MEMORANDUM DECISION

ON REHEARING

APPELLANT PRO SE

Amanda Perdue
Pearisburg, Virginia

IN THE
COURT OF APPEALS OF INDIANA

Amanda Perdue,
Appellant-Plaintiff,

v.

William H. O'Toole,
Appellee-Defendant

November 17, 2022

Court of Appeals Case No. 22A-SC-231

Appeal from the Porter Superior Court

The Honorable Michael J. Drenth, Judge

Trial Court Cause No. 64D03-1907-SC-2286

May, Judge.

[1] Amanda Perdue requests rehearing of our opinion issued September 7, 2022, which determined Perdue's failure to comply with several Indiana Rules of Appellate Procedure resulted in waiver of the arguments she presented on appeal. *Perdue v. O'Toole*, 22A-SC-231 slip op. at 2 (Ind. Ct. App. September 7, 2022). In her petition for rehearing, Perdue argues the record she submitted on appeal provided sufficient information for us to review her appellate arguments. While Perdue's brief and record on appeal violated several rules of appellate procedure, we have reexamined the record provided[1] and choose to exercise our discretion to consider, to the extent possible, the merits of Perdue's appeal. *See Omni Ins. Group v. Poage*, 966 N.E.2d 750, 753 (Ind. Ct. App. 2012) (appellate court prefers "to decide a case on the merits whenever possible"), *trans. denied*. We accordingly grant rehearing to address Perdue's appellate arguments.

[2] As noted in our original opinion in this matter, Perdue appeals the small claims court's denial of her claims against her bankruptcy lawyer, William H. O'Toole. She presents four issues for our consideration, which we consolidate and restate as whether the small claims court erred when it denied her claims. We affirm.

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[1] On September 13, 2022, Perdue filed a "Motion to Clarify And For Leave To File Amended Appendix So This Case May Be Decided On The Merits[.]" (Motion to Clarify at 1) (original formatting omitted). That motion requested we permit Perdue to supplement the record to include some of the documents we had noted were missing from the record she provided on appeal. On October 7, 2022, Perdue filed a motion for leave to file attachments or additional appendices, in which she made requests to supplement the record that were almost identical to those in her September 13 motion. We contemporaneously deny both motions.

Facts and Procedural History

[3] Perdue retained O'Toole to represent her in a bankruptcy proceeding. On March 1, 2013,[2] the parties signed an attorney/client contract ("Attorney/Client Contract"). The Attorney/Client Contract states, regarding "the financial terms for retaining your attorney-designate":

> You shall have paid your attorney-designate the sum of $2,000 in full satisfaction of his *estimated* attorney & paraprofessional fees & expenses (subject to any exceptions herein contained); together with a $281 filing fee, $30 for the Credit Report, and $39 for the Credit Counseling tutorials, all whereof he acknowledges receipt. Your attorney-designate charges $250 per an hour against your payment of his estimated fee, associate attorneys at $150 per hour and his paraprofessional staff will bill against your retainer for $75 an hour. If you must add creditors to your schedules of which you were unaware, after your schedules have been already filed with the Clerk of the Court, there is a $206 additional fee per event, regardless of how many creditors you add at any one time.

(Ex. Vol. I at 145) (emphasis in original). As to "exceptions herein contained" the contract provided:

> Other examples of matters which are not comprehended under this Agreement are litigation in state courts concerning challenges against the dischargeability of certain debts which may have to be adjudicated by state courts, as in the nature of

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[2] Perdue contends she did not sign the contract until April 3, 2013, based on an email sent the same day indicating she would "hand deliver these documents to your office this morning." (Ex. Vol. II at 113.) Perdue does not argue this discrepancy in signature dates affects the terms of the contract.

