MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Nora Creason,
Appellant-Plaintiff,

v.

Allen Wilson d/b/a Competition Auto Body,
Appellee-Defendant

January 19, 2022

Court of Appeals Case No. 21A-SC-1658

Appeal from the Howard Superior Court

The Honorable Douglas A. Tate, Judge

Trial Court Cause No. 34D03-2007-SC-672

Crone, Judge.

Case Summary

[1] Nora Creason appeals the trial court's order awarding her damages of $1,635 on her claims of breach of contract and theft against Allen Wilson d/b/a Competition Auto Body. She contends that the trial court erred by failing to

apply the correct measure of damages on her breach of contract claim and failing to award her civil statutory damages and attorney fees on her theft claim. Finding no error, we affirm.

Facts and Procedural History

[2] In January 2019, Creason was involved in a car accident that caused significant damage to her Jeep Wrangler. Creason was insured by State Farm Insurance, which provided an estimate of $13,790 to repair the Jeep. Based on State Farm's recommendation, Creason hired Wilson to repair the Jeep. State Farm paid Wilson $12,790, as Wilson's insurance policy contained a $1,000 deductible.[1]

[3] State Farm's repair estimate included $5,065 for the installation of a new frame assembly. Wilson determined that one of the frame's brackets was bent and that only the bracket needed to be replaced, not the entire frame. He discussed this deviation with a State Farm representative, but he did not discuss it with Creason. To obtain a replacement bracket, Wilson had to purchase a new frame and cut off a bracket, rendering the new frame unusable.

[4] When Creason picked up the Jeep, she experienced some issues unrelated to the frame and returned the Jeep to Wilson for further work. Upon completion of the repairs, Wilson refunded $1,000 to Creason, but he did not inform her that

[1] It is unclear from the transcript whether Creason paid Wilson anything out of pocket. Tr. Vol. 2 at 30-31.

he had not replaced the entire frame. At some point, Creason took the Jeep to Mike Anderson Jeep for an inspection and learned that a new frame had not been installed. Mike Anderson estimated that the installation of a new frame would cost $6,685.28.

[5] In July 2020, Creason filed a small claims action against Wilson alleging breach of contract, breach of warranties, fraud, and theft and seeking damages of $6,000, attorney fees, interest, and costs. A bench trial was held, at which Creason and Wilson testified, and the parties submitted documentary exhibits.[2] At the conclusion of the hearing, the trial court took the matter under advisement.

[6] On June 1, 2021, the trial court entered judgment in Creason's favor and against Wilson for $1,635. The trial court found as follows:

> At issue is whether [Creason] is entitled to any additional refund for [Wilson] choosing not to replace the frame. The first issue is the cost of the frame assembly. [Wilson] testified the frame itself was not bent, just a bracket. [Wilson] further testified that the bracket is not sold separately and that it could only be removed from a new frame. This may be a fair assessment, however, the decision to not install a new frame was not [Creason's]. [Wilson] chose to buy a new frame and cut off a bracket rendering the frame unusable. While [Wilson] may have discussed this deviation from the estimate with State Farm, the fact remains that the customer was [Creason]. The estimate is a starting point

[2] Our review of the transcript shows that Creason submitted a video in support of her claim that the frame was bent and that the trial court stated that he would watch the video, but it does not appear that the video was ever officially admitted as an exhibit, and it is not in the record before us. Tr. Vol. 2 at 35-38.

> and the court understands that many times it may become necessary to deviate from the estimate. However, [Creason's] insurance company paid for a new frame and it should have been [Creason's] decision, not [Wilson's], to not install a new frame. Because [Creason] did not get a new frame, she is not going to be responsible for paying for a new frame.
>
> The next issue involves reasonable labor charges for modifying the original frame. [Wilson] was paid by the insurance company for 42 hours of labor to install a new frame at a rate of $65.00 per hour. The modification resulted in substantially less labor. [Wilson] estimated that it would have been 20 hours less labor. This would have resulted in a decrease of $1,300.00 between the labor that [Wilson] was paid and what was actually incurred.
>
> There is no question that a bracket on the frame was bent. The bracket was fixed. [Creason] and her counsel repeatedly referred to the frame as still being bent. The burden rests with [Creason] to prove that the frame is, in fact, bent. If the frame is bent, then not only would it be highly unlikely that [Creason] would still be driving the vehicle, this would appear to be a fact that would be fairly easy to document. The evidence presented simply does not establish that the frame is bent.

Appealed Order at 1-2. The trial court calculated that the difference between the amount State Farm paid to Wilson to repair the vehicle, which included the installation of a new frame, and the actual cost to repair the vehicle, which included the cost to install the bracket, was $2,635. The trial court credited Wilson $1,000 for the refund he had already given to Creason and concluded that the amount due to Creason was $1,635. Creason filed a motion to correct error, arguing that the trial court failed to make any findings as to her allegation

of theft and request for attorney fees. The trial court denied the motion, and this appeal ensued.

