

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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COLONIAL PACIFIC LEASING  
CORPORATION n/k/a WATERVIEW  
RESOLUTION CORPORATION,

Plaintiff-Appellee,

v

EUGENE BUCKLEY individually and d/b/a MID  
MICHIGAN HOBBY SUPPLY,

Defendant-Appellant.

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UNPUBLISHED  
April 29, 2003

No. 231628  
Ingham Circuit Court  
LC No. 99-090931-CK

Before: Donofrio, P.J., and Markey and Murray, JJ.

PER CURIAM.

Defendant, Eugene Buckley and his d/b/a, Mid Michigan Hobby Supply, appeal as of right an order of judgment awarding plaintiff damages, interest, costs, and attorney fees, in this lease action. We affirm.

Plaintiff and defendant entered into a written lease on August 28, 1995, for video editing equipment requiring defendant to pay plaintiff \$1,252.35 plus tax per month for a period of sixty months. Plaintiff billed defendant monthly for the lease payments, and the requisite payments were made to plaintiff through May 1998. Despite plaintiff's requests for payment, defendant failed to comply. As of the date of the bench trial, September 5, 2000, defendant had neither resumed lease payments nor relinquished possession of the leased equipment. At trial defendant testified that he had requested and believed the lease term was for a period of forty-eight months in the amount of \$1,252.35 a month, and that he had not carefully read the terms of the lease before he signed it. Defendant admits a college education and having taught economics at the college level.

Defendant first argues on appeal that he was denied his right to a fair trial when he hired an attorney based on the recommendation of an attorney that represented plaintiff, the representation he received was incompetent, and his counsel had a conflict of interest. In order to preserve an issue for appeal, it must be raised before and addressed by the trial court. *Miller v Inglis*, 223 Mich App 159, 168; 567 NW2d 253 (1997).

Defendant did not raise any issues about the potential existence of a conflict of interest due to the attorney referral from plaintiff's attorney before the trial court. Issues first raised on

appeal need not be addressed by the appellate court. *Booth Newspapers, Inc v University of Michigan Bd of Regents*, 444 Mich 211, 234; 507 NW2d 422 (1993). As defendant did not make any reviewable record in the lower court and did not preserve this issue for our review, we decline to review this issue on appeal. *Id.*

Defendant did, however, raise his ineffective assistance of counsel argument in a motion submitted to and denied by the trial court, and it is preserved for this Court's review. This Court reviews a trial court's decision to deny a motion for a new trial for an abuse of discretion. *Morinelli v Provident Life & Accident Ins Co*, 242 Mich App 255, 260-261; 617 NW2d 777 (2000). Defendant, in propria persona, contends that his attorney was ineffective for many reasons. His contentions are that his attorney failed to include Pitney Bowes, plaintiff's parent company in this litigation, failed to notify him of relevant court dates and other proceedings including a mediation hearing, failed to do enough to negotiate a settlement, failed to prepare adequately for trial by not taking depositions and issuing interrogatories, allowed a new associate to work on the case to get trial experience at his expense, and at trial did not present the theory that the original contract was an "offer" and not a lease or contract. Defendant further maintains that his attorney wanted to be paid for his services prior to trial, that if he was not paid he would no longer represent defendant, and pushed defendant to declare bankruptcy because he was concerned about collecting his fees.

Defendant appears to be making an ineffective assistance of counsel claim. In *United States v \$100,375 in U.S. Currency*, 70 F3d 438, 440 (CA 6, 1995), the Sixth Circuit Court of Appeals noted that the Sixth Amendment right to effective assistance of counsel is "explicitly confined to 'criminal prosecutions.'" (Citations omitted). Likewise, Const 1963, art 1, § 20 states:

*In every criminal prosecution*, the accused shall have the right to . . . have the assistance of counsel of his or her defense. . . . [Emphasis added.]

Accordingly, we find that defendant's claim of ineffective assistance of counsel in this matter must fail because such right is not afforded to a civil litigant.

