Affirmed and Opinion filed January 10, 2002.

In The

Fourteenth Court of Appeals

NO. 14-00-01207-CV

SCOTT MCGUIRE, Appellant

V.

CHRISTIAN BROTHERS AUTOMOTIVE, Appellee

On Appeal from the County Civil Court at Law No. 2
Harris County, Texas
Trial Court Cause No. 734,872

O P I N I O N

Appellant appeals a take nothing judgment in a suit filed as a result of the repossession of his vehicle. In a single issue, appellant challenges the legal and factual sufficiency of the evidence to support the judgment. We affirm.

Appellant testified that he took his truck to Christian Brothers Automotive to obtain a state inspection sticker. At the time he left the truck, appellant signed a contract stating the following:

> I am the person or an agent acting on the behalf of the person who is obligated to pay for the repair of the vehicle subject to this repair contract. I understand

> that this vehicle is subject to repossession in accordance with section 9.503 of the Texas Business and Commerce Code if a written order for payment for repair of the vehicle is stopped, or dishonored because of insufficient funds, no funds, or because the drawer or maker of the order has no account, or the account on which it is drawn is closed, or a credit card voucher is dishonored.

A mechanic from Christian Brothers called appellant and informed him that the muffler would have to be replaced before the truck could pass inspection. The mechanic also told appellant that a pipe might need to be replaced, but that he could not determine that until he began work on the truck. The mechanic told appellant the muffler replacement would cost $95.70 and appellant authorized the work. Appellant asserts that the next time he heard from Christian Brothers, the mechanic called and said the truck was ready to be picked up and the repair bill was $364.72. Appellee disputes appellant's version of the facts in that appellee claims a mechanic from Christian Brothers called appellant a second time and informed appellant the repair would cost $364.72 and obtained authorization for the work. Appellant picked up his truck and paid the bill with a check. Later that day, appellant stopped payment on the check.

After receiving notice of the stop payment, an employee of Christian Brothers attempted to telephone appellant to arrange payment. Appellant did not return the phone call, but mailed a letter stating his dissatisfaction with the repair bill. Appellant had obtained an estimate from another repair shop, which would have used less expensive parts than those used at Christian Brothers and would have charged less money to fix the truck. Appellant stated in the letter that he would not pay the full amount because Christian Brothers should have referred him to a less expensive mechanic.

After receiving the letter from appellant, Rod Marcotte, an employee of Christian Brothers, attempted to telephone appellant and arrange payment. Marcotte testified that he telephoned appellant over a period of two weeks and, although Marcotte left telephone messages, appellant did not return his calls. Appellant testified that he did not return Marcotte's calls because he wanted a written response to his letter. Marcotte referred this

matter to Mark Carr, the owner of Christian Brothers. Marcotte told Carr of his two-week-long effort to obtain payment from appellant. Carr told Marcotte to have appellant's truck repossessed pursuant to the repair contract signed by appellant. Marcotte immediately called a repossession service and requested the repossession.

The next day, appellant called Mark Carr in an attempt to arrange payment for the repair work. Carr agreed to accept $325.00 for the $364.72 bill and appellant agreed to pay the amount in cash. When Carr told Marcotte of this arrangement, Marcotte told Carr he had already requested the repossession. Carr immediately called appellant and asked if his truck was still in the parking lot. Appellant looked for his truck and reported that it was gone. Carr then told appellant the truck had been repossessed and the matter was no longer in his hands.

Appellant subsequently filed this lawsuit in justice court alleging (1) Christian Brothers performed work without authorization; (2) Christian Brothers repossessed the truck after an agreement had been reached with regard to payment; (3) Christian Brothers' written repair contract did not meet the requirements of Texas Property Code section 70.001; and (4) his vehicle was not taken to the location where the work was performed. Christian Brothers filed a counterclaim seeking attorney's fees for a frivolous lawsuit. The justice court entered a take nothing judgment for both parties. Appellant then appealed to the county court at law, which also entered a take nothing judgment.

