

IN THE COURT OF APPEALS OF TENNESSEE
WESTERN SECTION AT JACKSON

LINELL JEFFRIES,

Defendant/Appellant

v.

JOE JEFFRIES, JR.,

Plaintiff/Appellee

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Shelby Circuit No. 58061 T.D.

Appeal No. 02A01-9503-CV-00042

FILED

February 29, 1996

Cecil Crowson, Jr.
Appellate Court Clerk

APPEAL FROM THE CIRCUIT COURT OF SHELBY COUNTY
AT MEMPHIS, TENNESSEE
THE HONORABLE WYETH CHANDLER, JUDGE

LINELL JEFFRIES

P. O. Box 14451
Memphis, TN 38114
Pro Se Appellant

SAM ZERILLA

243 Adams Avenue
Memphis, Tennessee 38103
Attorney for Appellee

AFFIRMED

WILLIAM H. INMAN, SENIOR JUDGE

CONCUR:

W. FRANK CRAWFORD, PRESIDING JUDGE

DAVID R. FARMER, JUDGE

OPINION

This action for damages for malicious prosecution by brother against brother was filed in the General Sessions Court and in course was heard *de novo* by the Circuit Court without a jury. Judgment was entered for the plaintiff for \$2,500.00 compensatory damages and \$500.00 punitive damages. The defendant appeals *pro se*, and presents for review three issues which we reproduce *in haec verba*:

1. Whether the plaintiff proved malicious prosecution beyond a reasonable doubt that defendant had committed malicious prosecution when conflicting testimonies were given by the plaintiff and the plaintiff's witness.
2. Whether the plaintiff's false testimony under oath of never assaulting defendant with a weapon should still be held as malicious prosecution by the defendant or was the plaintiff just using the court to commit fraud.
3. Whether defendant committed malicious prosecution by filing complaints on two occasions [sic] against plaintiff when plaintiff was constantly harrasing [sic] and threatening [sic] defendant with a deadly weapon.

Appellate review is restricted. We cannot substitute our judgment for that of the trial judge, and we are not authorized to try the case *de novo*. Our function is to review the record *de novo* with the presumption that the judgment is correct unless the evidence preponderates against it. TENN. R. APP. P., RULE 13(d). Correlative to this rule is the established legal principle that the trial judge is the exclusive judge of the credibility of the witnesses. See, *Walls v. Magnolia Truck Lines, Inc.*, 622 S.W.2d 526 (Tenn. 1981).

The plaintiff testified that he and his brother became involved in a heated argument in a parking lot, during the course of which his brother went to his car and returned to the verbal fray with what the plaintiff thought was a pistol. He therefore procured the arrest of the defendant for assaulting him with a firearm. The case was dismissed in the General Sessions Court.

The defendant testified that he had no pistol. His testimony was corroborated by a sister. The trial court minced no words in a determination of credibility, which was the crucial factor in the case, and dismissed the case for the reason the plaintiff had failed to carry his burden of proof. See, *Walls, supra*.

The evidence does not preponderate against the judgment, which is affirmed at the cost of the appellant. TENN. R. APP. P., RULE 13(d).

William H. Inman, Senior Judge

CONCUR:

W. Frank Crawford, Presiding Judge

David R. Farmer, Judge