



**In The
Court of Appeals
Sixth Appellate District of Texas at Texarkana**

No. 06-19-00088-CV

SHIRLEY STEPHENS AND RAY THOMAS, Appellants

V.

SHARI STEPHENS, Appellee

On Appeal from the 71st District Court
Harrison County, Texas
Trial Court No. 15-0371

Before Morriss, C.J., Burgess and Stevens, JJ.
Memorandum Opinion by Justice Burgess

MEMORANDUM OPINION

Appellee Shari Stephens (Shari) sued his mother, Shirley Stephens (Shirley), along with two other family members, Appellant Marilyn Stephens (Marilyn) and Ray Thomas (Thomas), alleging, in part, that Shirley converted eight of his calves and several pieces of his farm equipment. Shirley filed a counter-claim petition and several amended petitions against Shari for slander, theft, conversion, trespass, misappropriation of property, intentional infliction of emotional distress, and unjust enrichment.¹ Several other family members intervened, and they, together with Marilyn and Thomas, raised allegations against Shari that were similar to those raised by Shirley. In addition, Marilyn alleged a claim against Shari for assault.² Following a jury trial,

¹On July 19, 2013, Shari filed his original petition against Shirley and Thomas, alleging, in relevant part, Plaintiff Shari Stephens, (herein Plaintiff Stephens), on or about July 9, 2013, discovered doing an inspection of cattle he owns and pastured on land located in Jonesville, Harrison County[,] Texas that eight (8) calves were missing. The Calves[,] which where [sic] property solely owned by Plaintiff Stephens[,] had been removed from the Jonesville Pasture without the authorization of Plaintiff Stephens. Plaintiff Stephens was able to determine that the Calves had been removed, transported to Carthage[,] Texas[,] in Panola County[,] Texas[,] and sold to the Panola Livestock Company. Plaintiff also was able to ascertain that the parties involved in the acts and actions surrounding the unauthorized removal and sell [sic] of the eight (8) calves were Defendants Shirley Stephens and Ray Thomas.

Shari sought actual damages and attorney fees, along with pre-judgment and post-judgment interest and court costs. Later, Shari filed an amended petition, also alleging that Shirley had converted his farm equipment, fencing materials, and farm implements.

²On October 31, 2013, Shirley filed her original petition, alleging, in part,

6. [Shirley] is the mother of [Shari]. . . . Over the past two to three years [Shari] has taken bulls, calves, and cows owned by [Shirley] from several pastures in Harrison County that are rented by [Shirley]. Most, if not all, of the livestock taken by [Shari] was sold to or at livestock auctions through the Panola Livestock Company, Inc., Longview Livestock Commission, Inc., or Ark-La-Tex Livestock Auction, LLC. The farm equipment owned by [Shirley] and taken by [Shari] can generally be described as two tractors, two balers, a trailer, and a disc mower. Upon information and belief, the farm equipment is presently being held by [Shari] on property owned by Tom Owens, who resides at . . . Strickland Springs, Waskom, Texas.

7. [Shirley] and [Shari] have had numerous confrontations and conflict over the livestock and farm equipment, some requiring the intervention of local law enforcement agencies to respond to allegations of trespass and assault. [Shari] has failed and refused to return the farm equipment and livestock to [Shirley]. The actions of [Shari] were taken with the intent to deprive [Shirley] of her

the 71st Judicial District Court of Harrison County, Texas, entered a mixed judgment, finding, in part, that (1) Shari did not convert Shirley's property, (2) Shirley did convert Shari's property, and (3) Thomas did not convert Shari's property. The trial court awarded Shari \$21,800.00 in damages and \$2,055.00 in court costs.

Shirley appeals, maintaining that (1) the evidence was legally and factually insufficient to support the jury's finding that she converted Shari's property; (2) the evidence was legally and factually insufficient to support the damages awarded to Shari by the jury; and (3) the jury's finding that Shari did not publish his defamatory statement against Shirley and (4) the jury's failure to find that Shari knew or should have known that the statement that Shirley stole eight of his calves was false and had the potential to be defamatory were so against the overwhelming weight of the evidence as to be manifestly unjust. Thomas appeals, maintaining that (1) the jury finding that Shari did not publish his defamatory statement against Thomas and (2) the jury's failure to find that Shari knew or should have known that the statement that Thomas stole eight of his calves was false and had the potential to be defamatory were so against the overwhelming weight of the evidence as to be manifestly unjust. Finally, Marilyn appeals, maintaining that the jury finding

property. Due to [Shari]'s theft of [Shirley]'s property, [Shirley] has sustained damages in an amount within the jurisdictional limits of this court and for which she now sues.

