

Circuit Court for Anne Arundel County
Case No. C-02-CV-21-000889

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1872

September Term, 2023

WHITSEND III INC.
t/a SERVPRO OF ANNAPOLIS

v.

EARNEST MONTLEY, JR., ET AL.

Beachley,
Albright,
Wright, Alexander, Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Beachley, J.

Filed: December 13, 2024

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

After a fire at appellee Earnest Montley’s residence, Montley entered into a contract with appellant, Whitsend III Inc. t/a ServPro of Annapolis (“ServPro”), for the purported purpose of cleaning personal property damaged in the fire. ServPro challenges the Circuit Court for Anne Arundel County’s decision to award \$25,000 in damages related to Montley’s claim for loss or destruction of his personal property while in ServPro’s possession. We have recast ServPro’s two questions presented¹ to a single issue:

Did the circuit court err in assessing damages of \$25,000.00 for Montley’s personal property loss claim?

For the reasons that follow, we shall reverse and vacate the judgment entered in favor of Montley.

FACTS

On June 18, 2019, Montley’s Pasadena, Maryland home suffered extensive smoke damage from a grease fire that started in his kitchen.² Montley reported the fire to his insurance company, Homesite Insurance (“Homesite”), which contacted ServPro of

¹ ServPro presents the following questions in its brief:

- I. Did the trial judge err in finding that the appellant breached the contract by failing to clean items being stored?
- II. Did the trial judge err in assessing damages of \$25,000.00 for the appellant[’s] failure to clean?

Because we conclude that the trial court’s damages award must be reversed, we need not answer ServPro’s first question presented.

² The court filings have erroneously spelled appellee’s first name as “Earnest.” We shall use that spelling for consistency with the record, including briefing material submitted to this Court.

Annapolis on his behalf. ServPro sent two representatives, Nick Whittles and Eric Long, to meet Montley at the property shortly after the fire. Whittles, Long, and Montley surveyed the property damage for approximately twenty minutes, then adjourned outside to discuss Montley’s insurance coverage and what services ServPro could provide Montley. On June 28, 2019, Montley signed ServPro’s standard services contract, authorizing ServPro to “perform any and all necessary cleaning and/or restoration services on Customer’s property located at the address above, and with respect to items that need to be cleaned at a remote location to remove and clean such items as necessary.” The contract further authorized ServPro to receive payment directly from Homesite, and to act as Montley’s attorney-in-fact to expedite payment to ServPro. Within days of executing the contract, ServPro conducted a “pack out” of Montley’s home, which involved inventorying, packing, and removing personalty it believed could be safely cleaned and restored, and transporting those items to its warehouse for storage.

On July 1, 2019, ServPro employees arrived at the Montley property and discovered that the home had been “ransacked” over the weekend, with furniture and other items disturbed. ServPro’s employee, Eric Long, testified that he promptly called Montley, who instructed him to complete the pack out of the fire-damaged property. Montley arrived at the property the following day and made a police report related to the apparent burglary. Montley testified that, in addition to the “ransacking” of the house, his garage and shed on the property had been broken into, and that several items were missing from both

buildings.³

It was at this juncture that the relationship between Montley and ServPro soured. The pack out had been completed by the time Montley and the police arrived at the property on July 2, 2019, as Montley's possessions had already been removed to ServPro's warehouse for storage in anticipation of cleaning them. According to testimony from both Montley and Whittles, Montley asked ServPro not to return to the jobsite. Whittles testified that Montley accused ServPro of the theft of his property and fired them. Whittles further stated that Montley told Whittles never to speak to him again and asked him to leave the premises. According to Whittles, when Montley fired ServPro from the job, Whittles advised Montley that ServPro would not clean his possessions. Whittles further testified that he contemporaneously called the Homesite adjuster assigned to the claim and informed her that, because ServPro had been fired, it would not clean Montley's property.

On or about July 29, 2019, ServPro issued an estimate in the amount of \$14,037.52 for services related to the removal of Montley's personal property plus four months of anticipated storage at the ServPro warehouse. On August 9, 2019, ServPro sent an invoice for that amount to Montley. On September 12, 2019, Homesite issued a check in the amount of \$14,037.52, payable to Montley, ServPro, and Accurate Claim Services, a public adjuster retained by Montley to manage all of his fire-related claims. The check was ultimately endorsed by Montley and William Dunn of Accurate Claim Services, and

³ Montley stated at trial that the thieves had not been identified and none of the stolen items had been recovered.

deposited into Montley’s account without ServPro’s endorsement. Whittles testified that ServPro did not receive any payment from that check and that Homesite refused to reissue the check directly to ServPro. ServPro continued to send invoices to Montley for the continued storage of his uncleaned items through March 31, 2023.

