



**IN THE MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

FARMERS STATE BANK OF)
NORTHERN MISSOURI,)
)
Respondent,)
)
vs.) WD68861
)
DONNA HUFFAKER,) Opinion Filed: March 31, 2009
)
Appellant.)

APPEAL FROM THE CIRCUIT COURT OF ANDREW COUNTY, MISSOURI
The Honorable Randall R. Jackson, Judge

Before Lisa White Hardwick, P.J., Harold L. Lowenstein, Judge and Victor C. Howard, Judge

Donna Huffaker appeals the trial court’s judgment upon a jury verdict in favor of Farmers State Bank of Northern Missouri (“the Bank”) and against Mrs. Huffaker in the amount of \$146,970.69. In two of her four points on appeal, Mrs. Huffaker claims that the trial court erred in overruling her objections to the opinion testimony provided by two of the Bank’s witnesses. In her two remaining points, Mrs. Huffaker claims that the trial court erred in denying her motion for directed verdict because the Bank had not made a submissible case on its guaranty claim. The judgment of the trial court is affirmed.

Factual and Procedural Background

Duwane and Donna Huffaker were married and lived on a farm in Andrew County, Missouri. They became customers of the Bank in 1983. Although the Huffakers had an account

held in both of their names, Mr. Huffaker also had a separate account for his farming business. Over the years, Mr. Huffaker took out various loans relating to his farming and excavation work, and Mrs. Huffaker co-signed some of those loans.

Following a surgical procedure, Mr. Huffaker died on August 24, 2005. After his death, the Bank informed Mrs. Huffaker that her husband had six separate notes that had not been paid off and owed the bank approximately \$180,000. Although Mrs. Huffaker had not co-signed any of the six notes, the Bank claimed that she was obligated to pay the debt because she had signed a guaranty on August 11, 1998. The guaranty provided that the co-signer guaranteed the payment of all present and future debts of the borrower, with no limitation on the amount owed or the duration of the guaranty. The Bank subsequently filed suit against Mrs. Huffaker to recover the amount due on the six notes on the basis of the guaranty.

At trial, David DeShon, the president and CEO of the Bank, testified that he was familiar with the signatures of both Duwane and Donna Huffaker and that, in his opinion, Mr. Huffaker's signature appeared on the underlying notes, and Mrs. Huffaker's signature appeared on the guaranty. Additionally, the Bank presented the testimony of an expert witness, who compared the signature on the guaranty with the signatures on several other documents purportedly signed by Mrs. Huffaker. The expert concluded that the person who had signed the other documents was the same person who had signed the guaranty. In her testimony, Mrs. Huffaker stated that she was not in the bank on August 11, 1998, and that, although her name appeared on the guaranty, she was not the person who signed it.

Mrs. Huffaker's counsel made a motion for directed verdict at the close of the Bank's evidence and at the close of all evidence, arguing that the Bank had not made a submissible case on its guaranty claim. The trial court denied each motion. Thereafter, the court entered a

judgment based upon the jury's verdict in favor of the Bank in the amount of \$146,970.69. This appeal by Mrs. Huffaker followed.

Admissibility of Lay and Expert Witness Testimony

In two of her points on appeal, Mrs. Huffaker claims that the trial court erred in overruling her objections to the testimony of two witnesses. She contends in her first point that the trial court should not have admitted David DeShon's testimony wherein he stated his opinion that the signatures on certain documents were the signatures of Duwane and Donna Huffaker. In her next point on this issue, Mrs. Huffaker argues that the trial court should not have admitted the testimony of William Storer, the Bank's expert witness, wherein he stated his opinion that the handwriting on several documents purporting to bear the signature of Mrs. Huffaker matched the handwriting of the person who signed the guaranty.

A "trial court is vested with broad discretion in determining the admissibility of evidence," and an appellate court "will not disturb its rulings absent a clear abuse of discretion." *Rinehart v. Shelter Gen. Ins. Co.*, 261 S.W.3d 583, 589 (Mo. App. W.D. 2008). An abuse of discretion "occurs when the trial court's ruling is clearly against the logic of the circumstances and so arbitrary and unreasonable that it shocks the sense of justice and indicates a lack of careful consideration." *Id.*

Mrs. Huffaker's first point focuses on the admissibility of the testimony of David DeShon, who has worked in some capacity for the Bank for approximately twenty years. At trial, Mr. DeShon testified that he was familiar with the signatures of both Mr. and Mrs. Huffaker and that, in his opinion, Mr. Huffaker's signature appeared on the loan documents and Mrs. Huffaker's signature appeared on the guaranty. However, Mrs. Huffaker argues that the Bank did not establish a sufficient factual basis underlying Mr. DeShon's familiarity with the