Shirley and Thomas continued filing amended petitions, culminating in Shirley's sixth amended counterclaim and Thomas's third amended counterclaim. In their final counterclaim petition, Shirley and Thomas alleged that Shari's actions constituted slander, theft, conversion, trespass, misappropriation of property, intentional infliction of emotional distress, and unjust enrichment.

Marilyn filed her original petition in intervention on January 14, 2014, alleging that Shari's actions constituted theft, conversion, and unjust enrichment. Later, Marilyn alleged that Shari had assaulted her.

Intervenors Sovia Stephens, Lennard Germaine Stephens, and Leon Allen Stephens are Shari's siblings. Shenika Stephens and Jacqueline Stephens are both Shari's nieces, and they intervened in the case as well. The intervenors filed multiple petitions, culminating in causes of action against Shari for theft, conversion, trespass, and assault.

that Shari did not assault her was so against the overwhelming weight of the evidence as to be manifestly unjust.

We find that the evidence was legally and factually sufficient to support the jury's verdict and affirm the trial court's judgment.

I. Background

In this case, the litigants are all related to each other. Shirley is Shari's mother. Marilyn is Shari's sister. Intervenors are Shari's brothers, sisters, and nieces. Thomas is a cousin to some or all of the parties. In their voluminous pleadings, Shari and Appellants alleged widely divergent versions of the facts. After a number of requests for continuances by both sides, a Harrison County jury was selected, and the trial commenced almost six years after Shari filed his original petition.

A. Shari's Version of the Facts

According to Shari, his father, Leon Stephens, was a cattle rancher, and Shari helped him take care of his cattle. Shari maintained that Leon relied on him for help, especially when Leon's health began to decline. Shari stated that, around 2008, and just prior to Leon having surgery, Jerry Cargile and Cargile's partner "bought [Leon] out." According to Shari, the transaction included the sale of fifty to seventy-five cows located on one particular pasture. Shari explained that any remaining cattle owned by Leon were kept on a different pasture. Shari said that, by 2009,

he had sold the remaining cattle,³ and according to Shari, he gave the proceeds from the sale to his mother.⁴

However, while Shari worked with Leon's cattle, he began to purchase cattle of his own, pasturing them on the same property with Leon's cattle. Shari said that, from 2002 to 2014, he "built up" a significant herd of cattle, which included several calves. In July 2013, Shari realized that four of his cattle were missing from one of the pastures, two were missing from another pasture, and two more were missing from yet another pasture. After realizing that some of his cattle were missing, Shari contacted the sale barn and asked if "anybody checked in any cows from Waskom because [he was] missing some calves." According to Shari, he learned that six head of cattle had been sold to the barn, presumably by Shirley, but he could not say where the other two had been taken.⁵ Shari explained, "Well, I called the sale barn and they told me who checked in some cows and [Shirley] don't have no cows and what do you think?"

When Shari was asked how he knew the missing cattle were his and not Shirley's, he stated, "They don't have cows. I have cows. Those are mine[]. They are not my mother's cows. My daddy sold all of his cows."⁶ They was mine[]." Referring to Shirley, Shari stated, "Well, if you

³Shari conceded that, at the time of his father's death, Leon "had one cow that was red faced, white faced, cow [sic] that nobody could get in the trailer." The photographs that were entered into evidence showed that all of the cattle at issue were black in color, with the exception of one red cow with a white face.

⁴Leon died in 2011.

⁵Shirley contends that, during Shari's deposition, he testified that Shirley sold four cows at auction.