> child support (which cannot be discharged under the bankruptcy laws); certain accusations of fraud which are to, or may be relegated to state courts for trial and judgment; post-filing defense against foreclosure proceedings (if you don't want foreclosure); student loan claims with which you reasonably believe you have complied; or any "adversary proceeding" (an expression meaning a lawsuit under the umbrella of your principal bankruptcy case) brought by a creditor, your assigned trustee, or the Office of the U.S. Trustee (not to be confused with your assigned trustee), which was not foreseen at the time you filed your bankruptcy petition; a defense against an assessment of penalties for your failure or refusal to file and submit your tax returns to your assigned trustee if he requests them; your failure or refusal to turn over property legitimately demanded by your assigned trustee for the purpose of satisfying all or a portion of your creditors' claims. Finally, you ought to be aware that, in some (but very rare) cases, you may be subjected to criminal prosecution for issuing bad checks to a creditor who decides to have you prosecuted rather than sue you to collect. In Indiana, issuing bad checks is deemed a Class-D felony, if the county prosecutor decides to bring charges against you in a criminal proceeding. Criminal proceedings against you constitute something not covered by your retainer in this Agreement, the defense against which you by the federal government (United States Attorney's Office) or the state (the county prosecutor's office) are not covered by this Agreement. However, you are not obligated to retain your attorney-designate for any criminal matter.

(*Id*. at 143-44.) The contract also stated, "if you are a candidate under Chapter 13, to purge your assets of liens may entail additional fees & expenses which, whenever possible will be built into your repayment plan." (*Id*. at 142.) In addition, the contract explained:

> Please be aware that the following costs are to be borne by you in order to file your petition for relief: a filing fee (whose exact amount depends upon the kind of bankruptcy for which you qualify (e.g., Chapter 7 or Chapter 13); the cost of pre-filing credit counseling (whether conducted in-person, by phone, or over the internet; the cost of post-filing debtor education (whether conducted by any of the three methods above); and any costs for tax transcripts or credit reports deemed necessary to accomplish a successful bankruptcy filing.

(*Id*. at 145.) Perdue chose to pursue Chapter 13 bankruptcy and the bankruptcy proceedings spanned over five years. O'Toole submitted requests for attorney fees and expenses at various times during the proceedings and the bankruptcy court granted his requests, adding the totals approved to Perdue's debt for inclusion within her monthly payment plan.

[4] On July 11, 2019, Perdue filed a notice of claim with the small claims court. The proceedings were delayed for a significant period of time by multiple continuances, a stay, and a change of counsel. On January 9, 2021, Perdue sent a letter to the small claims judge indicated she intended to prove O'Toole committed "negligence and/or professional negligence and/or gross negligence; breach of contract; conversion, including criminal conversion; fraud and/or fraud in the inducement; deceit; bad faith; and misrepresentation." (App. Vol. II at 18.) During the evidentiary hearings before the small claims court on April 1, 2021, and July 8, 2021, O'Toole presented testimony from Paul Chael, the Bankruptcy Trustee in Perdue's case. The small claims court also admitted

multiple exhibits O'Toole proffered.[3] Perdue cross-examined Chael and presented evidence, which the small claims court admitted, in the form of a binder with over 200 pages of filings and emails. Perdue did not present testimony from any witnesses. The parties also made closing arguments. On October 28, 2021, the small claims court entered judgment for O'Toole after finding:

> 1. A contract existed between the Parties.
>
> 2. There is no evidence supporting a conclusion that [O'Toole] breached that contract or that the terms of such contract were altered.
>
> 3. The terms of the contract control the relationship of the Parties.
>
> 4. As to legal fees/costs, the contract called for an hourly rate for services provided, as well as payment of certain costs.
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> 5. The Bankruptcy Court approved in an Order all of the fees and costs paid to [O'Toole].
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> 6. [Perdue] received her Chapter 13 Bankruptcy discharge.
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> 7. While providing hundreds of pages of documents/email[s] shared between the Parties, [Perdue] has failed to provide evidence that convinces this Court effectively to overturn the contract of the Parties and the Orders of the Federal Bankruptcy

[3] O'Toole's exhibits are not in the record before us.