Huffakers' signatures in that Mr. DeShon did not testify that he had ever seen either of the Huffakers sign their names, and admitted that neither he, nor anyone else at the bank, had witnessed Mrs. Huffaker signing the guaranty. Therefore, Mrs. Huffaker argues that the trial court improperly admitted Mr. DeShon's opinion testimony and that, without testimony to establish that the Huffakers signed the documents, the Bank cannot prove its guaranty claim.¹

In Missouri, the testimony of a lay witness may constitute substantial proof that a signature is genuine if it is established that the witness is sufficiently familiar with the handwriting of the person whose signature is in dispute. *State v. Sanders*, 714 S.W.2d 578, 589 (Mo. App. E.D. 1986). Additionally, the Missouri Supreme Court has noted that "[i]t seems to make no difference under the authorities whether the knowledge of a handwriting which qualifies a witness to testify to it is acquired by having seen the person write or by having seen specimens known to be his." *Weber v. Strobel*, 194 S.W. 272, 275 (Mo. 1917). Thus, the opinion of a lay witness "as to handwriting is not wholly without foundation merely because the witness did not see the [documents] signed and was not a handwriting expert." *Sanders*, 714 S.W.2d at 589. "[N]either the extent of [the witness's] familiarity, nor his personal interest in the outcome, determines the question of his competency" to offer an opinion regarding handwriting. *Klaus v. Zimmerman*, 174 S.W.2d 365, 368 (Mo. App. 1943). Even if the witness's opinion is based upon limited opportunities for knowledge or is affected by an interest in the outcome, "it will nevertheless be admissible in evidence in the case for whatever weight the jury may see fit to attribute to it." *Id.*

¹ In order to recover on its guaranty claim, the Bank must show that: (1) Mrs. Huffaker executed the guaranty, (2) the guaranty was unconditionally delivered to the Bank, (3) the Bank extended credit to Mr. Huffaker in reliance on the guaranty, and (4) there is currently due and owing some sum of money from Mr. Huffaker to the Bank that the guaranty purports to cover. *See ITT Commercial Fin. Corp. v. Mid-Am. Marine Supply Corp.*, 854 S.W.2d 371, 382 (Mo. banc 1993).

With regard to one of the promissory notes the guaranty purported to cover, Mr. DeShon's testimony on direct examination was as follows:

- Q: Do you know how long Mr. Huffaker's been a customer of the bank?
A: Huffakers have been there longer than I have.
Q: During the time that you've been at the bank, have you become familiar with Mr. Huffaker's signature?
A: Yes.
Q: Looking at Plaintiff's Exhibit 2A, which is the promissory note, do you recognize the signature that appears on the bottom?
A: Yes, sir.
Q: And whose signature is that, in your opinion?
A: Duwane Huffaker's.

This example is representative of Mr. DeShon's testimony regarding each promissory note covered by the guaranty. After each time he testified that a note contained Mr. Huffaker's signature, Mr. DeShon admitted that he had not actually seen Mr. Huffaker sign the note.

Mr. DeShon later provided similar testimony when questioned about the signature on the guaranty:

- Q: And since you've been at the bank, have you had an opportunity to become familiar with Mrs. Huffaker's signature?
A: Sure.
...
Q: ... Looking at [the guaranty], do you recognize the signature that appears at the bottom?
A: Yes.
Q: And whose signature appears?
A: Donna Huffaker's.

When questioned by Mrs. Huffaker's attorney, Mr. DeShon admitted that he was not present when Mrs. Huffaker signed the guaranty. Finally, the Bank recalled Mr. DeShon on the second day of trial and elicited the following testimony:

- Q: [Y]ou have become familiar with [Mr. and Mrs. Huffaker's] signatures due to the fact that they've been customers for several years, correct?
A: Yes, sir.
...
Q: And [that familiarity is] based upon your years of business dealings with the

Huffakers, correct?

A. Yes.

As the court in *Sanders* noted, the fact that Mr. DeShon did not personally see Mr. Huffaker sign the promissory notes or Mrs. Huffaker sign the guaranty does not render Mr. DeShon incompetent to testify as to whether he believed the Huffakers had signed any of the documents at issue. The relevant question is whether the testimony the Bank elicited from Mr. DeShon was sufficient to establish a factual basis underlying his familiarity with the Huffakers' handwriting. Although Mr. DeShon did not testify that he had seen either of the Huffakers sign anything, he did state that he was familiar with the Huffakers' signatures and that his familiarity was based on his years of doing business with the Huffakers at the Bank. This testimony is enough to support an inference that, while working at the Bank, Mr. DeShon had seen the signatures of Mr. and Mrs. Huffaker on documents relating to their banking activities. Counsel for Mrs. Huffaker had the opportunity to question Mr. DeShon regarding his opinion and attempted to reveal the limitations on Mr. DeShon's familiarity with the Huffakers' signatures. The assessment of Mr. DeShon's credibility and the weight to be given to his testimony were matters for the jury. Therefore, the Bank established a sufficient factual basis underlying Mr. DeShon's familiarity with the Huffakers' signatures, and the trial court did not abuse its discretion in overruling Mrs. Huffaker's objection to the admission of Mr. DeShon's opinion testimony.