⁶Among other testimony, Tom Oden stated that the majority of Leon's cattle had been sold to Cargile about a year and a half before Leon's death. Oden explained, "I did not realize Leon had any cows at the time [of the alleged incident], but one LA red cow. So I mean, [Shirley] can't have [had] four calves. . . . One red cow that is probably 20 years old can't have four calves."

don't have no cows. You take cows to the sale barn, can't you tell where you got your cows from[?] Out of somebody else's pasture."⁷ Shari continued, "They [were] gone and I called around and ain't nobody else [other than Shirley] sold any." The following day, Shari went to the sheriff's office, reported that some of his cows were missing, and named Shirley and Marilyn as the individuals who had taken his cattle.⁸

Shari said that, on occasion, his cattle would get out of the fencing. In 2011, he purchased a farm liability policy covering seventy-five head of cattle. According to Shari, the policy continued in effect through 2014. Shari testified that, even after Leon's death, he (1) insured the cattle, (2) fed the cattle, (3) worked the cattle, (4) was the person who was contacted if the cattle got out of the fencing, (5) bought the material to build fences, which he then built, (6) put the cattle out to pasture, (7) vaccinated the cattle, (8) dehorned the cattle, (9) treated them for worms, and (10) cut and baled the hay the cattle ate. Because he did all of those things, Shari was adamant that the cattle belonged to him.

⁷Later, Shari explained that he was suing Thomas because he had been told that Thomas was the person who hauled the cattle to the auction. When Shari was asked if Thomas hauled eight calves to the barn, he responded, "[Thomas] hauled eight calves from me."

⁸Shari made the police report on July 10, 2013, alleging that Shirley and Marilyn had taken his cattle and informing the sheriff that he was "continuing to have a theft of cattle occurring on the property that he maintains for hay pasture and grazing pasture." The police report reads, "He states the property is owned by Jeff Scribner and the estate of Sammy Vaughn. He does not know who actually holds the lease on the property and he states that Jeff Scribner has allowed him to put cattle on the property for no charge." Yet, when Shari was asked what information he had to believe that Marilyn took his cows, Shari responded, "Nothing." Marilyn died prior to trial.

Shirley said that, in June 2013, she sold two calves and in July 2013, she sold four calves,⁹ not eight. Shirley explained that four of the calves had been given to her by her mother, Mazzie.¹⁰ She also said she bought some cows from her sister. According to Shirley, she visited the cattle regularly, but not every day. Shirley was shown seven photographs of several cows in a pasture, and she was asked which cows belonged to her and Leon. Shirley claimed that four of the photographs showed cows that belonged to them.

B. Appellants' Version of the Facts

Shirley testified that she learned her cows were missing from the pasture when she went to feed them. According to Shirley, Shari had taken quite a few of her cows. But, when she was asked how many cows Shari had taken, Shirley said, "I can't put a finger on how many he took, but I know that he took some." When asked where Shari had taken Shirley's cattle, she stated, "To the livestock auctions or somebody. He got rid of them." When she was asked if the cattle at issue belonged to Shari, Shirley said, "They are not his, God as my witness, I would not tell you a lie for nothing. They are not his. He knows they are not his." She continued, "He knows he will go to hell for lying."

⁹Later, Shirley testified that she had sold four steers as opposed to calves.

¹⁰When asked about Shirley's assertion's that the cattle she sold had been calves that her mother had given to her, Oden stated, "If she did they were old, old, old cows. I can tell you that."

C. The Jury's Findings

After both parties presented additional witnesses and a significant amount of documentary evidence, the jurors were excused to conduct their deliberations.¹¹ Based on the jury's findings, the trial court entered a final judgment on August 21, 2019, declaring that (1) Shirley converted Shari's property, (2) Thomas did not convert Shari's property, (3) Shari did not publish that Shirley had stolen eight of Shari's cows, (4) Shari did not publish that Thomas had stolen eight of Shari's cows, (5) Shari did not assault Marilyn, (6) Shari did not commit theft of property, and (7) Shari was awarded \$21,800.00 in damages, and \$2,055.00 in court costs.¹² This appeal followed.

II. Standard of Review

Appellants contend, for several reasons, that the evidence was legally and/or factually insufficient to support the jury's findings in favor of Shari. In determining legal sufficiency, the appellate court determines "whether the evidence at trial would enable reasonable and fair-minded people to reach the verdict under review." *City of Keller v. Wilson*, 168 S.W.3d 802, 827 (Tex. 2005); *Basley v. Adoni Holdings, LLC*, 373 S.W.3d 577, 582 (Tex. App.—Texarkana 2012, no

¹¹Among other questions, the jury was asked to make the following determinations:

Question No. 1: Did Shirley . . . convert Shari['s] . . . property? Answer: Yes.

