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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1013-21**

EUGENIA T. BURCH,

Plaintiff-Respondent,

v.

KINDLE FORD,

Defendant-Appellant.

Submitted October 12, 2022 – Decided November 22, 2022

Before Judges Accurso and Natali.

On appeal from the Superior Court of New Jersey, Law
Division, Cape May County, Docket No.
DC-000633-21.

Dengler & Lipski, attorneys for appellant (Christopher
P. Morgan, on the brief).

Respondent has not filed a brief.

PER CURIAM

Defendant Kindle Ford appeals from an order awarding plaintiff Eugenia
T. Burch \$8000 after a trial in the Special Civil Part. On appeal, defendant

argues the court erred in holding it liable, and awarding damages, because plaintiff: (1) lacked standing to bring her claim; (2) failed to prove defendant breached any duty to her; and (3) did not support her damages claim with competent evidence. Having reviewed the record before us, and in light of the applicable law, we are satisfied the court's factual findings sufficiently established plaintiff's standing and supported the imposition of liability against defendant as a bailee. We reach a different determination regarding the court's damages award and conclude additional findings are required. We accordingly affirm in part, reverse in part, and remand for further proceedings.

I.

In 2016, plaintiff purchased a 2006 Ford Fusion with 130,000 miles for \$8,000. After receiving a recall notice in 2019 regarding the vehicle's airbags, plaintiff had the vehicle towed to defendant's service department where it remained on defendant's property for several months. When plaintiff called defendant to reclaim her car, however, defendant informed her it was no longer on the lot. Three days later, plaintiff filed a police report claiming her vehicle was stolen from defendant's property.

On April 30, 2021, almost two years after she reported the vehicle stolen, plaintiff filed a complaint against defendant seeking \$15,000 in damages.

According to plaintiff, when she initially contacted defendant to service her vehicle, an employee collected her debit card information, agreed to complete the recall work, and instructed her to bring the vehicle to defendant's service department. She also testified she spoke to a second representative after she had the car towed and he confirmed defendant would service her vehicle.

Plaintiff maintained she regularly contacted defendant while it was in possession of her car. At some point after the vehicle was delivered to the lot, defendant's employees informed her they could not work on the vehicle until she addressed several of their concerns. Specifically, plaintiff stated defendant asked her to provide a key to the vehicle, clean the interior of the car, and provide proof of ownership. Plaintiff testified she previously left a key in the glove compartment at the time the car was towed, provided a copy of her registration to defendant's service representative, and cleaned the car at defendant's request. She also claimed the key she provided to defendant was the vehicle's only key.

Defendant's operations manager refuted plaintiff's testimony. He stated plaintiff never left defendant a key, the vehicle remained in an unsanitary condition while on the property, and defendant never received proof that plaintiff owned the car. He further testified the parties did not execute a repair

order, a requirement before work can commence on any vehicle. The operations manager also explained he was unaware of the circumstances surrounding the car's disappearance and assumed either plaintiff removed the vehicle herself or it was repossessed.

After considering the documentary evidence and testimony, the court determined defendant owed plaintiff a duty of care, which it breached when the car went missing while in its possession. As the court explained, defendant acknowledged receipt of plaintiff's vehicle, and the car disappeared "while it was in [defendant's] possession for the purposes of [defendant's] business."

As to damages, plaintiff demanded the purchase price of the vehicle as well as reimbursement for costs associated with hiring cabs and rental cars. The court awarded plaintiff \$8000, the amount she paid for the car, but denied her request for any additional damages due to the lack of evidentiary support.

II.

We first address the standard of review that guides our analysis. In an appeal from a bench trial, "[f]indings by the trial judge are considered binding on appeal when supported by adequate, substantial and credible evidence." Rova Farms Resort, Inc. v. Invs. Ins. Co. of Am., 65 N.J. 474, 484 (1974). "[W]e do not disturb the factual findings and legal conclusions of the trial judge unless

. . . convinced that they are so manifestly unsupported by or inconsistent with the competent, relevant and reasonably credible evidence as to offend the interests of justice." Ibid. (quoting Fagliarone v. Twp. of N. Bergen, 78 N.J. Super. 154, 155 (App. Div. 1963)). "A trial court's interpretation of the law and the legal consequences that flow from established facts[, however] are not entitled to any special deference." Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995).

III.

Defendant first argues plaintiff lacked standing to pursue her claim because she failed to provide a title to the vehicle or other evidence sufficient to prove ownership. We disagree.