Appellant presents a single issue to this court alleging that final judgment should have been rendered in his favor. We will treat appellant's issue as a challenge to the legal and factual sufficiency of the evidence to support the judgment. Because findings of fact were neither filed nor requested, the judgment of the trial court implies all necessary findings of fact to support it. *See Holt Atherton Indus., Inc. v. Heine,* 835 S.W.2d 80, 83 (Tex. 1992). Legal and factual sufficiency of the inplied findings may still be challenged on appeal. *Id.* We apply the same standard of review to sufficiency challenges of implied findings as is applied in the review of jury findings. *See Herter v. Wolfe,* 961 S.W.2d 1, 3 (Tex.

App.—Houston [1st Dist.] 1995, writ denied). In reviewing the legal sufficiency of the evidence, we consider only the evidence and reasonable inferences tending to support the implied finding, viewing it in the light most favorable to the verdict. *Catalina v. Blasdel,* 881 S.W.2d 295, 297 (Tex. 1994). In reviewing the factual sufficiency of the evidence, we consider all the evidence, both in support of and contrary to the challenged implied finding, and uphold the finding unless it is against the great weight and preponderance of the evidence so as to be manifestly unjust. *Plas-Tex, Inc. v. U.S. Steel Corp.,* 772 S.W.2d 442, 445 (Tex. 1989).

First, we will examine the evidence to determine if there is any support in the record for the implied finding that appellee had the right to order the truck repossessed. If a person signs a repair contract containing a notice that the article may be subject to repossession and the notice is printed on the repair contract in a conspicuous manner with a separate signature line, possession of the article may be taken when the person has not satisfied his payment obligation. *See* TEX. PROP. CODE ANN. § 70.001(c)(2) (Vernon 2000). The record reflects a repair order containing a paragraph that states: "I understand that this vehicle is subject to repossession in accordance with section 9.503 of the Texas Business and Commerce Code if a written order for payment for repair of the vehicle is stopped, or dishonored because of insufficient funds[.]" The paragraph appears in a separate box near the bottom of the repair contract next to the total and contains a separate signature line, which appellant signed. Because the record does not contain findings of fact and there is more than a mere scintilla of evidence supporting the implied finding that appellee had a right to repossess the truck, we find the trial court properly denied appellant relief on his claim of illegal seizure.

In reviewing the factual sufficiency of the evidence, we review all the evidence and will set aside the implied finding only if it was so against the great weight and preponderance of the evidence that the result was manifestly unjust. Appellant argues the paragraph authorizing repossession violated section 70.001 of the Property Code because it was not "separate from the written repair contract," nor was the language "boldfaced, capitalized,

underlined, or otherwise set out from the surrounding material so as to be conspicuous with a separate signature line." The Property Code, however, does not require a separate contract, or separate typeface as long as the notice is "conspicuous" and the signature line is "separate." *Ryan v. Abdel-Salam,* 39 S.W.3d 332, 336 (Tex. App.—Houston [1st Dist.] 2001, pet. denied). Here, the paragraph was located on the repair contract in a separate box with a separate signature line. We find the evidence is factually sufficient to support the implied finding that the repair contract met the requirements of the Property Code.

Appellant further challenges the sufficiency of the evidence to support the trial judge's implied finding that he is not entitled to attorney's fees. A party may recover reasonable attorney's fees if he prevails and recovers damages on a cause of action for which attorney's fees are recoverable. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 38.001 (Vernon 2000); *Green Int'l, Inc. v. Solis,* 951 S.W.2d 384, 390 (Tex. 1997). The grant or denial of attorney's fees is within the trial court's sound discretion and we will not reverse the court's ruling absent a clear abuse of discretion. *Lee v. Lee,* 47 S.W.3d 767, 793 (Tex. App.—Houston [14th Dist.] 2001, pet. denied). Based on the trial court's ruling that appellant take nothing, there have been no damages recovered. Thus, appellant is not a prevailing party and the trial court did not abuse its discretion in denying attorney's fees. Appellant's sole issue is overruled.

The judgment of the trial court is affirmed.

PER CURIAM

Judgment rendered and Opinion filed January 10, 2002.
Panel consists of Chief Justice Brister, and Justices Fowler and Seymore.
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