

IN THE COURT OF APPEALS OF IOWA

No. 7-830 / 06-1551
Filed November 29, 2007

JULIA RENAE KAY,
Plaintiff-Appellee,

vs.

JAMES K. OLIVER,
Defendant-Appellant.

Appeal from the Iowa District Court for Des Moines County, Cynthia H. Danielson, Judge.

James Oliver appeals from a district court order granting appellee writ of replevin and ordering him to pay Julia Kay for her interest in an automobile.

AFFIRMED.

Curtis Dial of Law Office of Curtis Dial, Keokuk, for appellant.

Clinton Boddicker of Smith, Kultala & Boddicker, L.L.P., Keokuk, for appellee.

Considered by Sackett, C.J., and Vaithesawran and Baker, JJ.

BAKER, J.

James Oliver appeals from a district court order granting Julia Kay's writ of replevin and ordering him to pay her \$600 for her interest in an automobile. We affirm.

I. Background and Facts

James Oliver and Julia Kay lived together for approximately five years, but were never married. Kay is disabled as the result of a head injury and receives monthly social security disability insurance payments of approximately \$645. In early 2002, she received two lump sum social security benefit payments, totaling approximately \$8000. Oliver is retired.

Prior to the beginning of the relationship between Oliver and Kay, Oliver and his son purchased a 1957 Chevrolet for \$1200, with each contributing \$600 toward the purchase. After the beginning of their relationship, Kay and Oliver worked together to restore the vehicle. Kay gave Oliver \$600, which he in turn gave to his son, to purchase a one-half interest in the vehicle. The title to the 1957 Chevrolet was never transferred to Oliver or his son and remains in the previous owner's name.

Oliver and Kay separated in approximately December 2004. In the fall of 2004, they purchased a 1990 Chevrolet Corvette, for \$5500, and a 1978 dump truck, for \$1100. Oliver wrote personal checks, drawn on his personal account, for these vehicles. Kay testified that she reimbursed Oliver in cash for the purchase of the vehicles. The vehicles were titled in Kay's name. Oliver testified the vehicles were titled in Kay's name because he "had a DWI and was not allowed to license cars" in his name. After they separated, Oliver retained

possession of these vehicles and the 1957 Chevy. In December 2004 or January 2005, arrangements were made for Kay to pick up the Corvette and the dump truck. When she arrived at Oliver's home to pick up the vehicles, however, they were not available.

Kay filed a petition for writ of replevin in May 2005, asking the district court to award her possession of numerous items of property, including the Corvette, dump truck, and the 1957 Chevrolet. The district court awarded Kay the possession of the Corvette and the dump truck and entered judgment against Oliver for \$600 for Kay's interest in the 1957 Chevrolet. Oliver appeals.

II. Merits

We review an action for replevin for errors at law. *Keppy v. Lilienthal*, 524 N.W.2d 436, 438 (Iowa Ct. App. 1994). The district court's findings of fact are binding on us if supported by substantial evidence. *Id.*

We construe the trial court's findings broadly and liberally. In case of doubt or ambiguity we construe the findings to uphold, rather than defeat, the district court's judgment. We are prohibited from weighing the evidence or the credibility of the witnesses.

A finding of fact is supported by substantial evidence if the finding may be reasonably inferred from the evidence. In evaluating sufficiency of the evidence, we view it in its light most favorable to sustaining the court's judgment. We need only consider evidence favorable to the judgment, whether or not it was contradicted.

Evidence is substantial or sufficient when a reasonable mind could accept it as adequate to reach the same findings. Evidence is not insubstantial merely because it could support contrary inferences.

Id. (citations and internal quotation marks omitted).

Oliver contends the district court erred in entering judgment in favor of Kay for her interest in the 1957 Chevrolet because Kay failed to prove she was

entitled to immediate possession of the vehicle, as required to prevail. In the alternative, he argues the court erred in determining the amount of damages. Oliver posted a supersedeas bond in September 2006. In June 2007, he paid the principal due on the judgment. The payment of a judgment constitutes acquiescence in the judgment and a waiver of a right to appeal. *Ames Gen. Contractors, Inc. v. Iowa Employment Sec. Comm'n*, 200 N.W.2d 538, 541 (Iowa 1972); see also *Bates v. Nichols*, 223 Iowa 878, 882, 274 N.W. 32, 34 (1937) (“[T]he rule has been well established in Iowa that where one pays a judgment voluntarily against himself, he cannot subsequently appeal the case.”). Because there is no evidence other than that Oliver voluntarily paid the \$600 judgment, these issues are now moot, and we will not consider them on appeal. See *Adams by Adams v. Johnson*, 445 N.W.2d 422, 424-25 (Iowa Ct. App. 1989).

Oliver also contends the district court erred in granting Kay’s writ of replevin as to the Corvette and the dump truck and confirming her as the owner of these vehicles. Because this is a replevin action, Kay has the burden to prove by a preponderance of the evidence that she is entitled to possession on the vehicles. See *Marx Truck Line, Inc. v. Fredricksen*, 260 Iowa 540, 546, 150 N.W.2d 102, 105 (1967). The district court found that both vehicles were titled in Kay’s name and remain titled in her name alone, and that Oliver has “no listed ownership or security interest in those vehicles on the certificates of title.” The court also noted that, although Oliver claims the reason the vehicles are titled in Kay’s name is because he was prohibited from owning vehicles due to a third OWI conviction, “[h]e acknowledges that although this prohibition has subsequently been removed, the titles remain in [Kay’s] name.”

We agree with the district court's conclusion that "the certificates of title themselves meet [Kay's] burden of proving ownership." See Iowa Code § 321.45(2) (2005) ("No person shall acquire any right, title, claim or interest in or to any vehicle . . . except by virtue of a certificate of title."); *Schultz v. Sec. Nat'l Bank*, 583 N.W.2d 886, 889 (Iowa 1998) (noting, as to all parties other than a buyer and seller, "unless an interest is noted on the certificate of title, it cannot be valid"). Section 321.45(2) is absolute except for certain exceptions that do not apply here. Oliver has no ownership interest listed on either certificate of title. Even were we to find that the certificate of title is merely presumptive, Oliver's cancelled checks do not rebut the presumption, based on Kay's name on the title that she is the owner of the vehicles and the court's findings that Oliver merely brokered the deal and she in fact paid for the vehicles. See *Rick v. Boegel*, 205 N.W.2d 713, 716 (Iowa 1973) ("When both parties claim ownership of property in dispute, right of possession depends on ownership, and if nothing further appears, it is presumed that the owner is entitled to possession."). We therefore affirm the grant of Kay's petition for writ of replevin as to the automobile and the dump truck.

AFFIRMED.