We shall summarize the somewhat complicated procedural history of this case. ServPro originally filed a breach of contract action against Montley in the District Court for Anne Arundel County in January 2021, seeking payment of the \$14,037.52 plus interest and attorney’s fees. On May 3, 2021, Montley filed a breach of contract case against ServPro in the Circuit Court for Anne Arundel County, alleging damages in the amount of \$30,000. The District Court subsequently granted Montley’s motion to transfer ServPro’s original contract action to the Circuit Court for Anne Arundel County, and the cases were consolidated for trial. Montley filed a supplemental counter-complaint against ServPro on September 14, 2021, alleging breach of contract related to ServPro’s failure to promptly clean and return his possessions, and demanding \$30,000 in damages.⁴ Montley also demanded \$3,080 in damages resulting from ServPro’s negligent placement of a dumpster in his driveway. On May 11, 2022, Montley filed an “Amended Supplemental Counter-Complaint,” increasing his claim against ServPro to \$140,000, which he alleged represented the “complete loss” value of the items still uncleaned and in ServPro’s

⁴ The Schroedel Company (d/b/a CRDN of Baltimore and Southern Maryland) was also named as a counter-defendant by Montley, and subsequently filed its own third party complaint against Montley. The parties agreed to dismiss the claims against one another in a stipulation of dismissal filed with the court on April 19, 2023.

possession. ServPro filed an amended complaint on June 1, 2022, demanding \$55,000 in damages, which included \$14,037.52 related to the original unpaid invoice plus ongoing storage fees, interest and attorney’s fees.

The consolidated cases proceeded to a bench trial on October 25, 2023, in the Circuit Court for Anne Arundel County. After a one-day trial, the court rendered its bench opinion, awarding the following damages: (1) a \$14,037.52 judgment in favor of ServPro related to the August 9, 2019 pack out invoice, (2) a \$3,080 judgment in favor of Montley related to damages to his driveway, and (3) a \$25,000 judgment in favor of Montley related to damages to his personal property. As the parties acknowledged at oral argument, the only issue before us is the propriety of the \$25,000 judgment against ServPro. We shall provide additional facts as necessary to inform our analysis.

DISCUSSION

Standard of Review

Appellate review of a bench trial is governed by Rule 8-131(c), which provides:

When an action has been tried without a jury, the appellate court will review the case on both the law and the evidence. It will not set aside the judgment of the trial court on the evidence unless clearly erroneous, and will give due regard to the opportunity of the trial court to judge the credibility of the witnesses.

Md. Rule 8-131(c).

The clearly erroneous standard applies only to the circuit court’s factual findings, however, and not the court’s legal conclusions. *SVAP II Pasadena Crossroads LLC v. Fitness International LLC*, 260 Md. App. 77, 89 (2023). “When evaluating whether a

circuit court’s decision was legally correct, ‘we give no deference to the trial court findings and review the decision under a *de novo* standard of review.’” *Id.* (quoting *Lamson v. Montgomery Cnty.*, 460 Md. 349, 360 (2018)).

Analysis

In his operative complaint, Montley alleged that all personal property removed by ServPro “was ruined due to the smoke and fire damages settling into the furnishings over a matter of time without receiving the immediate cleaning necessary to salvage and restore the items.” Consistent with his claim that “all property collected [by ServPro] resulted in a complete loss,” Montley produced an itemized list of property that he claimed was totally destroyed as a result of ServPro’s failure to timely clean the property. As the owner of the property, Montley testified that the value of the damaged property was approximately \$105,000. *See Lakewood Engineering and Mfg. Co., Inc. v. Quinn*, 91 Md. App. 375, 389 (1992) (It is well-settled that “an owner of property can testify as to its value.”).

ServPro asserts that, assuming *arguendo* that it breached the contract, the proper measure of damages would be “the cost of proper cleaning.” Because Montley produced no evidence of the cost to clean his property, ServPro argues that the circuit court’s \$25,000 award based on a total loss of Montley’s property cannot stand.