Even without the aid of Mr. DeShon's testimony, the Bank could have established that Mrs. Huffaker signed the guaranty through the testimony of its expert witness, handwriting expert William Storer. Mrs. Huffaker makes several arguments in support of her claim that the trial court erred in overruling her objection to the testimony of Mr. Storer. She contends that Mr. Storer's testimony was inadmissible because: (1) the identification of handwriting is not a proper

subject for expert testimony in that the subject is within the knowledge of lay witnesses, (2) there was no evidence that the material he relied on was the type of material that is reasonably relied on by experts in his field, (3) there was no evidence to establish that the exemplars used in Mr. Storer's comparisons contained Mrs. Huffaker's signature, and (4) Mr. Storer impermissibly relied on Mr. DeShon's opinion to reach his conclusions.

Despite Mrs. Huffaker's claim that the comparison or identification of handwriting is not a proper subject for expert testimony, there are numerous cases in Missouri in which expert comparison of handwriting has been utilized. *See, e.g., In re Marriage of Schulz*, 583 S.W.2d 735, 745 (Mo. App. E.D. 1979) (holding that because the exemplars used in handwriting comparison had been authenticated, the testimony of a handwriting expert was admissible). As Missouri case law clearly supports the use of handwriting experts, this facet of Mrs. Huffaker's argument is without merit.

Next, Mrs. Huffaker argues that Mr. Storer's testimony was inadmissible because the Bank failed to satisfy a requirement of the expert witness statute in that it did not establish that the material Mr. Storer relied on was the type of material that is reasonably relied on by experts in his field.² However, at trial, Mrs. Huffaker's objection to Mr. Storer's testimony did not include an assertion that Mr. Storer failed to testify that the facts or data upon which he relied were of a type reasonably relied upon by experts in his field.³

The circumstances here are similar to those addressed in *Rinehart*, in which a party raised objections to an expert's testimony at trial, but did not specifically assert that the opposing party had failed to establish that the facts upon which the expert based his opinion were of the type

² Section 490.065.3 provides that "[t]he facts or data in a particular case upon which an expert bases an opinion or inference . . . must be of a type reasonably relied upon by experts in the field in forming opinions or inferences upon the subject and must be otherwise reasonably reliable."

³ Counsel for Mrs. Huffaker may have attempted to make this argument by asserting that Mr. Storer relied upon unauthenticated documents. However, that argument is addressed separately in Mrs. Huffaker's point on appeal.

reasonably relied upon by experts in his field. *See* 261 S.W.3d at 592. The court noted that the grounds asserted on appeal are limited to those asserted at trial. *Id.* Because the party “did not give the trial court the opportunity to consider and correct any deficiencies in [the expert]’s testimony based on the facts he reasonably relied upon,” the court found that the foundation argument on that point had been waived and could not be considered on appeal. *Id.* Therefore, since Mrs. Huffaker’s attorney did not assert at trial that Mr. Storer failed to testify that the facts upon which he based his opinion were of a type reasonably relied upon by experts in his field, we will not consider this argument on appeal.

Mrs. Huffaker next claims that Mr. Storer’s testimony was inadmissible because the documents he used for his comparisons were not properly authenticated.⁴ At trial, Mr. Storer stated that the Bank had provided him with Exhibits 9 through 13, which purportedly bore Mrs. Huffaker’s signature. Mr. Storer compared the signatures on these documents with the signature on the guaranty and concluded that the person who signed Exhibits 9 through 13 had also signed the guaranty. The authenticity of an exemplar may be established by, among other methods, the testimony of lay witnesses, *see State v. Farmer*, 612 S.W.2d 441, 446 (Mo. App. S.D. 1981), or by the admission of an opponent, *see Klaus*, 174 S.W.2d at 369. The record shows that when Mr. DeShon was recalled as a witness, he testified that, based upon his familiarity with Mrs. Huffaker’s handwriting, it was his opinion that she had signed Exhibits 9 through 13. Additionally, Mrs. Huffaker admitted that she had signed Exhibit 11, an affidavit. Therefore, as the authenticity of the exemplars was established by the testimony of a lay witness and Mrs. Huffaker’s admission, Mr. Storer’s testimony was not inadmissible on this basis.

