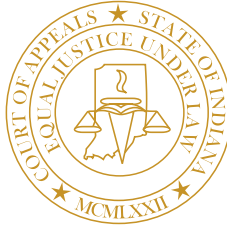


MEMORANDUM DECISION

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 Appellate Rule 65\(D\)](#), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.



IN THE Court of Appeals of Indiana

DSG Indiana, LLC d/b/a Ashley Furniture,
Appellant-Defendant

v.

Angela R. Green,
Appellee-Plaintiff

September 6, 2024

Court of Appeals Case No.
24A-SC-731

Appeal from the Johnson Circuit Court

The Honorable Brandi Foster Kirkendall, Magistrate

Trial Court Cause No.
41C01-2310-SC-1123

Memorandum Decision by Judge Mathias
Chief Judge Altice and Judge Bailey concur.

Mathias, Judge.

[1] DSG Indiana, LLC, d/b/a Ashley Furniture (“DSG”), appeals the small claims court’s judgment for Angela Green on Green’s complaint alleging breach of contract. DSG presents three issues for our review, which we consolidate and restate as whether the small claims court clearly erred when it entered judgment for Green.

[2] We affirm in part, reverse in part, and remand with instructions.

Facts and Procedural History

[3] On May 5, 2023, Green bought several pieces of furniture from DSG, including a leather sectional couch (“leather sectional”) and a protection plan for that couch. DSG gave Green a 30% discount on the price of the furniture, and she paid a total of \$5,985.92, including a delivery fee. Approximately one month later, when her order was loaded onto a truck for delivery, there was a hole in the truck and the furniture was damaged by rain. Upon delivery, Green rejected the leather sectional, which was badly damaged, but she ultimately kept a table and chairs she had bought. The total cost of the furniture she kept plus the protection plan was \$4,018.13.¹

[4] A DSG representative told Green that, in exchange for the leather sectional, Green had a store credit and could pick out new furniture. In August, Green

¹ This amount represents the total after Green was refunded the \$481.49 delivery fee.

chose a less expensive cloth sectional (“cloth sectional”), an ottoman, and an armless chair. The total price for that set of replacement furniture was \$2,595. DSG attempted to issue a store credit for the difference in price between the leather sectional and the cloth sectional, but Green never received that credit. Green also was not given her original 30% off discount on the prices of the replacement furniture. Green later returned the armless chair and was refunded \$438.43.

[5] Green then sought a refund from DSG both for the price difference between the leather sectional and the cloth sectional and for the cost of the protection plan, which she had purchased specifically to cover the more expensive leather sectional. After several attempts to obtain her refunds, on September 11, Green finally met with DSG manager Alex Creese, who told her that he was processing refunds for both the price difference and the protection plan. When those refunds did not come through, Green filed a complaint with the small claims court.

[6] Following a trial, the small claims court entered findings and conclusions and awarded Green \$2,067.54 in damages, plus court costs. The small claims court calculated Green’s damages as follows: \$4,449.62 paid for the leather sectional, protection plan, and tax; \$1,943.65 paid for the replacement furniture (including tax but applying the original 30% discount); refund due: \$2,505.97, minus the \$438.43 refund received for the return of the armless chair. DSG filed a motion to correct error, which the court denied. This appeal ensued.

Discussion and Decision

- [7] DSG contends that the small claims court clearly erred when it entered judgment for Green and when it calculated her damages. Small claims actions involve informal trials with the sole objective of dispensing speedy justice between the parties according to the rules of substantive law. *Harvey v. Keyed in Prop. Mgmt., LLC*, 165 N.E.3d 584, 587 (Ind. Ct. App. 2021), *trans. denied*. Accordingly, judgments from small claims actions are provided a deferential standard of review. *Id.* We will neither reweigh the evidence nor assess witness credibility, and we consider only the evidence most favorable to the judgment. *Pfledderer v. Pratt*, 142 N.E.3d 492, 494 (Ind. Ct. App. 2020). However, this deferential standard relates only to procedural and evidentiary issues; it does not apply to substantive rules of law, which we review de novo. *Id.*
- [8] We also note that Green has not filed an appellee’s brief. When the appellee fails to file a brief on appeal, we may reverse the trial court’s decision if the appellant makes a prima facie showing of reversible error. *McGill v. McGill*, 801 N.E.2d 1249, 1251 (Ind. Ct. App. 2004). In this context, prima facie error is defined as “at first sight, on first appearance, or on the face of it.” *Orlich v. Orlich*, 859 N.E.2d 671, 673 (Ind. Ct. App. 2006). This rule was established to make clear that it is not the burden of the court on appeal to rebut apparently valid arguments advanced for reversing the trial court’s judgment. *See McGill*, 801 N.E.2d at 1251.

