FILED
MAY 28 1985
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

BETTY REMETCH,

Plaintiff-Appellant,

vs.

CITY OF WATERLOO, IOWA and DARYLD GILBERTSON,

Defendants-Appellees.

Filed May 28, 1985

5-152
84-911

Appeal from the Iowa District Court for Black Hawk County - Forest E. Eastman, Judge.

Plaintiff appeals the district court's judgment for defendants on her petition which sought recovery from defendant police officer for use of excessive force in effectuating an arrest of the plaintiff. AFFIRMED.

John W. Pieters of Pieters & Pieters, Jesup, Iowa, for plaintiff-appellant.

Jim D. DeKoster and Jay P. Roberts of Swisher & Cohrt, Waterloo, Iowa, for defendants-appellees.

Heard by Snell, P.J., Schlegel, and Sackett, JJ.

SCHLEGEL, J.

The plaintiff, Betty Remetch, brought this action seeking compensatory and punitive damages for injuries she suffered resulting from the actions of a police officer, who arrested her for striking an unattended vehicle with her pick-up truck, for resisting an officer, and for interfering with official acts. She appeals the adverse judgment, asserting that the trial court's finding that the officer did not use excessive force was not supported by substantial evidence. We affirm.

The plaintiff was 43 years old at the time of her arrest and weighed approximately 180 pounds. She had been hospitalized for Crohn's disease three weeks before the arrest.

The defendant police officer, Daryld Gilbertson, is trained in judo, karate, and ikedo. He also teaches self defense tactics and handcuffing procedures.

According to Gilbertson's testimony, he received a call to investigate an accident. His investigation indicated that plaintiff's pick-up truck, parked nearby in front of a trailer, was involved. Gilbertson went to the door of the trailer and was met by Remetch. Both Remetch and Gilbertson proceeded to the scene of the accident and she denied any involvement. He asked to see her license several times but she refused and became hostile and loud. Gilbertson informed Remetch that if she did not provide a license she would be arrested. She returned to the trailer to call her attorney.

Gilbertson radioed for assistance and again knocked on the door of the trailer. Remetch allowed him inside but refused his request to see her license and she remained hostile. Gilbertson then arrested her for striking an unattended vehicle, resisting an officer, and interfering with official acts. When he moved towards Remetch she pushed him back. He handcuffed one of her wrists but she resisted by pulling backwards. She fell back onto a sofa, and positioned herself so that Gilbertson could not handcuff her other wrist. After again radioing for assistance, he finally forced Remetch's arm and handcuffed her other wrist.

Remetch gave a different version of the events surrounding her arrest. She claimed that she did not raise her voice until just before her arrest and that she was attempting to show her license to Gilbertson when she was arrested. She also stated that, after handcuffing her, he jumped up and down on her back for 10 to 15 minutes with his knee and hit her in the head. Remetch further claimed that Gilbertson lifted her off the floor by the handcuffs and shoved her.

Other trial witnesses stated that Remetch was hostile prior to her arrest. The auxiliary officers, who responded to Gilbertson's call for assistance, testified that he backed away from Remetch immediately after completing the handcuffing and that the auxiliary officers assisted her to her feet by putting their hands under her arms.

A doctor testified that a week after the arrrest he noted muscle spasms in Remetch's neck for which he prescribed traction and physical therapy. The doctor stated that he admitted her into the hospital 20 days after the arrest.

In its decision, the district court found that Remetch suffered injuries to her neck muscles during the arrest. The court, however, stated that it could not place much credence on the plaintiff's version of the arrest. The court found that the amount of force used by Gilbertson was no greater than necessary to overcome Remetch's resistance and that the whole incident could have been averted if she had cooperated.

Our review in a law action is confined to assigned errors. Where a case is tried without a jury, the trial court's findings of fact are equivalent to a jury verdict and, if supported by substantial evidence and justified as a matter of law, they are binding on us. Gere v. Council Bluffs Community School Dist., 334 N.W.2d 307, 309 (Iowa 1983). Furthermore, where the evidence is conflicting, we must construe the evidence in the light most favorable to the trial court's judgment and we will not weigh the evidence or pass on the credibility of witnesses. Hubby v. State, 331 N.W.2d 690, 694 (Iowa 1983).

Remetch had the burden of proving that Gilbertson used excessive force. The trial court, in essence, ruled that she did not meet that burden. We can interfere with a trial court's determination that a party has failed to carry the burden of proof on an issue only if the evidence is so overwhelming that the party carried the burden as a matter of law. Public Finance Co. v. Van Blaricome, 324 N.W.2d 716, 718 (Iowa 1982); Electra Ad Sign v. Cedar Rapids Truck Center, 316 N.W.2d 876, 880 (Iowa 1982); First Nat'l. Bank of Lennox v. Claiser, 308 N.W.2d 1, 3 (Iowa 1981).

It was the trial court's duty to assess the credibility of witnesses. Based on the testimony of Gilbertson, the auxiliary officers, and other witnesses, many of Remetch's assertions were contradicted. Therefore, we hold that the trial court could have disbelieved the plaintiff's evidence, and that there was substantial evidence to support the court's finding that Gilbertson used no more force than necessary to overcome her resistance to the arrest.

AFFIRMED.