> Court granting fees to [O'Toole]; further there is no adequate evidence supporting a conclusion that [O'Toole] committed any tort such that [Perdue] should recover for a related damage.
>
> 8. [Perdue] has not proved her case.

(Small Claims Court's Order at 1.) Perdue filed a motion to correct errors, which was deemed denied on January 6, 2022, pursuant to Indiana Trial Rule 53.3.

Discussion and Decision

[5] As an initial matter, we note O'Toole did not file an appellee's brief. When an appellee does not submit a brief, we do not undertake the burden of developing arguments for that party. *Thurman v. Thurman*, 777 N.E.2d 41, 42 (Ind. Ct. App. 2002). Instead, we apply a less stringent standard of review and may reverse if the appellant establishes prima facie error. *Id*. Prima facie error is "error at first sight, on first appearance, or on the face of it." *Van Wieren v. Van Wieren*, 858 N.E.2d 216, 221 (Ind. Ct. App. 2006).

[6] As we noted in our original opinion disposing of Perdue's appeal, Perdue failed to include a copy of her motion to correct error in the Appendix she filed. *Perdue*, *slip op*. at 1. Nor does her Appellant's Brief provide any argument regarding how or why the small claims court may have abused its discretion by failing to grant any portion of her motion to correct error. Accordingly, she has waived any challenge to the small claims court's final determination, which was the denial of her motion to correct error, because she failed to make a cogent

argument about that decision. *See Martin v. Hunt*, 130 N.E.3d 135, 137 (Ind. Ct. App. 2019) (failure to make a cogent argument results in waiver of issue on appeal). Notwithstanding this additional waiver, we address the underlying judgment on the merits.

[7] Our standard of review in small claims cases is particularly deferential to the small claims court in order to preserve the speedy and informal process for small claims. *Feather Trace Homeowners Ass'n, Inc. v. Luster*, 132 N.E.3d 500, 502 (Ind. Ct. App. 2019). The small claims court is the sole judge of the evidence and the credibility of witnesses, and thus, on appeal, we will not reweigh the evidence or assess the credibility of witnesses. *Id*. We view the facts and the reasonable inferences therefrom in the light most favorable to the judgment below. *City of Dunkirk Water & Sewage Dep't v. Hall*, 657 N.E.2d 115, 116 (Ind. 1995). A plaintiff who seeks damages bears the burden of proving those damages by a preponderance of the evidence. *Eppl v. DiGiacomo*, 946 N.E.2d 646, 649 (Ind. Ct. App. 2011). If the court rules against the party with the burden of proof, it enters a negative judgment that we may not reverse for insufficient evidence unless "the evidence is without conflict and leads to but one conclusion, [and] the court reached a different conclusion." *Id*. In other

words, we may not reverse the small claims court's judgment against Perdue unless literally every piece of evidence in the record favors Perdue.[4]

1. Breach of Contract

[8] Perdue argues O'Toole breached the Attorney/Client Contract between them when he required her to pay what she alleged was more than the contract's terms. "To recover for a breach of contract, a plaintiff must prove that: (1) a contract existed, (2) the defendant breached the contract, and (3) the plaintiff suffered damage as a result of the defendant's breach." *Collins v. McKinney*, 871 N.E.2d 363, 370 (Ind. Ct. App. 2007). Specifically, Perdue contends O'Toole breached the Attorney/Client Contract when he "caused Perdue to pay far in excess of the $2,000 fee agreed to in the original writing" and "by failing to competently perform his duties as an attorney." (Br. of Appellant at 15.) We address each of her arguments separately.

1.1 Terms of Contract

[9] Perdue asserts on appeal that O'Toole charged and caused her to incur fees in excess of their Attorney/Client Contract. As part of the bankruptcy action,[5] O'Toole was required to submit an application for fees with the bankruptcy

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[4] Perdue also argues the small claims court erred when it did not consider certain evidence she submitted. However, in its order, the small claims court indicated it reviewed all the items included in Perdue's evidentiary binder when, in Finding 7, it found that despite all that material Perdue had not provided evidence to support her claims.