⁴ Pursuant to section 490.640, “[c]omparison of a disputed writing with any writing proved to the satisfaction of the judge to be genuine shall be permitted to be made by witnesses, and such writings and the evidence of witnesses respecting the same may be submitted to the court and jury as evidence of the genuineness or otherwise of the writing in dispute.”

Lastly, Mrs. Huffaker claims that Mr. Storer impermissibly relied on Mr. DeShon's opinions, rather than facts, in reaching his conclusions. However, the record indicates that Mr. Storer did not state that Mrs. Huffaker had signed the guaranty but, rather, concluded that whoever signed Exhibits 9 through 13 also signed the guaranty. Mr. Storer explained that he reached this conclusion by identifying various handwriting features in the signature on the guaranty and comparing them with the signatures on Exhibits 9 through 13. Due to the unique handwriting features that appeared in both the signature on the guaranty and the signatures on Exhibits 9 through 13, Mr. Storer concluded that the same person who signed Exhibits 9 through 13 had also signed the guaranty. Mr. Storer's testimony shows that he relied on his own examination of the handwriting features present in the signatures, rather than on the opinions of Mr. DeShon. Therefore, the trial court did not abuse its discretion in admitting the testimony of Mr. Storer.

Submissibility of Bank's Guaranty Claim

In her two remaining points on appeal, Mrs. Huffaker asserts that the trial court erred in denying her motion for directed verdict because the Bank did not make a prima facie case on its guaranty claim. When reviewing a denial of a motion for directed verdict, an appellate court determines "whether the non-moving party submitted substantial evidence that tended to prove the facts essential to its claim." *Gill Constr., Inc. v. 18th & Vine Auth.*, 157 S.W.3d 699, 712 (Mo. App. W.D. 2004). "The evidence is viewed in the light most favorable to the non-moving party, affording the non-moving party all reasonable inferences from the evidence and disregarding the moving party's evidence that contradicts the non-moving party's claims." *Id.* Additionally, "[a] jury verdict will be reversed on appeal for insufficient evidence only if there is

a ‘complete absence of probative facts’ to support the verdict.” *Id.* (quoting *Seitz v. Lemay Bank & Trust Co.*, 959 S.W.2d 458, 461 (Mo. banc 1998)) (internal quotations omitted).

Mrs. Huffaker first claims that the Bank failed to establish a prima facie case on its guaranty claim in that there was no substantial evidence to prove that Mr. Huffaker signed the promissory notes or that Mrs. Huffaker signed the guaranty. In her argument, Mrs. Huffaker refers to her claims of error relating to the admission of the testimony of Mr. DeShon and Mr. Storer and asserts that when their testimony is excluded from consideration, there is no substantial evidence to establish a prima facie case. However, we have already concluded that the trial court did not err in admitting the testimony of Mr. DeShon and Mr. Storer. Furthermore, Mr. DeShon’s testimony identifying the Huffakers as the individuals who signed the documents at issue and Mr. Storer’s opinion that the same person signed Exhibits 9 through 13 and the guaranty constituted substantial evidence that tended to prove facts essential to the Bank’s claim.

In her final argument, Mrs. Huffaker contends that the Bank failed to establish a prima facie case in that there was no substantial evidence to prove that the Bank relied on the guaranty in extending credit to Mr. Huffaker. She argues that Mr. DeShon provided the only evidence related to reliance and that his testimony was a self-serving, unsupported statement that did not constitute substantial evidence. Mr. DeShon’s testimony regarding reliance was as follows:

Q: Did Farmers State Bank of Northern Missouri rely on this guaranty in determining whether or not to make loans to Mr. Huffaker?

A: Absolutely.

This court has previously interpreted the issue of whether a creditor relied on a guaranty as “essentially a question of whether the extension of credit was in consideration for execution of the guaranty.” *See Stewart Title Guar. Co. v. WKC Rests. Venture Co.*, 961 S.W.2d 874, 882 (Mo. App. W.D. 1998) (abrogated on other grounds by *Boone Nat’l Sav. & Loan Ass’n, F.A. v.*

Crouch, No. WD 58107, 2001 WL 182415 (Mo. App. W.D. Feb. 27, 2001)). Missouri courts have held that “[t]he recitation ‘for value received’ is prima facie evidence of sufficient consideration to support a guaranty.” *Id.* In this case, the guaranty begins with the following statement:

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and to induce you, at your option, to make loans or engage in any other transactions with borrower from time to time, I absolutely and unconditionally guarantee the full payment of the following debts

The language in the guaranty is equivalent to a recitation of “for value received.” Thus, even without the benefit of Mr. DeShon’s testimony, the guaranty itself provided prima facie evidence of consideration. The trial court did not err in denying Mrs. Huffaker’s motion for directed verdict.

The judgment of the trial court is affirmed.

VICTOR C. HOWARD, JUDGE

All concur.