

IN THE COURT OF APPEALS OF IOWA

No. 5-390 / 94-1294

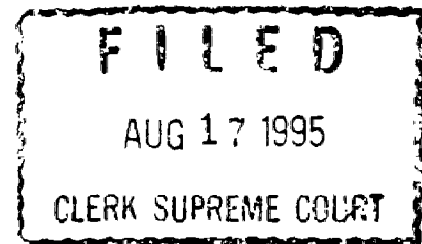
RANDY COMLY,

Plaintiff-Appellant,

vs.

TED LAMB, JR.,

Defendant-Appellee.



Appeal from the Iowa District Court for Dallas County, David L. Christensen,
Judge.

Plaintiff appeals from a district court judgment in a replevin action. The district court issued a writ of replevin allowing plaintiff to retrieve any of his tools which might be found in defendant's garage. **AFFIRMED.**

Martin L. Fisher of Fisher, Fisher & Fisher, P.C., Adair, for appellant.

Ronald A. Baybayan, Des Moines, for appellee.

Considered by Hayden, P.J., and Sackett and Habhab, JJ.

SACKETT, J.

Plaintiff-appellant Randy Comly appeals following a trial court's decision in a replevin action. Plaintiff contends the trial court erred in not finding defendant-appellee Ted Lamb responsible for tools left in his garage and in not assigning a value to the tools. We affirm.

Plaintiff took mechanics' tools to a garage of defendant in Redfield, Iowa. Plaintiff had free access to the garage and opened it with a garage door opener. Plaintiff put his tools in the garage in March 1993 and, about the middle of May of the same year, left defendant's garage, leaving the tools there and taking the garage door opener with him. Plaintiff owed Snap-On Tools Corporation about \$4000 for the tools and agreed to let the field manager for Snap-On repossess some of the tools in defendant's garage for payment. Plaintiff gave the garage door opener to the Snap-On Tools field manager. The manager eventually returned the opener to defendant.

Plaintiff filed this replevin action asking the court issue a writ of replevin for his tools in defendant's possession and asking the court to award damages for him and against defendant for keeping his tools of trade.

After a hearing, the trial court found, while the evidence showed defendant had tools of plaintiff's in the garage, plaintiff did not prove the value of the tools. The court issued a writ of replevin for plaintiff to enter defendant's premises to locate any tools that may be his. The court found defendant was not responsible for the

safekeeping of plaintiff's tools and plaintiff had failed to prove he suffered any loss of income. The trial court dismissed the allegations of plaintiff's petition seeking damages.

Plaintiff contends the trial court erred in finding defendant was not responsible for the tools left in his garage and in not assigning a value to the tools. Plaintiff contends, in finding defendant was not responsible for tools, the trial court decided an issue not vital to the case. Plaintiff has not shown how error was preserved on this issue. No Rule 179(b) motion was filed. As a general rule, issues not presented in the trial court may not be raised for the first time on appeal. *Conner v. State*, 362 N.W.2d 449, 457 (Iowa 1985). We address the issue without determining whether error was preserved.

The trial court found there was not sufficient evidence of the value of the tools. A replevin is an action at law. *See* Iowa Code § 643.2 (1994). The factual findings made by the trial court are binding on us if supported by substantial evidence. *First Trust and Savs. Bank v. Guthridge*, 445 N.W.2d 401, 402 (Iowa App. 1989). Plaintiff had the burden of proof on the issue of value. Our review of the record convinces us there is substantial evidence to support the trial court's decision. The record is not clear what tools may have been removed by Snap-On. We affirm.

AFFIRMED.