MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.

APPELLANTS PRO SE

Lucy L. Handfield
Charles V. Petrunak
Anderson, Indiana

ATTORNEY FOR APPELLEE

Elizabeth Penn
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

Lucy L. Handfield, and Charles V. Petrunak,

Appellants,

v.

Brandy Rollins,

Appellee.

October 24, 2023

Court of Appeals Case No. 22A-SC-2991

Appeal from the Madison Circuit Court

The Honorable Scott A. Norrick, Judge

Trial Court Cause No. 48C05-2202-SC-98

Memorandum Decision by Judge Brown
Judges Crone and Felix concur.

Brown, Judge.

[1] Lucy L. Handfield and Charles V. Petrunak appeal the trial court's order awarding her damages. We affirm.

Facts and Procedural History

[2] On August 20, 2020, Handfield and Brandy Rollins were involved in an automobile accident. On February 2, 2022, Petrunak and Handfield filed a complaint against Rollins and Rollins's insurance provider, Geico Secure Insurance Company ("Geico"), for "refus[ing] to honor the claim against their insured client and deceiv[ing] the Plaintiffs that the vehicle was not repairable causing further financial damages." March 1, 2022 Notice of Small Claim. On February 25, 2022, Geico filed a motion to dismiss.

[3] On March 18, 2022, the court began a scheduled bench trial, at which Handfield and Petrunak appeared *pro se*, proceedings were postponed to allow them to provide "the basis for [their] claim of ten thousand dollars," and the court wanted "discovery completed by the end of . . . the next hearing . . . ." Transcript Volume II at 7-8. On August 24, 2022, the court held a bench trial at which all the parties appeared in person and by counsel. Handfield testified that she had approached an intersection with a green light, noticed Rollins's car, applied the brakes, but could not avoid a collision. Rollins testified that the traffic light "was also green, switching [to] yellow," the light was faulty, it had been green for both her and Handfield, and she had been distracted by a bee in her lap. *Id.* at 25.

[4] On August 25, 2022, the court determined Rollins was liable and stated:

> I do find for [Handfield] and here's why: [Rollins] acknowledges that she did look down. It doesn't say how long. That wasn't developed. Uh, but she had looked down. She also acknowledged the light was turning yellow. She acknowledges that the light was green for [Handfield]. We all know what yellow means, and the fact that [Rollins] had time to recognize that the light was green for the other party, albeit maybe it was too late to do something, but the fact that she had that time to recognize that, had she not looked down to begin with uh, at the bug or bee in the lap or phone uh, but again that's disputed, but the accident may have been more preventable. So, I think the greater weight of evidence is in [Handfield's] favor in that regard.

Id. at 34.

[5] The court stated about damages that it "draws on its own notice that Priuses have a good reputation for higher mil[e]age than certain other models potentially," and noted:

> the Court[']s aware that certain folks feel that Toyota Priuses are . . . God's gift to . . . mankind vehicle wise and they last forever. Three hundred and eighty-seven thousand (387,000) miles would certainly demonstrate that this car is on its way to last forever, because that's a lot of mil[e]age. . . . [H]ow many more miles would it have lasted? Who knows? Speculation, but theoretically it could be driven today.
>
> * * * * *
>
> For [Rollins], I understand that the estimate that was submitted uhm, the value you['re] submitting was just over three thousand dollars ($3.000.00). Your position is that this [is] worth more than what is the other [sic] party's own insurance company said.

Id. at 63, 67. It awarded Handfield "$3,159.49 plus costs verses [sic] [Rollins] at statutory post judgment interest until the judgment is satisfied," declined to award attorney's fees, and noted "the vehicle still has value such that [Handfield] may keep, sell or dispose as they determine." Appellants' Appendix Volume II at 9-10. The court dismissed Geico and removed Petrunak as a party. Handfield and Petrunak filed a motion to correct error, which the trial court denied.

Discussion

[6] Handfield and Petrunak, *pro se*, argue that the trial judge was not impartial and violated Ind. Code of Judicial Conduct Rule 2.2, and "[t]he violation . . . originated in another lawsuit whose proceeding[']s timeline overlapped that of this case." Appellants' Brief at 11. They reference cause number 48C05-2201-SC-68 ("Cause No. 68"), and state that bias from that cause contributed to bias in this case. They state that Handfield, Petrunak, and the judge were also involved in Cause No. 68. They claim the court erred in its dismissing Geico, in valuing the vehicle, and in not granting their request for attorney fees.