[9] DSG first argues that Green was not entitled to a refund for the difference between the original furniture purchase and the replacement furniture purchase. DSG maintains that, as its representative testified at trial, its policy is that “sales are final upon delivery” and “Green failed to report damage or defect within 72 hours of delivery” as required under its store policy. Appellant’s Br. at 8. But, other than that testimony at trial, DSG presented no evidence that those policies had been communicated to Green or that she had agreed to them. Green testified that she sought a refund for the price difference and that, on September 11, 2023, DSG manager Alex Creese had agreed to issue a refund for the price difference. The small claims court was entitled to credit Green’s testimony, and the court did not clearly err when it found that she was entitled to a refund for the price difference between the original furniture and the replacement furniture.

[10] DSG also argues that it did not issue the protection plan and the small claims court clearly erred when it ordered DSG to reimburse Green the \$759.99 for that plan. However, Green testified that, after being directed by DSG, she spoke with representatives for two companies believed to have issued the protection plan. Ultimately, a DSG representative told Green to call a company called GBS, and a representative for GBS told Green that, “since we paid Ashley Furniture for the refund, it had to come from Ashley Furniture.” Tr. p. 33. And on September 11, DSG manager Creese told Green that he had processed a refund for the cost of the protection plan. Again, the small claims court was entitled to credit Green’s testimony, and the court did not clearly err when it

found that she was entitled to a refund for the protection plan, which she had purchased to cover the original, more expensive, leather sectional.

- [11] Finally, DSG contends that the small claims court's damages award is excessive. Generally, the computation of damages is a matter within the sound discretion of the trial court. *Berkel & Co. Contractors v. Palm & Assocs., Inc.*, 814 N.E.2d 649, 658 (Ind. Ct. App. 2004). We will not reverse a damage award unless it is based on insufficient evidence or is contrary to law. *Id.* A party injured by a breach of contract may recover the benefit of the bargain. *Id.*
- [12] DSG argues that the small claims court clearly erred when it reduced the cost of the replacement furniture by 30% based on the discount Green had received when she bought the original furniture. DSG maintains that there is no evidence that Green was entitled to that discount. But it was DSG's breach of the original contract that put Green in the position to have to purchase replacement furniture. And it was within the small claims court's discretion to give Green the benefit of her bargain with DSG and award the discount. *See id.* DSG has not shown error on this issue.
- [13] DSG also argues that Green was not entitled to a refund for the protection plan. But, as we explained above, the small claims court was entitled to credit Green's testimony on this issue. DSG has not shown error.
- [14] We note, however, that the small claims court's computation of Green's damages is erroneous in one respect. The court found that Green had paid \$4,449.62 for the leather sectional and protection plan in May 2023. But that

amount is not supported by the evidence. Rather, the undisputed evidence shows that Green paid \$4,018.13 total for the leather sectional, tax, and the protection plan.² Thus we recalculate Green's damages as follows: \$4,018.13 minus \$1,943.65 (the cost of the replacement furniture with the 30% discount), minus the \$438.43 refunded to Green for the armless chair return, equals a total damages award of \$1,636.05 plus court costs.

[15] For all these reasons, we affirm the small claims court's judgment for Green but remand with instructions to reduce the damages award to \$1,636.05 plus court costs.

[16] Affirmed in part, reversed in part, and remanded with instructions.

Altice, C.J., and Bailey, J., concur.

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² She originally paid an additional \$481.49 for delivery of that furniture, which was refunded to her.