[5] Pursuant to Indiana Evidence Rule 201(a)(2)(c), we take judicial notice of the underlying Bankruptcy proceedings, encompassed in Bankruptcy Claim Number 13-21082.

court. (*See, e.g.*, Ex. Vol. I at 25-6) (indicating practice for application of attorney fees and costs in a bankruptcy proceeding). After O'Toole filed the application for fees, Perdue had the opportunity to object to those fees. *See, e.g.*, Chronological Case Summary for Bankruptcy Petition 13-21082, page 10 (noting "Application for Compensation filed [on March 28, 2018] . . . Objections to Motion due by 4/18/2018"). Perdue did not object to those fees as noted in the bankruptcy court's Order approving O'Toole's requested fees, entered April 25, 2018, which states, in relevant part:

> Notice having been given to the Trustee, U.S. Trustee, the Debtor, and all Creditors of the Application for Payment of Attorney's Fees and Reimbursement of Expenses filed postconfirmation by the attorney for the Chapter 13 Debtor on the 28th day of March, 2018 ("Application"), and no timely objections thereto or requests for hearing having been filed within the time required by said notice[.]

(Order Approving Fee Application of Attorney for Debtor Postconfirmation, April 24, 2014, Bankruptcy Court No. 13-210-82). As there had been no objection or request for hearing and the Bankruptcy Court found Perdue received notice of O'Toole's request, the Bankruptcy Court approved O'Toole's Application for Fees and awarded him "$359.13 in attorney's fees for services rendered, and for reimbursement of expenses in the sum of $59.00[.]" (*Id.*) The Bankruptcy Court then ordered those fees and expenses to be paid out of "future plan payments" of the Bankruptcy payment plan. (*Id.*)

[10] "Res judicata, whether in the form of claim preclusion or issue preclusion (also called collateral estoppel), aims to prevent repetitious litigation of disputes that are essentially the same, by holding a prior final judgment binding against both the original parties and their privies." *Becker v. State*, 992 N.E.2d 697, 700 (Ind. 2013) (italics removed). Res judicata applies "where there has been a final adjudication on the merits of the same issue between the same parties." *Indiana State Ethics Comm'n v. Sanchez,* 18 N.E.3d 988, 993 (Ind. 2014) (quoting *Gayheart v. Newnam Foundry Co., Inc.*, 271 Ind. 422, 426, 393 N.E.2d 163, 167 (1979)). Issue preclusion, or collateral estoppel,

> bars the subsequent litigation of a fact or issue that was necessarily adjudicated in a former lawsuit if the same fact or issue is presented in the subsequent lawsuit. If issue preclusion applies, the former adjudication is conclusive in the subsequent action, even if the actions are based on different claims. The former adjudication is conclusive only as to those issues that were actually litigated and determined therein. Thus, issue preclusion does not extend to matters that were not expressly adjudicated and can be inferred only by argument. In determining whether issue preclusion is applicable, a court must engage in a two-part analysis: (1) whether the party in the prior action had a full and fair opportunity to litigate the issue and (2) whether it is otherwise unfair to apply issue preclusion given the facts of the particular case.

Angelopoulos v. Angelopoulos, 2 N.E.3d 688, 696 (Ind. Ct. App. 2013), *trans. denied*.

[11] As part of O'Toole's application for fees in the bankruptcy proceeding, he submitted a copy of the Attorney/Client agreement he and Perdue signed as

