

of them money, and occasionally providing them places to live. Walker also cared for Matthew as a baby; washed his dirty laundry after he was grown; bought him five vehicles; and sent him money each month when Matthew went to prison, apparently three times, for “[w]riting checks, mostly.” When Matthew finally was released, Walker picked him up and brought him back to Walker’s house, where Matthew stayed for a time and to which he sometimes returned.

Such kindness was repaid, several months before Matthew’s forgeries, by Donna McIntosh passing an \$8,000 forged check on Walker’s account¹ and giving Matthew most of the money. At Donna’s sentencing, Walker heard her tell the court that Matthew actually forged the check.²

During a five-day period several months later, Matthew forged and brought to Bank the three subject checks. Per Bank’s operations manual, a teller on each occasion (1) checked for proper endorsement; (2) verified the payee’s identifications; (3) verified sufficient funds; and (4) checked for stop payments or alerts on the account. Each check passed these tests and was paid without checking the drawer’s signature, even though Walker’s signature card had been scanned into Bank’s computer system for ready access and easy review. At trial, a Bank witness declared the checks “obvious” forgeries, but testified that checking signature cards was not part of Bank’s operations manual.

¹ “Just like this one,” testified Walker at the instant trial.

² Walker readily admitted at the instant trial, “That [sic] what she said. And I don’t doubt it, because the signature is the same.”

Legal Principles

We must affirm the judgment unless it is unsupported by or against the weight of substantial evidence, or it erroneously declares or applies the law. We view all evidence and inferences in favor thereof; disregard contrary evidence and inferences; and recognize the trial judge's superior opportunity to assess witness credibility. *See Johanssen v. McClain*, 235 S.W.3d 86, 87 (Mo.App. 2007).

One whose blank checks are stolen and forged usually is not liable thereon. *See* § 400.3-401.³ But if one's own negligence contributes to the forgery, and a payor bank also is negligent, § 400.3-406 may trigger a comparative fault analysis:

(a) A person whose failure to exercise ordinary care substantially contributes ... to the making of a forged signature on an instrument is precluded from asserting ... the forgery against a person who, in good faith, pays the instrument or takes it for value or for collection.

(b) Under subsection (a), if the person asserting the preclusion fails to exercise ordinary care in paying or taking the instrument and that failure substantially contributes to loss, the loss is allocated between the person precluded and the person asserting the preclusion according to the extent to which the failure of each to exercise ordinary care contributed to the loss.

Since the quoted statute is central to Walker's appeal points, but Missouri case law thereon is scant,⁴ our analysis draws freely from Professors White & Summers' well-known UCC commentary.⁵

³ Statutory citations are to the Missouri Uniform Commercial Code, RSMo chapter 400, as amended through 2006.

⁴ *Dalton & Marberry, P.C. v. Nationsbank, N.A.*, 982 S.W.2d 231 (Mo. banc 1998) mentioned § 400.3-406's comparative fault approach in dicta, expressly noting that the statute did not apply to "the type of scam involved here." *Id.* at 237.

⁵ 2 JAMES J. WHITE & ROBERT S. SUMMERS, UNIFORM COMMERCIAL CODE § 19-3 (5th ed. & Supp. 2008) (hereinafter "White & Summers").

Point I

Walker denies his negligence substantially contributed to the forgeries, citing his own testimony that he had no recent contact or dealings with Donna, and that he safeguarded his checkbook on his person or in a lockbox. But the trial court was not required to credit such testimony, and apparently did not do so, at least regarding Walker's "safeguards," and especially given the prior \$8,000 forgery. Walker's lockbox was a gift from Donna, and his testimony suggested that he had only one of three keys thereto. Ordinary care arguably required Walker, following a check theft and \$8,000 forgery despite apparent safeguards, and with scienter of Matthew's criminal proclivity and presence about his home, to be sure more checks were not missing, or contact Bank about alerts or stop payment orders, or question his lockbox security and perceived safeguards; but we find no such evidence. Viewing the record as we must (*Johannsen, supra*), we cannot say the trial court erred in finding that Walker's failure to exercise ordinary care substantially contributed to the forgeries.⁶ Point I fails.

⁶ "Substantially contributes" is a lesser standard than "direct and proximate cause." See Comment 2 to § 400.3-406.

[I]n order to preclude one from asserting a forgery or alteration, that person need not prove that the person's behavior was a "direct and proximate cause" of the forgery or alteration, but only that it "substantially contributed" thereto. Thus, where there are multiple causes of loss (not the least of which may be a deficiency in the thief's morality), one person's act could be a substantial cause even though other events might be more direct and powerful causes.

White & Summers § 19-3. "The acts sufficient to 'substantially contribute' to a material alteration or to the making of an unauthorized signature are limited only by man's capacity for slovenly business transactions." *Id.* See also Annot., *Commercial paper: what amounts to "negligence contributing to alteration or unauthorized signature" under UCC § 3-406*, 67 A.L.R.3d 144 (1975).

Point II

We question Point II, which claims the trial court erred in finding that Bank “followed reasonable commercial standards in accepting checks ... in that Bank was negligent in not recognizing that checks were obvious forgeries by failing to verify signatures and failed to exhibit good faith.” The premise is faulty: the judgment described Bank’s fault and allocated the loss 80-20 because Bank had *not* followed reasonable commercial standards.⁷ Nor are reasonable commercial standards relevant to Bank’s good faith under Missouri’s Uniform Commercial Code.⁸ Walker cites a 1984 Oregon case declaring a bank’s failure to review check signatures negligence as a matter of law; a view effectively disapproved by later Article 3 revisions which Missouri enacted in 1992. *See* § 400.3-103(a)(7); White & Summers § 19-3. Walker seeks reallocation of the loss, but this court cannot reweigh the evidence or substitute its fact findings for those of the trial court. We deny Point II and affirm the judgment.

Daniel E. Scott, Presiding Judge

BARNEY, J. – CONCURS

BATES, J. – CONCURS

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⁷ Section 400.3-406(b) triggered comparative fault only if Bank “fail[ed] to exercise ordinary care in paying or taking the instrument,” and for Bank, exercising ordinary care required “observance of reasonable commercial standards.” § 400.3-103(a)(7).

⁸ UCC 3-103(a)(4)’s “good faith” definition was revised in 1990 to add an objective requirement to observe reasonable commercial standards of fair dealing. Missouri has not adopted that change. 13 WILLIAM H. HENNING, MISSOURI PRACTICE: UCC FORMS § 1-102, Form 1 Comment (3d ed. & Supp. 2008).