Standing "requires a sufficient stake and real adverseness with respect to the subject matter of the litigation [and a] substantial likelihood of some harm visited upon the plaintiff in the event of an unfavorable decision" Jen Elec., Inc. v. Cnty. of Essex, 197 N.J. 627, 645 (2009) (first alteration in original) (quoting In re Adoption of Baby T, 160 N.J. 332, 340 (1999) (citations omitted)). Plaintiff more than sufficiently established standing as she testified to owning the vehicle. She also produced insurance documentation indicating the car was

registered to her, as well as a police report which contained similar information, and a recall notice identifying her as the owner.

IV.

We next address the court's liability findings. Defendant asserts the court erred in concluding it owed plaintiff a duty of care. Specifically, it claims: "the trial court's finding that [defendant] owed a duty to [p]laintiff regarding the [v]ehicle is erroneous because no bailment was created." Defendant further argues that even if a bailment was created, it was merely gratuitous and, thus, defendant cannot be held liable because plaintiff failed to introduce evidence of its bad faith or gross negligence. Defendant also contends plaintiff was precluded from recovery because she "did not produce any evidence suggesting that [defendant] breached its supposed duty of care," and "did not . . . identify any negligent conduct by [defendant] at all."

We reject all of these arguments as we are satisfied the court's legal conclusion that defendant is liable for the loss of plaintiff's vehicle is supported "by adequate, substantial and credible evidence." Rova Farms Resort, Inc., 65 N.J. at 484. "To establish a claim of negligence, a plaintiff must show that there was a legal duty, the duty was breached, the breach proximately caused a foreseeable injury, and plaintiff suffered damages." Franco v. Fairleigh

Dickinson Univ., 467 N.J. Super. 8, 24 (App. Div. 2021) (citing Townsend v. Pierre, 221 N.J. 36, 51 (2015)). Although not explicit in its oral opinion, it appears the court determined defendant owed plaintiff a duty of care as a bailee, which it breached when the vehicle disappeared while in its possession.

"A bailment may be created by contract, either express or implied, or by operation of law or statute." LaPlace v. Briere, 404 N.J. Super. 585, 598 (App. Div. 2009). A bailor-bailee relationship is created "when a person leaves his chattel on the premises of another 'if the latter is given primary control of the chattel for the time being.'" Ibid. (quoting Moore's Trucking Co. v. Gulf Tire & Supply Co., 18 N.J. Super. 467, 469-70 (App. Div. 1952)).

Once a bailment is established, there is an implicit "requirement that the property be returned to the bailor, or duly accounted for by the bailee, when the purpose of the bailment is accomplished, or that it be kept until it is reclaimed by the bailor." Ibid. (quoting 8A Am. Jur. 2d. Bailments § 1 (1997)). Where the subject of a bailment is either not returned, returned damaged, or is lost, "the bailor may be able to recover under theories of either conversion or negligence." Id. at 600. Under a negligence theory, the bailee's standard of care depends on whether the bailment is mutually beneficial or merely gratuitous. Banks v. Korman Assocs., 218 N.J. Super. 370, 372 (App. Div. 1987).

"When a bailment has mutual benefit for the bailor and bailee, the bailee has a duty to 'exercise reasonable care for the safekeeping of the chattel bailed.'" Jasphy v. Osinski, 364 N.J. Super. 13, 18 (App. Div. 2003) (quoting Parnell v. Rohrer Chevrolet Co., Inc., 95 N.J. Super. 471, 477 (App. Div. 1967)). In such circumstances, "[w]hen proofs are presented showing that goods were damaged while in the care of a bailee, a presumption of negligence arises and . . . a prima facie case is established against the bailee." LaPlace, 404 N.J. Super. at 602; see also Potomac Aviation, LLC v. Port Auth. of N.Y. and N.J., 413 N.J. Super. 212, 224 (App. Div. 2010). "Once established, a 'defendant must meet or rebut the procedural presumption by coming forward with evidence to show that the loss or damage occurred by reason of a cause other than its negligence, or if it cannot do that, to show that it exercised due care.'" Potomac Aviation, LLC, 413 N.J. Super. at 224 (quoting Kushner v. President of Atl. City, Inc., 105 N.J. Super. 203, 213 (Cty. Ct. 1969)).

When a bailment is solely for the benefit of the bailor, however, the bailee is considered gratuitous and "is liable to the bailor only for bad faith or gross negligence in caring for the bailor's property." Banks, 218 N.J. Super. at 373. A gratuitous bailee is one who "comes into possession of personal property of another, receives nothing from the owner of the property, and has no right to

recover from the owner for what he does in caring for the property." Capezzaro v. Winfrey, 153 N.J. Super. 267, 270 (App. Div. 1977). For example, in Banks, 218 N.J. Super. at 372-73, we concluded the defendant landlord became a gratuitous bailee when it allowed the plaintiff to temporarily keep her furniture in her former apartment after lawfully evicting her. In defining the defendant as a gratuitous bailee, we explained the landlord "received no consideration for keeping the furniture for the tenant." Ibid.

