supported by substantial evidence and not manifestly wrong." *Patel v. Telerent Leasing Corp.*, 574 So. 2d 3, 6 (Miss. 1990). The circuit court judge reviewed the complete record from the county court and affirmed the judgment with a well thought out and well supported opinion. After a thorough review of the county court proceedings and circuit court's opinion, we affirm. The circuit court separated Pigg's six issues into three topical issues, and we will do the same.

I. ADEQUACY OF THE PLEADINGS

Pigg's first issue claims that this is a bailment case, not conversion, and Johnson failed to plead conversion as a theory, and therefore it should not have been submitted to the jury. Mississippi Rule of Civil Procedure 8 governs pleadings. Rule 8 states that a pleading must contain "(1) a short and plain statement of the claim showing that the pleader is entitled to relief, and (2) a demand for judgment for the relief to which he deems himself entitled." The comment to the rule explains that the reason for the rule is to give the other party notice. If the pleadings are lacking and the issue is not tried by the express or implied consent of the parties, then the notice is not present. Thus, asked the circuit court, was Johnson's pleading sufficient to put Pigg on notice of the conversion theory, or was the issue tried by the express or implied consent of the parties?

Johnson's amended complaint stated the following:

4. Johnson attempted to pick up his 1966 Chevrolet from the lot owned by Pigg, however,

Defendant Pigg refused to release the same to Johnson claiming Sproles owed him some money and requested Johnson pay \$1,500 in return for the release of his property, which \$1,500 represented a debt owed by Sproles to Pigg. Pigg retained dominion and control over Johnson's property and refused to turn the same over to Johnson.

The case of *Mississippi Motor Finance, Inc. v. Thomas*, 246 Miss. 14, 19, 149 So. 2d 20, 23 (1963), states:

"To make out a conversion, there must be proof of a wrongful possession, or the exercise of a dominion in exclusion or defiance of the owner's right, or of an unauthorized and injurious use, or of a wrongful detention after demand."

Id. (quoting *McJunkin v. Hancock*, 176 P. 740 (Okla. 1918)). It is true that Johnson did not use specific language to notice Pigg of his conversion theory. However, the rules do not require such specificity. Johnson made it clear in his complaint that he had tried to retrieve his truck, but that Pigg had wrongful possession of it and refused to release it except under outrageous conditions. During Pigg's unwarranted possession of Johnson's truck, the truck disappeared. All these facts were in the pleadings and were sufficient to put Pigg on notice of the theory of conversion. This issue is without merit.

II. INSTRUCTIONS

Pigg's next group of errors deals with instructions granted or denied by the trial court. He also complains that overall, the instructions were inconsistent, contradictory, and confusing. The instructions that he complains should not have been given are instructions dealing with the conversion theory, which has been discussed above. He also complains that instruction D-12 should have been granted, but D-12, while a bailment instruction, has no basis in the evidence. His last complaint about instructions states that the jury was inappropriately instructed on damages, despite the fact that the damage instruction was based on evidence and testimony from an expert witness about the value of the truck. Pigg made all of these objections at trial, and the county court judge considered them thoroughly.

In instructing the jury, the trial judge is given considerable discretion. *Mississippi Transp. Comm'n v. Nat'l Bank of Commerce*, 1997 WL 461594 *5 (Aug. 14, 1997). A party is allowed to present his theory of his case to the jury through instructions as long as the instructions are based in the credible evidence presented at trial. *Splain v. Hines*, 609 So. 2d 1234, 1239 (Miss. 1992). Our standard of review on appeal is:

On appeal, this Court does not review jury instructions in isolation; rather they are read as a whole to determine if the jury was properly instructed. Accordingly, defects in specific instructions do not require reversal where all instructions taken as a whole fairly--although not perfectly--announce the applicable primary rules of law. However, if those instructions do not fairly or adequately instruct the jury, this Court can and will reverse.

Boone v. Wal-Mart Stores, Inc., 680 So. 2d 844, 845 (Miss. 1996). We have reviewed the evidence and the instructions and have considered them as a whole. Pigg has failed to persuade us that the county court erred in its decision over jury instructions. This issue is meritless.

III. WEIGHT OF THE EVIDENCE

We abide by the well-established standard of review concerning jury verdicts:

Once the jury has returned a verdict in a civil case, we are not at liberty to direct that judgment be entered contrary to that verdict short of a conclusion on our part that, given the evidence as a whole, taken in the light most favorable to the verdict, no reasonable, hypothetical juror could have found as they found.

Starcher v. Byrne, 687 So. 2d 737, 739 (Miss. 1997). In consideration of the weight of the evidence, such is for the trial judge to consider in a motion for a new trial. Pigg filed a motion for new trial, and the trial court denied it. The granting or denying of a motion for a new trial is in the discretion of the trial judge. *Allstate Ins. Co. v. McGory*, 697 So. 2d 1171, 1174 (Miss. 1997). "We reverse only where there has been an abuse of that discretion." *Id.* There was ample evidence presented at trial, and the facts were for the most part uncontradicted that Pigg retained control over Johnson's truck and refused to release it. It was while Pigg was exercising dominion and control over the truck that it disappeared. We are not persuaded that the trial court abused his discretion in denying Pigg's motion for new trial. We affirm the judgment of the circuit court, and grant statutory damages to Johnson.

THE JUDGMENT OF THE HINDS COUNTY CIRCUIT COURT AFFIRMING THE JUDGMENT OF THE HINDS COUNTY COUNTY COURT IS AFFIRMED. COSTS OF THIS APPEAL ASSESSED TO APPELLANT. ADDITIONALLY, STATUTORY DAMAGES ARE AWARDED TO APPELLEE IN THE AMOUNT OF 15% PURSUANT TO MISS. CODE ANN. § 11-3-23.

McMILLIN AND THOMAS, P.JJ., COLEMAN, DIAZ, HERRING, HINKEBEIN, KING, PAYNE, AND SOUTHWICK, JJ., CONCUR.