Question No. 2: Did . . . Thomas convert Shari['s] . . . property? Answer: No.

Question No. 3: What sum of money, if any, if paid now in cash, would fairly and reasonably compensate Shari . . . for his damages [caused by Shirley], if any, that resulted from such conduct? Answer: \$21,800.

Question No. 5: Did Shari . . . publish the following: That Shirley . . . stole eight calves that belonged to Shari . . . ? Answer: No.

Question No. 8: Did Shari . . . publish the following? That Ray Thomas stole eight calves that belonged to Shari Stephens? Answer: No.

Question No. 11: Did Shari . . . commit an assault against Marilyn . . . ? Answer: No.

Question No. 13: Did Shari . . . commit theft [of Shirley's property]? Answer: No.

Question No. 15: Did Shari . . . trespass on Shirley['s] . . . property? Answer: No.

¹²On September 3, 2019, Shirley, Thomas, and the Intervenors filed a motion for new trial, arguing that the evidence was insufficient to support the jury's findings. After receiving a response from Shari and hearing arguments of counsel, the trial court entered an order denying their motion for new trial on September 27, 2019.

pet.). In looking at the evidence, we credit favorable evidence if a reasonable jury could and disregard contrary evidence unless a reasonable jury could not. *City of Keller*, 168 S.W.3d at 827. The evidence is legally insufficient if (1) there is a complete absence of evidence of a vital fact, (2) the rules of law or of evidence bar the court from giving weight to the only evidence offered to prove a vital fact, (3) there is no more than a mere scintilla of evidence offered to prove a vital fact, or (4) the opposite of the vital fact is conclusively established by the evidence. *Jelinek v. Casas*, 328 S.W.3d 526, 532 (Tex. 2010). More than a scintilla of evidence exists when the evidence reaches a level enabling reasonable and fair-minded people to differ in their conclusions. *Merrell Dow Pharms., Inc. v. Havner*, 953 S.W.2d 706, 711 (Tex. 1997). “Less than a scintilla of evidence exists when the evidence is ‘so weak as to do no more than create a mere surmise or suspicion’ of a fact.” *King Ranch, Inc. v. Chapman*, 118 S.W.3d 742, 751 (Tex. 2003) (quoting *Kindred v. Con/Chem, Inc.*, 650 S.W.2d 61, 63 (Tex. 1983)).

When reviewing a jury verdict for factual sufficiency of the evidence, we consider and weigh all the evidence and only set aside the verdict “if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust.” *Cain v. Bain*, 709 S.W.2d 175, 176 (Tex. 1986) (per curiam).

III. Discussion

A. Shirley’s First Point of Error

We address Shirley’s first contention that “[t]he evidence presented at trial is legally and factually insufficient to support the jury finding of [Shirley’s] conversion of [Shari’s] cows

because there was no credible evidence that the cows sold by [Shirley] on July 9, 2013, belonged to [Shari].”¹³ We disagree.

Shari testified that he owned the cattle at issue and that he was telling the truth. Shirley testified that she owned the cattle and that Shari was “lying.”¹⁴ Shirley did not deny that she sold multiple calves at the auction house at or near the time Shari noticed that some of his cattle were missing.¹⁵ As Shari explained at trial, the parties were only “fighting over . . . whose they were.” Significantly, none of the cattle were branded, tagged, or otherwise readily identifiable in favor of one party or the other. Thus, the jury was left to determine the witnesses’ credibility and the strength of the parties’ evidence.

Shari testified that he took care of the cattle on a daily basis, including feeding, vaccinating, and dehorning the cattle. Although there was testimony to the contrary, Shari said he kept the pastures mowed and repaired the fences surrounding the pastures in lieu of paying rent. Moreover, Oden’s testimony echoed Shari’s testimony in regard to tending to the cattle’s needs. Shari was

¹³Conversion is defined as follows:

Conversion is the unauthorized and wrongful assumption and exercise of dominion and control over the personal property of another to the exclusion of, or inconsistent with, the owner’s rights. *Waisath v. Lack’s Store, Inc.*, 474 S.W.2d 444, 447 (Tex. 1991). To establish a claim for conversion of personal property, a plaintiff must prove that: (1) the plaintiff owned or had legal possession of the property or entitlement to possession; (2) the defendant unlawfully and without authorization assumed and exercised dominion and control over the property to the exclusion of, or inconsistent with, the plaintiff’s rights as an owner; (3) the plaintiff demanded return of the property; and (4) the defendant refused to return the property. *Apple Imports, Inc. v. Koole*, 945 S.W.2d 895, 899 (Tex. App.—Austin 1997, writ denied); *Whitaker v. Bank of El Paso*, 850 S.W.2d 757, 760 (Tex. App.—El Paso 1993, no writ).