Next, defendant argues that the trial court's decision must be reversed or a new trial granted because plaintiff's witness, Anne Marie Sanders, clearly entered false testimony into the record at trial. This issue is properly preserved for review on appeal because defendant raised the issue in motions before the lower court and both were addressed and denied. *McKusick, supra*, 246 Mich App 341. This Court reviews a trial court's decision to deny a motion for a new trial for an abuse of discretion. *Morinelli, supra*, 242 Mich App 260-261. In considering whether the trial court abused its discretion in denying a motion for a new trial, we recognize the unique opportunity of the trial judge to observe the witnesses. *Stallworth v Hazel*, 167 Mich App 345, 354; 421 NW2d 685 (1988).

Defendant contends that plaintiff's witness gave perjured testimony concerning the lease and its terms at trial. The discovery that testimony introduced at trial was perjured may be a ground for ordering a new trial. *Stallworth, supra*, 167 Mich App 352. In support of his argument that plaintiff's witness offered perjured testimony, defendant points to numerous contradictions between plaintiff's witness testimony and his own testimony. However, our review of the record shows that the contradictions in testimony were obvious at trial rather than

later discovered perjury. Such contradictions, in and of themselves, do not constitute proof of perjury. Moreover, the record reveals that defense counsel attempted to highlight the contradictions at trial, cross-examined the witness on the inconsistencies, and argued that his version of events was more credible. In according the trial court deference in light of its unique opportunity to observe the witnesses, we will not disturb the trial court's ruling on this issue. *Stallworth, supra*, 167 Mich App 354.

Defendant argues in general that the trial court misapplied basic contract law when reading the lease. Defendant also asserts that the trial court did not consider evidence presented at trial and made several serious errors of judgment especially in regard to defendant's credibility. Defendant also contends that the trial court erred when it decided the case in favor of plaintiff. A trial court's findings of fact in a bench trial are reviewed for clear error, while its conclusions of law are reviewed de novo. MCR 2.613(C); *Chapdelaine v Sochocki*, 247 Mich App 167, 169; 635 NW2d 339 (2001). "A finding is clear error when, although there is evidence to support it, the reviewing court is left with the definite and firm conviction that a mistake has been committed." *In re Estes Estate*, 207 Mich App 194, 208; 523 NW2d 863 (1994). If the findings are supported, the court's dispositional ruling is reviewed de novo. *Ghidotti v Barber (On Remand)*, 222 Mich App 373, 377; 564 NW2d 141 (1997), rev'd on other grounds 459 Mich 189 (1998).

"A judge is presumed to know and understand the law." *In re Costs & Attorney Fees*, 250 Mich App 89, 101; 645 NW2d 697 (2002). This Court must defer to the trial court's credibility determinations due to the special opportunity of the trial court to observe and judge the credibility of the witnesses. MCR 2.613(C); *Mogle v Scriver*, 241 Mich App 192, 201; 614 NW2d 696 (2000). Reviewing defendant's general allegations of error in light of the record, we find that defendant does not demonstrate clear error such that we are "left with the definite and firm conviction that a mistake has been committed." *In re Estes Estate, supra*, 207 Mich App 208. Since we find that the trial court's findings are supported by the evidence, our de novo review of the trial court's dispositional ruling reveals no error. *Ghidotti, supra*, 222 Mich App 377.

Defendant asserts that the court reporter failed to properly record the proceedings and because of numerous errors, she has rendered the record in this case suspect warranting a new trial. This issue is not preserved for this Court's review because defendant did not raise the issue in the lower court. *McKusick, supra*, 246 Mich App 341. Because there is nothing to review as defendant did not raise or make a record regarding this issue below, we decline to review this issue on appeal. *Booth Newspapers, Inc, supra*, 444 Mich 234.

Defendant argues that he was denied a fair trial due to alleged trial court bias and alleged trial court error. Generally, a party must pursue a claim of disqualification before the trial court to preserve the issue for appeal. MCR 2.003; *In re Schmeltzer*, 175 Mich App 666, 673; 438 NW2d 866 (1989). Because defendant did not pursue a claim of disqualification before the trial court, this issue is not properly preserved for this Court's review, and we decline to review it.

Finally, defendant asserts that the trial court erred when it entered judgment without notice to defendant pursuant to MCR 2.602(B)(3). Contrary to defendant's argument, the judgment in this case was submitted under MCR 2.602(B)(4) and therefore, defendant's

argument that the trial court violated the “7 Day Rule” of MCR 2.602(B)(3) is without merit.

Affirmed.

/s/ Pat M. Donofrio

/s/ Jane E. Markey

/s/ Christopher M. Murray