MEMORANDUM DECISION

ATTORNEYS FOR APPELLANT

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IN THE COURT OF APPEALS OF INDIANA

Roof Masters Plus,
Appellant-Plaintiff,

v.

Martin Webb,
Appellee-Defendant.

November 1, 2021

Court of Appeals Case No. 21A-SC-375

Appeal from the Tippecanoe Superior Court

The Honorable Matthew S. Sandy, Judge

Trial Court Cause No. 79D04-2010-SC-1732

Molter, Judge.

[1] Roof Masters Plus sued Martin Webb in small claims court for breach of contract after Webb failed to pay the remaining $2,048.25 on his bill for roofing

work, which Webb acknowledges he agreed to pay. The small claims court concluded that Webb breached the parties' contract, but only awarded Roof Masters $750.00 in damages. Because there is no evidence to support that damages amount, we reverse and remand with instructions to revise the judgment in favor of Roof Masters to reflect an amount of $2,048.25 (plus costs).

Facts and Procedural History

[2] Webb signed a contract for Roof Masters to replace the roof on his home. App. Vol. 2 at 6. This original contract was for $13,941.32, and it contained language that the contract was "legal and binding" and that "any alterations" to the contract "involving extra costs" would "become an extra charge over and above" the original contract. *Id.* Several weeks later, the parties signed an addendum for additional work on the project, including adding gutters and gutter guards, with an agreed upon price of $2,048.25. *Id.* at 7–9. Roof Masters completed the work, but although Webb paid the original $13,266.32, he never paid the additional $2,048.25. Tr. at 13, 19. After multiple payment reminders went unanswered, Roof Masters filed a Notice of Claim in small claims court alleging breach of contract. App. Vol. 2 at 5.

[3] The small claims court held a bench trial at which it received testimony and evidence from the parties. *See* Tr. at 4. Webb testified that he knowingly signed the addendum because he thought that was the only way to get Roof Masters to complete the work on his home. *Id.* at 19–20. But he says he did not really

know what the additional work was, and he never intended to pay the amount in the addendum. *Id.* He agreed with the small claims court's characterization that he was "lying" about his promise to pay for the additional work. *Id.* at 20.

[4] The small claims court concluded that Webb breached the parties' contract and awarded judgment to Roof Masters for $750.00 plus $87.00 for court costs. App. Vol. 2 at 10. The court did not explain how it calculated these damages, but instead commented that the judgment would "make everybody unhappy." Tr. at 27–28. Roof Masters now appeals.

Discussion and Decision

[5] As a preliminary matter, we note that Webb did not file an appellee's brief, and we cannot take on the role of his advocate. *Trinity Homes, LLC v. Fang*, 848 N.E.2d 1065, 1068 (Ind. 2006). As a result, we will reverse the trial court's judgment if the appellant's brief presents a case of *prima facie* error. *Id.* In this context, *prima facie* error is defined as, "at first sight, on first appearance, or on the face of it." *Id.* (quoting *Santana v. Santana*, 708 N.E.2d 886, 887 (Ind. Ct. App. 1999)). Even under the *prima facie* error rule, we are obligated to correctly apply the law to the facts in the record to determine whether reversal is required. *Id.*

[6] Roof Masters contends that the small claims court's judgment was clearly erroneous and contrary to law. Small claims judgments are "subject to review as prescribed by relevant Indiana rules and statutes." *Herren v. Dishman*, 1

N.E.3d 697, 702 (Ind. Ct. App. 2013) (citing Ind. Small Claims Rule 11(A)). Under Indiana Trial Rule 52(A), the clearly erroneous standard applies to appellate review of facts determined at a bench trial with due regard to the opportunity of the trial court to assess witness credibility. This particularly deferential standard of review is important in small claims actions, where "the trial shall be informal, with the sole objective of dispensing speedy justice between the parties according to the rules of substantive law." *Truck City of Gary, Inc. v. Schneider Nat'l Leasing*, 814 N.E.2d 273, 277 (Ind. Ct. App. 2004) (citing Ind. Small Claims Rule 8(A)). In determining whether a judgment is clearly erroneous, we do not reweigh the evidence or determine the credibility of witnesses but consider only the evidence that supports the judgment and the reasonable inferences to be drawn therefrom. *Kalwitz v. Kalwitz*, 934 N.E.2d 741, 748 (Ind. Ct. App. 2010).

[7] On appeal, Roof Masters challenges the small claims court's judgment for $750.00 as being unsupported by the evidence. 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, 978–79 (Ind. Ct. App. 2013). 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*. When injured by a breach of contract, a party's recovery is limited to the loss actually suffered. *Coffman v. Olson & Co., P.C.*, 906 N.E.2d 201, 210 (Ind. Ct. App. 2009), *trans. denied*. The party may not be placed in a

better position than he or she would have enjoyed if the breach had not occurred. *Id.* Accordingly, a damages award must reference some fairly defined standard, such as cost of repair, market value, established experience, rental value, loss of use, loss of profits, or direct interference from known circumstances. *Id.* We will reverse the trial court's award only when it is not within the scope of the evidence on the record. *Id.* at 210–11.

[8] Here, the small claims court entered a judgment in favor of Roof Masters and against Webb in the amount of $750.00 plus $87.00 for court costs, but it did not explain how it arrived at that amount, and there is nothing in the record suggesting that amount. App. Vol. 2 at 10; Tr. 27–28. For its part, Roof Masters demonstrated that the outstanding balance for the additional work was $2,048.25, including presenting documentary evidence of the parties' original contract and the addendum. App. Vol. 2 at 6–9. The parties agreed at trial that Webb had paid the original contract in full and had not paid the $2,048.25 for the addendum. Tr. at 26. Webb argued he should not have to pay any of the outstanding invoice, but he did not dispute that $2,048.25 was the unpaid amount from the addendum, and he did not propose any alternative amount of damages.

[9] 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. *Jasinski*, 3 N.E.3d at 979. There is no calculation that this court can find through the evidence in the

record to support the small claims court's determination of damages, and the rough justice of an amount that will "make everybody unhappy" does not adhere to the rule that damages must be calculated with a reasonably defined standard supported by the evidence. Tr. at 27–28. The only damages evidence in the record points to an amount of $2,048.25, and we therefore find that the small claims court's calculation of damages was not within the scope of the evidence and was clearly erroneous. We reverse the trial court's judgment and remand with instructions to enter a judgment award in favor of Roof Masters $2,048.25 (plus costs).

[10] Reversed and remanded.

Vaidik, J., and May, J., concur.