



509

IN THE COURT OF APPEALS OF ILLINOIS

RONALD LYONS,

Appellant,

v.

PATRICIA LYONS,

Appellee.

Filed April 28, 1978

459
2-60032

Appeal from Scott District Court - Lowell D. Phelps, Judge.

Plaintiff appeals from dismissal of his petition, which alleged breach of bailment duties, for failure to state a cause of action. Reversed.

Glenn F. Ruud, of Winstein, Kavensky, Wallace & Doughty, Rock Island, Illinois,
for appellant.

Harold C. Lounsberry, Davenport, for appellee.

Submitted to Allbee, C.J., Donielson, Snell, Oxberger and Carter, JJ.

PER CURIAM

Plaintiff, Ronald Lyons, appeals from adverse judgment entered by trial court in his action against his former wife for damages to a 1938 Buick. The petition alleged that the parties had been granted a dissolution of marriage and that as a result of that dissolution plaintiff was awarded the Buick. It further alleged that defendant had, at the dissolution hearing, reported the car's condition to be good, but that when plaintiff took possession the car had been damaged in numerous respects. Relief in the amount of \$2869.57 was demanded. Following service, defendant failed to appear; trial court thereafter entered default against her. Hearing was set for a determination of the amount of damages. After such hearing, trial court entered its Findings of Fact, Conclusions of Law and Judgment. In that document, the court found that the petition failed to state a cause of action and entered judgment for defendant.

The case presents three issues. (1) Did the petition allege facts sufficient to show that a bailment arose between the parties? (2) Did the petition allege facts sufficient to state a prima facie case for breach of the bailment relationship? (3) Did trial court apply the rule of *Hallett Construction Co. v. State Highway Comm.*, 261 Iowa 290, 295, 154 N.W.2d 71, 74 (1967) (which rule allows a defendant in default to show that plaintiff has not been damaged) erroneously, so as to allow defendant to assert an unpleaded defense to the claim? Because each of these questions must be answered in the affirmative, we reverse.

A bailment requires a transfer of the property to the bailee which excludes possession of the owner; it is a lawful severance of possession from ownership.¹ *Rutledge v. Des Moines Flying Service, Inc.*, 254 Iowa 809, 812-13, 119 N.W.2d 262, 264 (1963). The essence of a bailment is that return of the identical goods is required.

¹ The situation here shows exclusive possession by defendant. The car was on property possessed by defendant. Plaintiff demonstrated considerable hesitancy over its reacquisition, taking the precautions of inquiring of the court and of his own attorney before entering the property; he also took a police officer and another individual along on the foray.

Sturm v. Boker, 150 U.S. 312, 329, 14 S.Ct. 93, 104, 37 L.Ed. 1093, 1100 (1893). Such a relationship may result from implication, as well as by declaration. *State v. Chew Muck You*, 20 Or. 215, 218-19, 25 P. 355, 356 (1890). The instant case is slightly different from the usual situation in that title was taken from the car's possessor, rather than possession being given up by the titleholder. However, the dissolution decree imposed a duty upon defendant to deliver the car to plaintiff in specie. The petition, therefore, alleged facts sufficient to constitute a bailment.

The next subject of inquiry is whether there was a sufficient allegation of breach of the bailment. A prima facie case for such a breach requires a showing of "delivery of the property in good condition, redelivery in damaged condition, and the amount of damages." *Jones v. O'Bryon*, 254 Iowa 31, 38, 116 N.W.2d 461, 465 (1962). Trial court found that the amount of damages had been shown; nor can there be any dispute that the petition alleges the car was in damaged condition when returned. The question which remains is whether paragraph 3 of the petition is sufficient to allege delivery in good condition.² That paragraph asserted "[t]hat respondent reported at the time of [the dissolution hearing] that the auto was in the same good mechanical condition that it was at the time the petitioner and respondent separated." Our concern here is identical to the questions which arise when considering whether the pleading is sufficient to survive a motion to dismiss under rule 104(b), Rules of Civil Procedure. Such a motion will be sustained "only when it appears to a certainty the pleader has failed to state a claim upon which any relief may be granted under any state of facts which could be proved in support of the claim asserted. In making this determination the pleading should be construed in the light most favorable to the pleader with doubts resolved in his favor and the challenged allegations accepted as true." *Weber v. Madison*, 251 N.W.2d 523, 525 (Iowa 1977).

² Of course, due to the unusual manner in which this bailment arose, there was no delivery. Thus, the question is actually whether the good condition of the car at the time of initiation of the bailment was alleged.

While paragraph 3 may be defective in that it pleads an evidentiary fact rather than an ultimate fact, we do not consider that shortcoming conclusive in determining whether the pleading states a cause of action. Cf. *Newton v. Grundy Center*, 246 Iowa 916, 921, 70 N.W.2d 162, 164-65 (1955); *Maine v. Rittenmeyer*, 169 Iowa 675, 676, 151 N.W. 499 (1915). The paragraph was sufficient to state an essential element of plaintiff's cause of action.

Finally, trial court allowed defendant to go beyond the limited defensive showing described in *Hallett Construction Co. v. State Highway Comm.*, supra. Trial court found that plaintiff had been damaged in the amount of \$2869.57. All other findings of fact were on the question of whether defendant was responsible for those damages. That question was settled by the default; its consideration was impermissible.

Upon remand, trial court shall enter judgment for plaintiff in the amount of \$2869.57, plus interest and costs.

REVERSED.