well as a bill of his hours worked on Perdue's case. The bankruptcy court found Perdue received notice of O'Toole's application and the date by which she was required to object to that application. The bankruptcy court found she did not object to O'Toole's application of fees. As a part of its decision, we presume the bankruptcy court reviewed the parties' contract as well as O'Toole's billing. *See Laughlin v. State*, 101 N.E.3d 827, 830 (Ind. Ct. App. 2018) (presumption that the judge knows and properly applies the relevant law to the facts of the case). Therefore, the bankruptcy court found the fees and expenses requested were proper under the contract. Based thereon, we conclude collateral estoppel applies because Perdue had an opportunity to object to the fees O'Toole requested and assert breach of contract before the bankruptcy court, but she chose not to do so. Accordingly, it is not unfair to apply collateral estoppel here. Therefore, Perdue's breach of contract claim, as it pertains to the fee-related terms of the contract, is barred by res judicata. *See Marion County Circuit Court v. King*, 150 N.E.3d 666, 675-6 (Ind. Ct. App. 2020) (elements of issue preclusion satisfied when King had a full and fair opportunity to litigate claims in federal court), *reh'g denied*, *trans. denied*.

2.2 Performance Under The Contract

[12] Perdue also argues O'Toole failed to "competently perform his duties as an attorney." (Br. of Appellant at 15.) During the hearing, O'Toole asked bankruptcy trustee Paul Chael about the competency of O'Toole's services in Perdue's case, based on Chael's experience:

[O'Toole]: All right. How long, you said you've been Trustee, I'm sorry, thirty-four years?

[Chael]: Yes, sir.

[O'Toole]: Have you worked with Mr. Tool, Mr. O'Toole much?

[Chael]: Throughout the whole period of time pretty much.

[O'Toole]: Pretty much throughout the entire thirty-four years?

[Chael]: Yeah.

[O'Toole]: Correct?

[Chael]: He's been filing cases most of the time I've been Trustee.

[O'Toole]: And I think you indicated you likely had more than 20,000 or 25,000 total cases?

[Chael]: That's correct.

[O'Toole]: Given that level of experience, is there anything that happened in this case that makes you believe in any form that Mr. O'Toole committed any kind of negligence or malpractice related to this case?

[Chael]: I don't see that in this case at all. I mean, he dealt with, he filed the plan. Dealt with issues that came up. The plan was confirmed. Modified the plan. Debtor got her discharge. I

> mean, that's the normal course of how these things proceed and it looked like he got that accomplished.

(Tr. Vol. II at 29-30.) Chael's testimony supported the small claims court's finding that Perdue had not proven that O'Toole committed breach of contract by failing to perform his duties in a competent manner. Perdue's arguments to the contrary are invitations for this court to reweigh the evidence and judge the credibility of witnesses, which we cannot do. *See Feather Trace Homeowners Ass'n, Inc.*, 132 N.E.3d at 502 (appellate court cannot reweigh evidence or judge credibility of witnesses). The small claims court did not err when it found Perdue had not proven O'Toole committed breach of contract.

2. Criminal Conversion As A Civil Tort

[13] Perdue also argues she presented evidence to prove O'Toole committed criminal conversion as a civil tort. A person who knowingly or intentionally exerts unauthorized control over property of another person commits criminal conversion. Ind. Code § 35-43-4-3. To establish the mens rea element of the crime of conversion, a plaintiff must show the defendant was aware of a high probability that his control over the plaintiff's property was unauthorized. *JET Credit Union v. Loudermilk*, 879 N.E.2d 594, 597 (Ind. Ct. App. 2008), *trans. denied*. A person who has suffered a pecuniary loss as a result of a criminal conversion may bring a civil action to recover the loss. *Sam & Mac, Inc. v. Treat*, 783 N.E.2d 760, 766 (Ind. Ct. App. 2003). Unlike in a criminal trial, a claimant need prove by only a preponderance of the evidence that the defendant

committed the criminal act; a criminal conviction of conversion is not a condition precedent to recovery in the civil action. *Id*.

[14] Perdue argues she presented evidence for each element of criminal conversion as a civil tort. In her appellate brief, she weaves together the evidence allegedly presented at before the small claims court, such as O'Toole's request for additional fees under the attorney/client contract, to support her argument that all elements were satisfied. However, as the bankruptcy court conclusively decided O'Toole was entitled to additional fees under the contract and re-litigation of that issue is prohibited by res judicata, Perdue cannot demonstrate O'Toole's receipt of additional fees constituted exertion of unauthorized control over money that belonged to Perdue. Thus, the small claims court did not err when it denied Perdue's claim of conversion as a civil tort.

