

**IN THE COURT OF APPEALS OF IOWA**

No. 6-370 / 05-1162  
Filed July 26, 2006

**CONSUELO MICKENS,**  
Plaintiff-Appellant,

**vs.**

**THE PAWN STORE,**  
Defendant-Appellee.

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Appeal from the Iowa District Court for Polk County, Douglas F. Staskal,  
Judge.

The plaintiff appeals from the district court's order following trial on her  
breach of contract and conversion claims. **AFFIRMED.**

Robert A. Wright, Jr. of Wright and Wright, Des Moines, for appellant.

Roy M. Irish of Patterson, Lorentzen, Duffield, Timmons, Irish, Becker &  
Ordway, L.L.P., Des Moines, for appellee.

Considered by Vogel, P.J., and Zimmer and Vaitheswaran, JJ.

**VOGEL, P.J.**

Consuelo Mickens appeals from the district court's order following a bench trial denying judgment on her breach of contract and conversion claims against The Pawn Store, Inc. Because we find no error, we affirm the district court.

Mickens and the father of her three children, Jesse Colwell, were regular customers at the Pawn Store (the Store), so much so that the employees were on a first name basis with the couple. Mickens and Colwell held themselves out to be husband and wife to the employees of the Store. Mickens had previously pawned numerous items at the Store, including the diamond ring at question in this case. The Store employees recalled Colwell reclaiming items Mickens had pawned in the past.

On September 25, 2002, Mickens took a pear-shaped, one and a quarter carat diamond ring to pawn at the Store. She received \$225 in exchange for the ring. The pawn ticket that was signed by Mickens gave "the grantee" the option to reclaim the ring at a certain price within thirty days. Prior to the expiration of the thirty-day period, Mickens claims Colwell took the pawn ticket without her knowledge or consent and reclaimed the ring from the Store. After Colwell told Mickens he obtained the ring, Mickens attempted to alert the Store employees that Colwell should not be allowed to reclaim the ring. Employee Matt DePhillips informed Mickens that Colwell had already reclaimed the ring, using the pawn ticket. DePhillips thought this was not unusual, as Colwell had regularly picked up items at the Store for Mickens. Mickens quarreled with the Store employees and owner, Jeff Pocock, over the ring in two more visits to the Store. She did not alert the police of Colwell's actions or assert restitution from Colwell for the ring.

Mickens filed suit against the Store in February 2004, with claims for breach of contract, conversion, and slander per se.<sup>1</sup> After a bench trial, the district court entered judgment in favor of the Store on all claims, finding that Mickens failed to prove breach of contract or conversion due to her implied consent to allow Colwell to reclaim items she had pawned at the Store. Mickens appeals on the breach of contract and conversion claims.

We review a law action for correction of errors at law. Iowa R. App. P. 6.4. Where the trial court sits as the finder of fact, the court's findings have the effect of a jury verdict and bind us if substantial evidence supports them. *Papenheim v. Lovell*, 530 N.W.2d 668, 671 (Iowa 1995). Evidence is substantial when a reasonable mind could accept it as adequate to reach the same findings. *Waukon Auto Supply v. Farmers & Merchants Sav. Bank*, 440 N.W.2d 844, 846 (Iowa 1989). Evidence is not insubstantial merely because it would have supported contrary inferences and, in case of doubt or ambiguity we construe the court's findings of fact to uphold rather than defeat, the judgment. *Grinnell Mut. Reins. Co. v. Voeltz*, 431 N.W.2d 783, 785 (Iowa 1988). In addition, the review standard prohibits us from weighing the evidence or the credibility of witnesses. *Id.*

Mickens asserts on appeal that the district court erred by concluding she failed to prove her breach of contract and conversion claims. She argues that the court's finding that Mickens gave implicit permission to the Store for Colwell to redeem her property was not supported by substantial evidence. Mickens' claim for conversion rests on the allegation that the Store's breach of contract

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<sup>1</sup> The slander claim is not at issue on this appeal.

amounted to a conversion of the ring when employees turned it over to Colwell. In deciding whether there is an enforceable contract, we consider not only the language used but also the surrounding circumstances and the conduct of the parties. *McCarter v. Uban*, 166 N.W.2d 910, 913 (Iowa 1969). Contractual obligations may arise from implication as well as from express writing. *Palmer v. Albert*, 310 N.W.2d 169, 172 (Iowa 1981).

Mickens denied that she had allowed Colwell to retrieve pawned items at the Store for her in the past. The district court found testimony by the Store's employees more credible than Mickens' testimony. Substantial evidence on the record supports the district court's findings that Mickens had previously consented to having Colwell reclaim her various pawned items from the Store. The evidence further supports this arrangement as the couple held themselves out to be husband and wife to the Store's owner and employees. Although the pawn ticket in question was signed by Mickens alone, the parties' repeated past conduct provides substantial evidence that Colwell, having possession of the pawn ticket, was authorized to reclaim the ring pawned by Mickens. See 258 Iowa 658, \_\_\_ (1966), (defining waiver as "the intentional relinquishment of a known right"; and "inferred from such conduct as warrants the conclusion that a waiver was intended."). *Continental Cas. Co. v. G. R. Kinney Co.*, 140 N.W.2d 129, 130, As the district court concluded, "there is nothing in the law or the terms stated on the ticket which would preclude Mickens from giving someone else the right to redeem the ring." We agree and note that Mickens may assign her interest in the pawned item by delivering the pawn ticket to another and transferring the right of redemption. See 47 C.J.S. *Interest & Usury* § 543

(2005). While Mickens alleges that Colwell took the ticket for the ring without her permission, there is nothing in the record to suggest the Store was aware of this allegation. Rather, the record supports Mickens's and Colwell's past course of dealing with the Store which allowed Colwell to have possession of the ticket and redeem the ring. We conclude the district court did not err by finding no breach of contract or conversion by the Pawn Store and affirm.

**AFFIRMED.**