Applying these principles, we reject defendant's contention that the trial record failed to establish the existence of a bailor/bailee relationship. As noted, the court found defendant acknowledged receipt of plaintiff's vehicle within the course of its regular business, discussed work to be done on the car, and retained possession of the car. A bailment arrangement clearly arose when defendant accepted possession and control of the vehicle on its property.

Additionally, we reject as meritless defendant's contention that a bailment did not arise because it never agreed to possess or service the vehicle. Again, in concluding defendant acknowledged receipt of plaintiff's vehicle in the course of its regular business, the court clearly credited plaintiff's testimony that defendant's representatives informed her that she could bring her car to its lot

for service. We have no reason to disregard those explicit and implicit findings as they are supported by the record.

Those findings are also sufficient to reject defendant's argument that, at best, a gratuitous bailment was created. Unlike in Banks, the record fails to support any claim that defendant allowed plaintiff to keep her vehicle on its lot for reasons unrelated to its regular business practices, which included providing recall repairs for Ford vehicles.

Additionally, we reject defendant's argument that plaintiff's evidence was insufficient to conclude defendant breached its duty as a bailee. Plaintiff met her burden by producing sufficient evidence for the court to conclude a mutually beneficial bailment existed and the vehicle disappeared while in defendant's possession. In response, defendant failed to rebut the resulting presumption of negligence as it did not present any evidence to show the vehicle's disappearance occurred by reason other than its own negligence or that it exercised reasonable care to safeguard the vehicle.

V.

Defendant next argues the court erred in calculating plaintiff's damages as she did not provide evidence of the vehicle's value at the time the loss occurred. On this point, we agree.

As a general proposition, the purpose of compensatory damages is to compensate the plaintiff for his or her actual loss. Nappe v. Anschelewitz, Barr, Ansell & Bonello, 97 N.J. 37, 48 (1984); see also 525 Main St. Corp. v. Eagle Roofing Co., 34 N.J. 251, 254 (1961) ("Compensatory damages are designed 'to put the injured party in as good a position as he would have had if performance had been rendered as promised.'" (quoting 5 Corbin on Contracts § 992 at 5 (1951))). To calculate property damage to an automobile specifically, "our courts have long recognized that a vehicle owner is entitled to recover the difference between the vehicle's value before the harm and its value after" Fin. Servs. Vehicle Tr. v. Panter, 458 N.J. Super. 244, 250 (App. Div. 2019) (emphasis omitted).

As to the necessary proofs to establish a party's damages, "[i]t is well-settled that the 'law abhors damages based on mere speculation.'" Mosley v. Femina Fashions, Inc., 356 N.J. Super. 118, 128 (App. Div. 2002) (quoting Caldwell v. Haynes, 136 N.J. 422, 442 (1994)). A plaintiff, however, is only required to "prove damages with such certainty as the nature of the case may permit, laying a foundation which will enable the trier of the facts to make a fair and reasonable estimate." Lane v. Oil Delivery, Inc., 216 N.J. Super. 413, 420 (App. Div. 1987).

Here, although the court credited plaintiff's testimony that she purchased the vehicle for \$8,000 in 2016, that finding does not address the vehicle's value when it left defendant's lot in 2019. On this point, the record established that plaintiff purchased the vehicle with 130,000 miles on it, owned the vehicle for three years before towing it to defendant's lot, and that it needed repairs to replace the vehicle's airbags. Those proofs alone establish the car likely depreciated during plaintiff's ownership and, thus, the court's damages award based solely on the purchase price was not supported "by adequate, substantial and credible evidence." Rova Farms Resort, Inc., 65 N.J. at 484.

In reaching our decision, we are sensitive to the demands of presiding over the Special Civil Part's calendar, a high-volume docket with many, if not most, cases involving pro se litigants. Nothing in our opinion should be interpreted as a criticism of the judge, who handled the matter conscientiously. Under the circumstances of this case, however, where liability has been established, we believe it appropriate to reverse and remand for the court to make necessary factual findings as to the appropriate damages award. On remand, the court should allow the parties the opportunity to offer proofs regarding the vehicle's value at the time it left defendant's lot, as well as evidence of any additional damages.

To the extent we have not addressed the parties' remaining arguments, we conclude they lack sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E). The matter is remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.



CLERK OF THE APPELLATE DIVISION