3. Deceit

[15] Perdue contends the same argument and evidence supporting her claim of criminal conversion as a civil tort also demonstrates her claim of deceit or intentional misrepresentation. Indiana Code section 33-43-1-8 provides:

> (a) An attorney who is guilty of deceit or collusion, or consents to deceit or collusion, with intent to deceive a court, judge, or party to an action or judicial proceeding commits a Class B misdemeanor.
>
> (b) A person who is injured by a violation of subsection (a) may bring a civil action for treble damages.

The essential elements required to sustain an action for deceit are:

> (1) that a representation was made as a statement of fact, which was untrue and known to be untrue by the party making it, or else recklessly made; (2) that it was made with the intent to deceive and for the purpose of inducing the other party to act upon it; and (3) that the party did in fact rely upon it and was induced thereby to act to his or her injury or damage.

Shepherd v. Truex, 823 N.E.2d 320, 327-8 (Ind. Ct. App. 2005), *reh'g denied*.

[16] Before the small claims court, Perdue argued:

> Mr. O'Toole committed deceit when he offered to charge a flat fee of $2,000., [sic] and later affirmed this in the second payment plan, second amended payment plan. Then later billed additional fees. He also committed deceit when he told the court and me that the second amended payment plan included the adversarial fee, but did not apply a single penny of it toward the adversary.

(Tr. Vol. II at 63.) However, as evidenced by the portions of the contract quoted in the Facts and Procedural History, the contract Perdue signed was not for a "flat fee." (*Id*.) The fees were to be billed "against your retainer." (Ex. Vol. 1 at 145.) In addition, the contract explained that numerous circumstances might result in additional fees and that additional expenses would be built into the repayment plan "whenever possible." (*Id*. at 142.) Perdue has presented no evidence, aside from her misunderstanding of the contract, of O'Toole's intent to deceive her. To the extent Perdue argues her statement that O'Toole lied about the fees is evidence of his intent, the small claims court is the sole judge

of the evidence and the credibility of witnesses, and thus, on appeal, we will not reweigh the evidence or assess the credibility of witnesses. *Feather Trace Homeowners Ass'n, Inc.*, 132 N.E.3d at 502. Without any evidence of O'Toole's intent in any of his statements that allegedly induced Perdue to enter the Attorney/Client Contract, Perdue's claim fails. *See, e.g., Conner v. Howe*, 344 F.Supp.2d 1164, 1174 (S.D. Ind. 2004) (applying Indiana law, held intent to deceive is a "crucial element" of deceit). Therefore, because Perdue did not produce evidence O'Toole intended to deceive her, the small claims court did not err when it denied her claim for deceit.

4. Negligence or Legal Malpractice

[17] Perdue contends O'Toole committed negligence through

> his failure to answer Perdue's questions about mortgage payments, which precipitated the first motion to dismiss; O'Toole's catastrophic 5+ years of delay in filing the adversary; O'Toole's failure to file necessary paperwork, precipitating the second motion to dismiss; O'Toole's failure to keep apprised of Perdue's case, shown throughout the years and precipitating the final motion to dismiss; his failure to discuss the final motion to dismiss with the trustee; and his dangerous advice on how to remedy that dismissal motion.

(Br. of Appellant at 16-17) (internal citations to the record omitted). While Perdue argues her claim is one of negligence, her allegations are those of legal malpractice. To prove a legal malpractice claim, "the plaintiff-client must show: (1) employment of the attorney (the duty); (2) failure of the attorney to exercise ordinary skill and knowledge (the breach); (3) proximate cause

(causation); and (4) loss to the plaintiff (damages)." *CRIT Corp. v. Wilkinson*, 92 N.E.3d 662, 670 (Ind. Ct. App. 2018). To establish causation and the extent of harm in such cases, "the client must show that the outcome of the underlying litigation would have been more favorable but for the attorney's negligence." *Id*.

