

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

APPELLATE DIVISION (CIVIL): AY
CASE NO: 502012AP000051XXXXMB
L.T. NO: 502012SC001331XXXXMB

RACHELLE SAVITZ,
Appellant,

v.

MARTIN WHITNEY,
Appellee.

_____ /

Opinion filed: **FEB 13 2014**

Appeal from the County Court in and for Palm Beach County,
Judge Caroline Cahill Shepherd.

For Appellant: Rachelle Savitz, *pro se*
2575 SW 10th Street
Boynton Beach, FL 33426

For Appellee: Martin Whitney, *pro se*
4570 Barrett Street
Delray Beach, FL 33445

PER CURIAM.

AFFIRMED. This appeal arises from a final judgment after a nonjury trial in which Appellant Rachelle Savitz ("Savitz") was awarded \$363.00 in damages and \$225.00 in courts costs from Appellee Martin Whitney ("Whitney").

On May 29, 2012, Savitz filed an "Amended Statement of Claim for Money Lent," seeking \$2,382.00 in damages from Whitney pursuant to an oral reimbursement agreement. The trial court held a bench trial on August 9, 2012. No transcript of the proceedings was prepared, but the trial court ultimately approved Savitz's "Second Amended Statement of the Evidence" on October 31, 2013, which summarized the evidence relevant to the instant appeal as follows.

Savitz and Whitney, who lived together in a romantic relationship, had an agreement to equally split all of their expenses, including rent, household utilities, food, and travel. Because Whitney was not always able to pay his share of the expenses, the parties agreed that Savitz would front his share and Whitney would reimburse her. The parties ended their romantic relationship in June of 2010, and Whitney orally agreed to pay Savitz \$50.00 per week until his debt was repaid. Savitz kept track of everything she lent Whitney and everything he paid back in a handwritten log, and she submitted the log into evidence. The log appeared to reflect that as of September 7, 2011, Whitney owed Savitz \$2,382.00. Savitz also submitted leases for the two years the parties lived together, a rent ledger, her bank statements, and her credit card statements, and she asserted that these documents corroborated the amounts she noted in her personal log.

After taking evidence, the trial court informed the parties that it would review the evidence and issue a judgment by mail. No court costs or expenses were discussed at the trial. The trial court issued a final judgment, awarding Savitz \$363.00 in damages and \$225.00 in court costs from Whitney.

Savitz first contends that the trial court erred by not awarding her the full amount of damages she sought under the parties' oral reimbursement agreement. "In appellate proceedings the decision of a trial court has the presumption of correctness and the burden is on the appellant to demonstrate error." *Applegate v. Barnett Bank of Tallahassee*, 377 So. 2d 1150, 1152 (Fla. 1979). The Court may also reverse a judgment which is fundamentally erroneous on its face. *Holmes v. Holmes*, 578 So. 2d 323, 324 (Fla. 4th DCA 1991). "A trial court's award of damages is reviewed to determine if it is supported by competent, substantial evidence." *Devon Med., Inc. v. Ryvmed Med., Inc.*, 60 So. 3d 1125, 1128 (Fla. 4th DCA 2011). "Substantial evidence has been described as such evidence as will establish a substantial basis of fact from which the fact at

issue can be reasonably inferred.” *NITV, L.L.C. v. Baker*, 61 So. 3d 1249, 1251 (Fla. 4th DCA 2011) (quoting *De Groot v. Sheffield*, 95 So. 2d 912, 916 (Fla. 1957)).

Here, Savitz requested \$2,382.00 in damages. She presented evidence at trial which would support an award of that amount, namely her personal log of the amount Whitney owed her. The trial court ultimately awarded Savitz a lower figure than she asserted she was owed. This award is not fundamentally erroneous on its face and is also supported by competent, substantial evidence, as the evidence presented to the trial court would support any award up to and including \$2,382.00.

Savitz requests that this Court review the damages award “de novo,” but this is inappropriate. “[I]t is well established that ‘[i]t is the role of the finder of fact, whether a jury or a trial judge, to resolve conflicts in the evidence and to weigh the credibility of witnesses.’” *Siewert v. Casey*, 80 So. 3d 1114, 1116 (Fla. 4th DCA 2012) (quoting *Ferry v. Abrams*, 679 So. 2d 80, 81 (Fla. 5th DCA 1996)). “So long as competent, substantial evidence supports the trial court’s factual findings, we will not in essence offer a second trial on appeal by re-weighing the evidence.” *Id.*

Here, the trial court weighed the evidence and determined that Savitz was damaged in the amount of \$363.00.¹ Obviously, the trial court did not fully credit the amount reflected in the log Savitz submitted. The only way this Court could conclude the trial court’s damages award was erroneous would be to reweigh the evidence. Specifically, because her personal log is the only evidence Savitz presented that supports her claim of how much she was owed, the Court would

¹ While Savitz is understandably frustrated by the trial court’s failure to articulate any factual findings or legal conclusions, there is no requirement that a court make explicit findings of fact or conclusions of law in its final judgment to explain its reasoning. See *Town of Jupiter v. Alexander*, 747 So. 2d 395, 400 (Fla. 4th DCA 1998); *Broward Cnty. v. Brooks Builders, Inc.*, 908 So. 2d 536, 538-39 (Fla. 4th DCA 2005).

have to conclude the log was entitled to more weight than the trial court gave it in order to conclude the trial court erred in awarding less than \$2,382.00. As this Court in its appellate capacity cannot reweigh the evidence, we must affirm the trial court's damages award under the present circumstances.

Savitz's second contention is that the trial court erred in awarding her \$225.00 in costs without asking her for "her court costs, fees, and other expenses incurred." Savitz has not demonstrated error because there was no requirement that the trial court "ask" Savitz what her costs were. Rather, the proper procedure for seeking costs in Small Claims Court is to file a motion no later than thirty days after the judgment is filed. Fla. Small Claims R. 7.175. Although the trial court apparently awarded Savitz \$225.00 in costs without awaiting a motion, Savitz was still required to file a motion to request any additional costs to which she felt she was entitled. Indeed, this Court previously directed Savitz to request any trial-related costs from the trial court in an Order dated January 30, 2013, after she filed a Motion for Court Costs in the appellate court during the pendency of this appeal. As Savitz did not file a motion for any additional costs with the trial court as required by Rule 7.175, she cannot now complain on appeal that she was not awarded all of the costs to which she felt she was entitled.

SASSER, OFTEDAL, and BLANC, concur.