[7] We note that, although Handfield and Petrunak are proceeding *pro se*, such litigants are held to the same standard as trained counsel and are required to follow procedural rules. *Evans v. State*, 809 N.E.2d 338, 344 (Ind. Ct. App. 2004), *trans. denied*. This court will not "indulge in any benevolent presumptions on [their] behalf, or waive any rule for the orderly and proper conduct of [their] appeal." *Ankeny v. Governor of State of Ind.*, 916 N.E.2d 678, 689 (Ind. Ct. App. 2009), *reh'g denied*, *trans. denied* (citation omitted).

[8] To the extent Handfield and Petrunak refer to the removal of Petrunak, the denial of a continuance,[1] change of venue, Ind. Appellate Rule 16(B), Ind. Trial Rule 53.1, discovery requirements, perjury, and punitive damages, we note that Ind. Appellate Rule 46(A)(8)(a) provides "[t]he argument must contain the contentions of the appellant on the issues presented, supported by cogent reasoning" and "[e]ach contention must be supported by citations to the authorities, statutes, and the Appendix or parts of the Record on Appeal relied on . . . ."[2] Ind. Appellate Rule 46(A)(8)(b) provides that the argument "must include for each issue a concise statement of the applicable standard of review" and "a brief statement of the procedural and substantive facts necessary for consideration of the issues presented on appeal, including a statement of how the issues relevant to the appeal were raised and resolved by any . . . trial court." This Court has previously stated:

> We demand cogent argument supported with adequate citation to authority because it promotes impartiality in the appellate tribunal. A court which must search the record and make up its own arguments because a party has not adequately presented them runs the risk of becoming an advocate rather than an adjudicator. *Keller v. State*, 549 N.E.2d 372, 373 (Ind. 1990). A brief should not only present the issues to be decided on appeal, but it should be of material assistance to the court in deciding those issues. *Hebel v. Conrail, Inc.*, 475 N.E.2d 652, 659 (Ind.

---

[1] Handfield notes that "[t]he dates of the requests for continuance were between August 19 and 23, 2022 . . . ." Appellants' Brief at 14. The record does not include a copy of any motion for a continuance.

[2] To the extent Handfield mentions for the first time in her reply brief a "failure to honor service requirements" and "threats," Appellants' Reply Brief at 7, we note that a party may not raise an argument for the first time in its reply brief. *Akin v. Simons*, 180 N.E.3d 366, 375 (Ind. Ct. App. 2021).

> 1985). On review, we will not search the record to find a basis for a party's argument . . . nor will we search the authorities cited by a party in order to find legal support for its position.

Young v. Butts, 685 N.E.2d 147, 151 (Ind. Ct. App. 1997) (footnote omitted). Handfield cites no relevant authority and does not otherwise present a cogent argument. Accordingly, her arguments are waived.

[9] With respect to Handfield and Petrunak's argument the trial judge was biased and hostile toward her in another proceeding and thus was biased in this matter, Rule 2.2 of the Code of Judicial Conduct provides: "A judge shall uphold and apply the law and shall perform all duties of judicial office fairly and impartially. A judge may make reasonable efforts, consistent with the law and court rules, to facilitate the ability of all litigants, including self-represented litigants, to be fairly heard." The law presumes that a judge is unbiased and unprejudiced. *In re Edwards*, 694 N.E.2d 701, 711 (Ind. 1998). In order to overcome that presumption, the appellant must demonstrate actual personal bias. *In re Estate of Wheat*, 858 N.E.2d 175, 183 (Ind. Ct. App. 2006). Generally, an argument or issue raised for the first time on appeal is waived for appellate review. *First Chi. Ins. Co. v. Collins*, 141 N.E.3d 54, 61 (Ind. Ct. App. 2020). The record reveals that Handfield and Petrunak did not raise the issue of bias before the trial court and have waived the claim.

[10] Waiver aside, we cannot say the record demonstrates that the trial judge was biased. Although Handfield and Petrunak reference statements made by the judge in Cause No. 68, we note that the record does not contain a transcript of

any proceedings in Cause No. 68, and they did not request the court to take judicial notice of Cause No. 68. In this case, the record reveals that the court determined Rollins was liable after carefully weighing the evidence, stated that Priuses have a good reputation for high mileage, and found for Handfield and valued the vehicle at $3,159.49, consistent with a valuation submitted by Rollins. While we find the judge decided the case within the evidence presented, we would caution the judge to prospectively refrain from drawing upon its own notice of matters not within the evidence or matters otherwise not appropriate for judicial notice.