Smith v. Maximum Racing, Inc., 136 S.W.3d 337, 341 (Tex. App. Austin—2004, no pet.).

¹⁴Other witnesses testified at trial. Some of their testimony corroborated Shirley’s version of events, while some corroborated Shari’s.

¹⁵Shirley did not, however, concede that she sold eight calves as Shari had alleged in his petition.

also adamant that he had sold all of his father's cattle, thereby leaving Shirley with none. Closely reiterating Shari's testimony, Oden testified that Cargile bought out Leon's portion of their cattle business prior to Leon's death and that, if Shirley had any cattle to sell, they would be "old, old, old cows[,]” not calves as Shirley had maintained.

In addition, Shari stated that he maintained farm liability insurance on the cattle in the event the cows escaped the pasture's fencing. In support of that testimony, Shari offered, and the trial court admitted, a copy of a liability policy application showing that, during 2011 and 2012, Shari owned a herd of seventy-five cows and that he kept those cows on various pieces of property, some of which had been at issue in the case. Shari also testified that the insurance policy was in effect until 2014. Although the 2011–2012 insurance policy application, standing alone, may not have been the most compelling evidence, the jury could have considered it in regard to Shari's credibility as it related to the issue of ownership. In addition, Shari testified that, the day after he realized some of his cows were missing, he went to the sheriff's office to make a report alleging that Shirley had taken his cattle. Based on Shari's testimony, the jury was within its discretion to find that Shari's actions were consistent with the behavior of a person who owned the cows.

By contrast, Shirley testified that she visited the cattle regularly, but not every day. Although other witnesses corroborated that portion of Shirley's testimony, there was no evidence that she looked after the cattle's physical needs for any extended amount of time nor was there any evidence that she maintained the pastures or the fencing surrounding the property. Likewise, there was no evidence that Shirley hired someone to do the work. In addition, Shirley did not know how many cows Shari took from her, "but [she] kn[ew] that he took some." Shirley also contradicted

herself in regard to whether the cattle at issue were steers or calves. In making a determination of ownership, the jury was free to consider Shirley's lack of knowledge as to the number and type of cattle Shari allegedly stole, along with the lack of evidence showing that Shirley maintained the cows and the pastures on a day-to-day basis.

The fact-finder is afforded considerable discretion in making factual determinations. Here, the jury was presented with several witnesses and more than one-hundred pages of documentary evidence in an effort to unravel what could surely be considered a fact-intensive case. As to Shari's conversion claim against Shirley, once the jury found that Shari owned the cattle, and considering that Shirley conceded that she sold multiple cows at auction at or near the time Shari realized that some of his cows were missing, although not the most compelling proof, it did amount to more than a scintilla of evidence in support of the jury's verdict in favor of Shari. Further, this evidence is not so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust.

We will not disturb the jury's resolution of evidentiary disputes that revolve around credibility determinations or the weight of the evidence. We, therefore, conclude that the evidence was legally and factually sufficient to support the jury's findings that Shirley converted Shari's cows. Accordingly, we overrule Shirley's first point of error.

B. The Appellants' Remaining Points of Error

The remaining points of error raised by appellants Shirley, Thomas, and Marilyn are grounded in factual disputes. As we discussed above, the jury heard, at length, from the parties and their witnesses. To the extent the witnesses' testimony conflicted, the resolution of such conflicts landed squarely with the jury. With the exception of Shari's conversion claim against

Thomas, the jury heard the evidence and found in Shari's favor. We have exhaustively reviewed the record in this case and find no basis for disturbing the jury's findings. Therefore, we overrule Appellants' remaining issues.

IV. Conclusion

We affirm the judgment of the trial court.

Ralph K. Burgess
Justice

Date Submitted	February 26, 2020
Date Decided	July 9, 2020