IN THE COURT OF APPEALS

AT KNOXVILLE

SONJA FOX, Attorney-In-Fact For Johnny Fox Plaintiff–Appellee v. RON OSTERHOUT and SANDRA OSTERHOUT Defendants-Appellants	WASHINGTON COUNTY 03A01-9811-CV-00370 HON. G. RICHARD JOHNSON, CHANCELLOR AFFIRMED AS MODIFIED and REMANDED

RON OSTERHOUT and TANA OSTERHOUT, APPELLANTS, Pro Se

ROBIN S. KUYKENDALL OF KNOXVILLE FOR APPELLEE

O P I N I O N

Goddard, P.J.

Ron Osterhout and Tana Osterhout appeal a judgment of the Johnson City Law Court that ordered the return of a

1988 Mazda pickup truck to Johnny Fox, which Mr. Osterhout insists had been sold to him by Mr. Fox. The judgment also taxed costs of the case against Mr. and Mrs. Osterhout.

The Osterhouts' appeal insists that the Court was in error in ordering the return of the vehicle because the sale was a valid one. They also insist that Mrs. Osterhout was improperly onerated with costs below.

The order entered by the Trial Court contained the following findings:

> 2. The Court finds that Mr. Fox never signed any documents conveying his pickup truck to the Defendants.
>
> 3. The Court finds that the Defendant by fraud, artifice, and scheme did take advantage of a weakling, namely Mr. Johnny Fox, to the extent that it shocks the conscience of the Court.

As to the first issue, no transcript or statement of the evidence has been filed by the Osterhouts. Under such circumstances we must conclusively presume that the findings of the trial court are supported by evidence heard in the trial court. J. C. Bradford & Co. v. Martin Construction Co., 576 S.W.2d 586 (Tenn. 1979). We are therefore unable to reach the merits of this issue, but must conclusively presume that the evidence presented justified the judgment of the trial court.
See In re: Rockwell v. Arthur, 673 S.W.2d 512 (Tenn.App. 1983).

As to the issue regarding adjudging costs, the judgment—which, among other things, ordered delivery of the title to the truck—for the most part speaks of "Defendant" rather than "Defendants." There are two incidents where the order speaks of Defendants. The first is in Section 2, wherein the Court found that "Mr. Fox never signed any documents conveying his pickup truck to the Defendants," and the second in the concluding paragraph: "The costs of this cause are taxed primarily and secondarily to the Defendants Ron and Tana Osterhout."

We think it clear from the entire order–which as we have already noted principally speaks of Defendant rather than Defendants—that the order intended the use of the singular form to apply only to Mr. Osterhout, as it provides "in the event the Defendant fails to deliver the title, a mittimus shall immediately issue for the Defendant, Ron Osterhout's arrest for contempt..."

We conclude in light of the foregoing that costs were improperly adjudged against Ms. Osterhout and the judgment is accordingly modified to adjudge costs below solely to Mr. Osterhout.

For the foregoing reasons the judgment of the Trial Court as modified is affirmed and the cause remanded for

collection of costs below. Costs of appeal are adjudged against Mr. Osterhout.

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Houston M. Goddard, P.J.

CONCUR:

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Charles D. Susano, Jr., J.

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D. Michael Swiney, J.