[11] With respect to their argument that the trial court had "already made a predetermined decision to remove Geico," they reference the court's comments at the bench trial on August 24th. Appellants' Brief at 16. The record reveals that the court heard the testimony of Handfield and Rollins, who described the events preceding the accident, before stating:

> Well, let me pause for just a moment, because we've concluded the evidence here and I haven't heard anything in regards to GEICO [being] individually liable. So I am going to grant GEICO'S request to be removed as named defendant in the case.
>
> * * * * *
>
> I wanted to hear evidence whether or not there was a direct claim and uh, because it's not a direct-action State, I think GEICO should be removed from the, it doesn't mean that their [sic] still not insurance and so forth, but-
>
> * * * * *
>
> I haven't heard a particular claim.

Transcript Volume II at 35-36. Handfield and Petrunak's counsel then stated that Geico had "involved themselves in this matter . . . due to their, it's either negligent misrepresentation or in the alternative fraudulent misrepresentations of the facts," and the court responded: "I don't know that rises to the level of . . . involvement. . . . I don't believe it's enough to name them as a . . . defendant party." *Id.* at 36. Handfield and Petrunak's counsel showed the court a denial letter from Geico and a police report alleged to have been in Geico's possession, and the court stated that it did not "rise[] to the level of . . . individual liability against GEICO under this fact pattern." *Id.* at 47. Based on the record, we cannot say the court made a predetermined decision to remove Geico.

[12] Handfield and Petrunak claim that "Geico was named as a defendant for their specific actions involving bad faith with this case," Appellants' Brief at 16, and assert they are entitled to bring a claim against Geico as third-party beneficiaries to the insurance contract between Rollins and Geico. They do not cite to the insurance agreement between Geico and Rollins, and our review of the record does not reveal the agreement was admitted. Even if the record enabled us to determine whether they were third-party beneficiaries, we note the Indiana Supreme Court has held that "we do not find . . . that a third-party beneficiary and the insurer has the 'special relationship' . . . that would impose on the insurer a duty under tort law to deal with the third party in good faith," and "a third-party beneficiary cannot sue an insurer in a tort action for the insurer's failure to deal in good faith with a third-party beneficiary." *Cain v. Griffin*, 849

N.E.2d 507, 515 (Ind. 2006). Under the circumstances, we cannot say the court erred in dismissing Geico.

[13] As for Handfield and Petrunak's argument that the court erred in not awarding her more than $3,159.49 and retention of her damaged Prius, we note that the amount of damages to be awarded is a question of fact for the trier of fact. *Jasinski v. Brown*, 3 N.E.3d 976, 978-979 (Ind. Ct. App. 2013) (citing *Campins v. Capels*, 461 N.E.2d 712, 722 (Ind. Ct. App. 1984)). A court is not required to calculate damages with mathematical certainty, but the calculation must be supported by evidence in the record and may not be based on mere conjecture, speculation, or guesswork. *Id.* at 979 (citing *Ponziano Constr. Servs. Inc. v. Quadri Enters., LLC*, 980 N.E.2d 867, 873 (Ind. Ct. App. 2012)). We will neither reweigh evidence nor judge witness credibility. *Id.* Handfield references the valuation she and Petrunak submitted at trial and the valuations submitted by Rollins, and she argues that the court "found favor" in one of Rollins's valuations. Appellants' Brief at 17. We note that the court's award fell within the range of submitted valuations and decline to reweigh the evidence.

[14] With respect to their request for attorney's fees, Handfield and Petrunak cite Ind. Code § 34-52-1-1(b), which provides:

> In any civil action, the court may award attorney's fees as part of the cost to the prevailing party, if the court finds that either party:
>
> > (1) brought the action or defense on a claim or defense that is frivolous, unreasonable, or groundless;

> (2) continued to litigate the action or defense after the party's claim or defense clearly became frivolous, unreasonable, or groundless; or
>
> (3) litigated the action in bad faith.

Based upon the record, we cannot say that Handfield and Petrunak showed that Rollins litigated the action in bad faith and that the court erred in not awarding attorney's fees.

[15] For the foregoing reasons, we affirm.

[16] Affirmed.

Crone, J., and Felix, J., concur.