

STATE OF MICHIGAN
COURT OF APPEALS

BARBARA L. MACDONALD,

Plaintiff-Counter-Defendant-Appellee,

v

CHARLES SISCHO,

Defendant-Counter-Plaintiff-Appellant.

UNPUBLISHED

December 19, 1997

No. 195360

Genesee Circuit Court

LC No. 95-035326-CZ

Before: McDonald, P.J., and Saad and Smolenski, JJ.

PER CURIAM.

Defendant appeals as of right from a judgment for plaintiff, entered following a bench trial, requiring defendant to continue making payments on a 1992 Camaro that he purchased for plaintiff. We affirm.

Plaintiff and defendant were involved in a romantic relationship for about seven years. In 1994, before the relationship ended, defendant purchased a 1992 Camaro, which plaintiff exclusively used and possessed. Defendant made the monthly loan payments on the Camaro, while plaintiff paid for the insurance. Seven months following their break up, defendant requested that plaintiff return the car or assume the loan payments. Plaintiff filed a complaint, alleging that defendant purchased the car for her as a gift “acknowledging their multi-year personal relationship,” and that they had entered into an agreement that defendant would continue to make payments on the car even if they broke up.

The certificate of title was in defendant’s name. On the back of the certificate of title, under the section, “Title Assignment by Seller,” plaintiff’s name is listed as purchaser. Above plaintiff’s name it reads: “The undersigned hereby certifies that the vehicle described in this title has been transferred to the following purchaser and the title is free of all liens.” Defendant’s name is listed as seller and it is signed by him. Defendant argues that because the security interest held by General Motors Acceptance Corporation (GMAC) on the Camaro was not satisfied, the requirements were not met for a valid transfer of title to the vehicle, and he remains the owner.

Plaintiff concedes that GMAC’s security interest was not satisfied and MCL 257.233(4); MSA 9.1933(4) was not complied with, but claims that: (1) there was a contract between the parties (i.e. that defendant agreed to purchase the Camaro for her), and (2) this contract should be enforced. Defendant

filed a counter-complaint, alleging breach of contract and conversion and requesting that plaintiff be ordered to return the Camaro to him or pay the remainder of the car loan and the amount of the oral purchase agreement.

I

Defendant first argues that the trial court erred in denying his motions for summary disposition pursuant to MCL 2.116(C)(8) and (10) because there was no question that he was the owner of the Camaro since he did not validly transfer title to plaintiff pursuant to MCL 257.233(4); MSA 9.1933(4). This Court reviews the trial court's grant or denial of a motion for summary disposition de novo as a matter of law. *Skene v Fileccia*, 213 Mich App 1, 3; 539 NW2d 531 (1995).

MCL 257.233(4); MSA 9.1933(4) provides:

The owner shall indorse on the back of the certificate of title an assignment of the title with warranty of title in the form printed on the certificate with a statement of all security interests in the vehicle or in accessories on the vehicle and deliver or cause the certificate to be mailed or delivered to the purchaser or transferee at the time of the delivery to the purchaser or transferee of the vehicle. The certificate shall show the payment or satisfaction of any security interest as shown on the original title.

The trial court twice denied defendant's motions for summary disposition, concluding that, regardless of whether MCL 257.233; MSA 9.1933 was strictly complied with, the issue of whether plaintiff was the owner of the vehicle was a question of fact for the factfinder. The trial court relied upon *Botsford Hospital v Citizens Ins*, 195 Mich App 127; 489 NW2d 137 (1992) (in which PIP benefits were at issue), which states:

Legal title and ownership of a vehicle are not coextensive terms under the Vehicle Code; more than one person may be liable as "owner," even if no one possesses all the normal incidents of ownership. The question of ownership is one of fact that is to be decided by the factfinder. [*Id.* at 133.]

Here, the proper focus is whether defendant agreed to purchase the Camaro for plaintiff and make all payments on it, not whether he effectively transferred title to her. The trial court properly determined that whether plaintiff was entitled to ownership of the Camaro was a question of fact because plaintiff alleged facts to indicate that defendant agreed to purchase the car for her and to continue to make payments even if they broke up.

We find unpersuasive defendant's attempt to distinguish *Botsford* by arguing that, because the instant case does not involve PIP benefits (or some other special provision), strict compliance with MCL 257.233; MSA 9.1933 should control. Similarly, we do not find defendant's analysis of *Messer v Averill*, 28 Mich App 62, 66-67; 183 NW2d 802 (1970) (regarding the special and general provisions), to be germane to this case. There is no "other provision" under which plaintiff is asserting that she is the owner of the 1992 Camaro. The only statute implicated is the Vehicle Code.

II

Defendant also argues that the trial court erred in denying his motion for a directed verdict because title to the Camaro was not properly transferred pursuant to MCL 257.233(4); MSA 9.1933(4) and therefore, there was no question that defendant retained ownership of the vehicle. This Court reviews the trial court's decision to grant a motion for a directed verdict de novo. *Meagher v Wayne State University*, 222 Mich App 700, 708; 565 NW2d 401 (1997). When evaluating a motion for a directed verdict, a court must consider the evidence in the light most favorable to the nonmoving party, making all reasonable inferences in favor of the nonmoving party. *Id.* Directed verdicts are appropriate only when no factual question exists upon which reasonable minds may differ. *Id.*

As indicated above, although MCL 257.233; MSA 9.1933 was not strictly complied with, the relevant issue here was whether defendant entered into an agreement with plaintiff to purchase the car. We agree with the trial court that plaintiff presented sufficient evidence to create a question of fact about the existence of such an agreement. Plaintiff testified that, prior to their break up, defendant told her that he would purchase a car for her. Defendant made monthly payments on the car, but only drove the car once. Plaintiff testified that she would ask defendant to drive the car, but he would refuse, stating: "It's your car, I don't want to drive it." The car remained in plaintiff's possession and she paid the insurance, which was in her name. After plaintiff and defendant broke up, she continued to have exclusive possession of the car for seven months while defendant made the monthly loan payments. Plaintiff's father, two brothers and friend, all testified that defendant stated that he purchased the Camaro for her. Moreover, plaintiff testified that she and defendant entered into an agreement stating that he gave the Camaro to her and even if they broke up, he would continue to make the payments while she kept the car. Although defendant denied signing this agreement, the trial court was entitled to weigh the witnesses' credibility and believe plaintiff that defendant signed the document.¹ An appellate court recognizes the factfinder's unique opportunity to observe the witnesses, as well as the factfinder's responsibility to determine the credibility and weight of trial testimony. *Zeeland Farm Services, Inc v JBL Enterprises, Inc*, 219 Mich App 190, 195; 555 NW2d 733 (1996). Accordingly, the trial court properly denied defendant's motion for directed verdict because there was a factual question regarding ownership of the Camaro upon which reasonable minds could differ.

Affirmed.

/s/ Gary R. McDonald
/s/ Henry William Saad
/s/ Michael R. Smolenski

¹ We do not address the issues of enforceability of a gift or contract because they were not raised by defendant. Defendant merely argued that the improper transfer of title precluded the court from addressing ownership of the Camaro as a question of fact.