

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**July 25, 2002**

Cornelia G. Clark  
Clerk of Court of Appeals

**NOTICE**

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**Appeal No. 02-0354**  
**STATE OF WISCONSIN**

**Cir. Ct. No. 01-SC-161**

**IN COURT OF APPEALS  
DISTRICT IV**

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**GILBERT JENSEN,**

**PLAINTIFF-APPELLANT,**

**v.**

**CRISTYN BAKER,**

**DEFENDANT-RESPONDENT.**

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APPEAL from a judgment of the circuit court for Sauk County:  
PATRICK TAGGART, Judge. *Affirmed.*

¶1 VERGERONT, P.J.<sup>1</sup> This is a small claims action which arises out of Gilbert Jensen's sale of a 1997 Dodge Neon to Cristyn Baker. Jensen filed a replevin action seeking return of the Neon and \$5,000 in damages. The trial court

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<sup>1</sup> This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(a) (1999-2000). All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

determined that there was a contract for Jensen to sell the Neon to Baker for \$2,667.50, not for \$11,531 as Jensen testified. The court determined that Baker still owed Jensen \$576.62. The court also determined that Jensen had violated WIS. STAT. § 422.304(1) of the Wisconsin Consumer Act-Consumer Credit Transactions by filling out a blank wage assignment, and therefore under WIS. STAT. § 425.304, Baker was entitled to \$1,000 as a penalty from Jensen. Accordingly, the trial court entered a judgment against Jensen and in favor of Baker for \$423.38.

¶2 Jensen appeals contending that the court's findings with respect to the assignment of wages and agreement to pay were clearly erroneous, as was its finding that the parties agreed on a purchase price of \$2,667.50. We conclude that the trial court's findings of fact are not clearly erroneous, and we therefore affirm.

¶3 When we review the findings of the trial court acting as the finder of fact, we must give due regard to the opportunity of the trial court to judge the credibility of witnesses, and we may not set aside the findings unless they are clearly erroneous. WIS. STAT. § 805.17(2). Where the trial court acts as the finder of fact, it is the ultimate arbiter of both the credibility of the witnesses, *Gehr v. City of Sheboygan*, 81 Wis. 2d 117, 122, 260 N.W.2d 30 (1977), and the weight to be given to each witness's testimony, *Milbauer v. Transport Employees' Mut. Benefit Soc'y*, 56 Wis. 2d 860, 865, 203 N.W.2d 135 (1973). It is the function of the trier of fact, not that of the reviewing court, to resolve the conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts. *State v. Poellinger*, 153 Wis. 2d 493, 506, 451 N.W.2d 752 (1990). When the evidence supports the drawing of either of two conflicting inferences, the trier of fact, not this court, decides which inference to draw. *State v. Friday*, 147 Wis. 2d 359, 370-71, 434 N.W.2d 85 (1989).

¶4 In this case, there was a conflict in the testimony of Jensen and Baker concerning the transaction between them. Jensen testified as follows. He had purchased the Neon from Rocky's Auto Sales for \$2,119 as a salvage vehicle and repaired it. Prior to the actual sale of the vehicle to Baker, he told her the cost of the vehicle after repairs were completed would be approximately \$9,000. The voluntary wage assignment that Baker signed, agreeing that a weekly payment of \$77.44 was to be paid to Jensen by her employer, was based on a calculation of a sales price of \$9,000 and interest at 14.5%. When Baker signed that document, Jensen had already written in the sale price of \$11,531 and the monthly payments of \$77.44.

¶5 Jensen also presented the testimony of Mark Clausen, who was a used car dealer with his own dealership and an auto body technician. Clausen stated that a 1997 Dodge Neon had a retail value of \$8,300. Clausen acknowledged he had worked with Jensen in the past.

¶6 Baker's testimony on the transaction was in sharp conflict to Jensen's. She testified that neither the sums of \$11,531 nor \$77.44 were written on the voluntary wage assignment when she signed it. Her mother, who was present during the signing, testified that those figures were not on the document when signed by Baker and by her, and it was her understanding that the sale was for \$2,667.50. In addition to the voluntary wage assignment, the motor vehicle purchase contract showed a dealer retail price of \$2,500 plus tax and title fees, with a "total" due on delivery or balance to finance of \$2,667.50. Baker testified that the amount she agreed to pay was the price on the purchase contract, which was \$2,667. The purchase contract was signed by both Jensen and Baker. The application for Wisconsin title and license plate also stated a full purchase price of \$2,500 and other fees of \$167.50 and was signed by both Jensen and Baker.

¶7 In a written decision, the court carefully considered all the evidence. It determined, based on the evidence and the credibility of the witnesses, that when Baker signed the wage assignment, it was blank. The court considered Jensen's testimony on how he had arrived at the weekly wage assignment, but discounted this because there was no other evidence that the purchase price was \$9,000. Specifically, the application for title and license plate showed a purchase price of \$2,500, which amount the court determined Jensen had written. The court observed that it is crime to understate the purchase price of a vehicle on the title application, because that reduced the amount of taxes owed, and the court stated "[it did] not believe that plaintiff would wish to subject himself to liability for failure to collect \$451.55 in state tax [the difference between the tax actually paid and the amount that would be due if the purchase price were really \$11,530]." The court also considered a document Jensen submitted signed by himself, Baker, and Baker's mother which was an agreement to pay Jensen's body shop for auto use and repairs in an amount of \$11,531. The court did not find this convincing evidence of the agreed upon purchase price for the Neon because the document did not anywhere indicate that it was a contract for the sale of the Neon or even refer to the Neon. The court also found that if it were an agreement to extend credit to Baker, it was incomplete because, although it had a weekly installment of \$77.44, it did not contain the number of installments or the dates on which they were to be paid.

¶8 The court was entitled to resolve the credibility issues in favor of Baker and her mother, and because it did so, its finding that Jensen wrote in the amount of \$11,531 after Baker signed the wage assignment is not clearly erroneous. Similarly, the court's decision to credit Baker's testimony rather than Jensen's on other points of conflict, as well as the evidence and the reasonable

inferences it drew from the evidence, support its finding that Baker agreed to purchase the Neon for \$2,667.50, not \$11,531, and accordingly, that finding is not clearly erroneous.

*By the Court.*—Judgment affirmed.

This opinion will not be published. WIS. STAT. RULE 809.23(1)(b)4.