[18] Here, Perdue did not present evidence to demonstrate the result of her bankruptcy proceedings would have been more favorable to her had O'Toole represented her in a different way. It would seem instead that Perdue, who is a licensed attorney but does not practice bankruptcy law, had an idea of how her bankruptcy case should proceed, and when her expectation was not realized, she claimed O'Toole committed malpractice in his representation of her in the matter.

[19] Based on the evidence before the small claims court, Perdue's bankruptcy "followed the typical course" of a bankruptcy proceeding. (Tr. Vol. II at 11.) Chael testified a Chapter 13 bankruptcy, such as the one Perdue filed, is a "fluid process" that takes "three to five years[.]" (*Id.*) He testified the occurrences in Perdue's bankruptcy case, such as a motion to dismiss, Perdue's delay with payment, and amendment of her payment were all things that happened in a typical Chapter 13 bankruptcy case. He also testified it was not unusual for a case to take six years like Perdue's case had, and he had experienced "cases pending [for] ten years." (*Id.*) As Perdue did not present evidence her case would have had a more favorable outcome and there was evidence to support the small claims court's finding that she did not prove any of the torts she

alleged, we conclude the small claims court did not err when it denied Perdue's claim that O'Toole committed legal malpractice.

5. Fraud

[20] Perdue argues she presented sufficient evidence to prove O'Toole committed fraud. The elements of fraud are "(1) a material misrepresentation of past or existing fact by the party to be charged which (2) was false, (3) was made with knowledge or in reckless ignorance of the falsity, (4) was relied upon by the complaining party, and (5) proximately caused the complaining party injury." *Harris v. Denning*, 900 N.E.2d 765, 769 (Ind. Ct. App. 2009). Perdue alleges she proved O'Toole committed fraud "when he told Perdue in the original writing dated October 19, 2012 and later affirmed in the 2APP dated September 19, 2014 that he would charge $2,000 for the bankruptcy." (Br. of Appellant at 19.)

[21] As with our analysis of Perdue's deceit claim *supra*, Perdue did not produce evidence of O'Toole's intent – specifically here whether O'Toole made any statements to her *with knowledge or in reckless ignorance* of the falsity of those statements. O'Toole charged Perdue a $2,000 retainer fee and then, in accordance with the language of the parties' contract, additional amounts were built into Perdue's bankruptcy payment plan. Because Perdue has not presented evidence of O'Toole's intent, we conclude the small claims court did not err when it denied her fraud claim.

Conclusion

[22] We grant Perdue's request for rehearing to decide her case on the merits. First, we hold Perdue is collaterally estopped from raising the issue of whether O'Toole committed breach of contract based on his accounting of fees because the issue was decided by the bankruptcy court when it approved O'Toole's application for fees. As Perdue's conversion as a civil tort claim is based on O'Toole's alleged breach of the contracted fee agreement, it is similarly precluded from our review by res judicata. Further, the small claims court did not err when it denied Perdue's deceit and fraud claims because she did not present evidence of O'Toole's intent in either instance. Finally, the small claims court did not err when it denied Perdue's legal malpractice claim because she did not present evidence her bankruptcy case would have had a more favorable outcome and O'Toole presented evidence to support the small claims court's finding.

[23] Under our standard of review, we cannot reverse a negative judgment against the party with the burden of proof, here Perdue, unless "the evidence is without conflict and leads to but one conclusion [and] the court reached a different conclusion." *Eppl*, 946 N.E.2d at 649. As we have noted *supra*, Perdue presented very little, if any evidence to support the elements of any of her claims. Based thereon, having decided Perdue's appeal on the merits, we hold the small claims court did not err when it denied her claims and accordingly affirm the decision of the small claims court.

[24] Small Claims Court Decision Affirmed.

Riley, J., and Tavitas, J., concur.