Significantly, the court determined that Montley was not entitled to “damages for items that can be cleaned,” a determination that has not been challenged on appeal. The court then summarily concluded, “After consideration of all the evidence, the [c]ourt will award Mr. Montley damages in the amount of \$25,000.”

There are several problems with the court’s analysis. First, the court articulated a distinction between “cleanable” and “uncleanable” items, declining to award damages for “cleanable” items and awarding \$25,000 for presumably “uncleanable” items. We use the word “presumably” here because the court did not specifically identify which of the 142 items of personal property it deemed “uncleanable.” Absent that predicate – itemized findings of uncleanable property – we cannot discern how the court determined that Montley was entitled to \$25,000 in damages. The law is clear that “one may recover only those damages that are affirmatively proved with reasonable certainty to have resulted as the natural, proximate and direct effect of the injury.” *Empire Realty Co. v. Fleisher*, 269 Md. 278, 284 (1973). Thus, even if the evidence showed that ServPro’s delay in cleaning was the proximate cause of alleged total loss to the “uncleanable” personal property, the basis for the \$25,000 damages award is, in the parlance of *Empire Realty*, “largely left to one’s imagination” and cannot be sustained.⁵ *Id.* at 283.

But the court’s damages award has a more fundamental problem. Although the court awarded \$25,000 for “uncleanable” property, we see nothing in the record to demonstrate that ServPro’s failure to promptly clean Montley’s property caused any of the property to become “uncleanable.” Montley produced absolutely no evidence on this

⁵ The only evidence concerning “uncleanable” property was produced by ServPro. Heather Smith prepared a report setting forth approximately twenty-four items which she deemed potentially uncleanable, depending on how close they were to the source of the fire. Using Mr. Montley’s valuations, the total value of those items amounts to only \$21,099, still short of the court’s \$25,000 award. Montley himself acknowledges that “the court did not break down every dollar for her \$25,000 decision.”

point—he baldly asserted that all 142 items of personalty were a total loss amounting to \$105,000. ServPro produced the only evidence regarding the potential effects that could result from a delay in cleaning the property. Whittles testified that the general industry standard is to clean any fire-damaged items “sooner rather than later,” but he proceeded to state that all of Montley’s items were able to be cleaned. Long testified that, during the pack out process, ServPro took only those items evaluated as “cleanable,” leaving behind anything it deemed unsalvageable. Heather Smith, a contents cleaning manager for a different ServPro franchise, evaluated all 142 of Montley’s items prior to the trial and submitted a written report on their condition, which was entered into evidence without objection. Although Smith acknowledged that it is generally better to clean damaged property “sooner rather than later,” she affirmed that the “majority of the items” in ServPro’s possession were cleanable. Additionally, in her report, Smith opined that “[t]he smell itself may actually have been slightly improved” after the passage of time “because the items have had time away from the source to allow it [sic] the smell to dissipate,” thereby giving the items “a higher chance” of being cleaned.⁶ Smith concluded, “in no way[,] shape or form have the items been further destroyed” by the passage of four years.

As noted, Montley failed to produce any evidence concerning the potential effects of delay in cleaning property in storage, and ServPro’s evidence on this point does not

⁶ Smith identified items that she was uncertain could be cleaned. Many of those items involved furniture comprised of “Particle Board or MDF Board,” which Smith thought may not be cleanable if they were in close proximity to the source of the fire. She did not testify that the delay in cleaning the items caused them to become uncleanable. As
(continued)

support the theory that ServPro’s delay caused further damage to Montley’s property. That the record is devoid of any evidence that ServPro’s action or inaction caused damage to Montley’s property is fatal to his total loss of property claim.

Accordingly, we reverse the judgment of the circuit court and vacate the \$25,000 damages award in favor of Montley.

**JUDGMENT OF THE CIRCUIT COURT
FOR ANNE ARUNDEL COUNTY AGAINST
APPELLANT IN THE AMOUNT OF \$25,000
REVERSED. COSTS TO BE PAID BY
APPELLEE.**

to mattresses and box springs, she indicated that they are typically “written off at the beginning” because it is difficult to remove the smell of smoke and potential “health risks” from sleeping on those items. Again, those effects were caused by the fire itself, not by any acts or omissions of ServPro.