Discussion and Decision

[7] As an initial matter, we observe that Wilson has not filed an appellee's brief. In such cases, we need not undertake the burden of developing an argument for the appellee, and we will reverse the judgment if the appellant presents a case of prima facie error, that is "at first sight, on first appearance, or on the face of it." *Trinity Homes, LLC v. Fang*, 848 N.E.2d 1065, 1068 (Ind. 2006) (quoting *Santana v. Santana*, 708 N.E.2d 886, 887 (Ind. Ct. App. 1999)).

[8] Judgments in small claims actions are "subject to review as prescribed by relevant Indiana rules and statutes." Ind. Small Claims Rule 11(A). Here, the trial court entered findings and conclusions sua sponte. We review the facts determined in a bench trial with due regard given to the opportunity of the trial court to assess witness credibility under the clearly erroneous standard. *Morton v. Ivacic*, 898 N.E.2d 1196, 1198-99 (Ind. 2008) (citing Ind. Trial Rule 52(A)). Under this standard, "[w]e consider evidence in the light most favorable to the judgment, together with all reasonable inferences to be drawn therefrom. We will reverse a judgment only if the evidence leads to but one conclusion and the trial court reached the opposite conclusion."[3] *Vance v. Lozano*, 981 N.E.2d 554,

[3] Creason contends that our standard of review is de novo because the judgment was based on documentary evidence. Appellant's Br. at 14; *see Trinity Homes,* 848 N.E.2d at 1068 ("[W]here a small claims case turns solely on documentary evidence, we review de novo, just as we review summary judgment rulings and other

558 (Ind. Ct. App. 2012) (citation omitted). A "deferential standard of review is particularly important in small claims actions, where trials are 'informal, with the sole objective of dispensing speedy justice between the parties according to the rules of substantive law.'" *Lae v. Householder*, 789 N.E.2d 481, 483 (Ind. 2003) (quoting *City of Dunkirk Water & Sewage Dep't v. Hall*, 657 N.E.2d 115, 116 (Ind. 1995)). However, "this deferential standard does not apply to the substantive rules of law, which are reviewed de novo just as they are in appeals from a court of general jurisdiction." *Trinity Homes,* 848 N.E.2d at 1068.

[9] Despite the informality in small claims proceedings, the parties "bear the same burdens of proof as they would in a regular civil action on the same issues." *Martin v. Ramos*, 120 N.E.3d 244, 249 (Ind. Ct. App. 2019). Thus,"[i]t is incumbent upon the party who bears the burden of proof to demonstrate that it is entitled to the recovery sought." *Vance*, 981 N.E.2d at 558. "The burden of proof with respect to damages is with the plaintiff." *Noble Roman's, Inc. v. Ward*, 760 N.E.2d 1132, 1140 (Ind. Ct. App. 2002).

Section 1 – The trial court did not err in determining damages.

[10] Creason asserts that the trial court applied an incorrect measure of damages, and that she is entitled to a new frame. We disagree. "It is axiomatic that a party injured by a breach of contract may recover the benefit of its bargain but is

'paper records.'"). Here, the parties testified, and thus the judgment was not based solely on documentary evidence. Accordingly, we apply the clearly erroneous standard.

limited in its recovery to *the loss actually suffered*." *L.H. Controls, Inc. v. Custom Conveyor, Inc.*, 974 N.E.2d 1031, 1043 (Ind. Ct. App. 2012) (emphasis added). However, the injured party "may not be placed in a better position than it would have enjoyed if the breach had not occurred." *Otter Creek Trading Co. v. PCM Enviro PTY, LTD*, 60 N.E.3d 217, 229 (Ind. Ct. App. 2016), *trans. denied*. "A damage award must be based upon some fairly defined standard, such as cost of repair, market value, established experience, rental value, loss of use, loss of profits, or direct inference from known circumstances." *Hi-Tec Props., LLC v. Murphy*, 14 N.E.3d 767, 776 (Ind. Ct. App. 2014), *trans. denied*.

[11] Here, Creason hired Wilson to repair her vehicle, and she was entitled to a repaired vehicle. Although the estimate anticipated replacement of the entire frame, Wilson determined that only a bracket was bent, and therefore the entire frame did not need to be replaced. As noted by the trial court, estimates are a starting point, and deviations are sometimes necessary. Wilson discussed the deviation with State Farm and replaced the bent bracket. The trial court rejected Creason's bald assertion that the Jeep's frame was bent, and Creason does not direct us to any evidence that the frame was bent. Accordingly, the evidence in support of the judgment shows that the Jeep's frame was repaired.

[12] There remains the overpayment that Wilson received from State Farm, resulting from the fewer hours needed to attach the bracket. The trial court addressed that by awarding Creason the difference between the amount State Farm paid Wilson for a new frame and its installation and the actual cost of the hours Wilson spent repairing the frame. Although Wilson bought a new frame

to obtain the replacement bracket, the trial court found that Creason did not have to pay for the new frame. Thus, the trial court's determination of damages fairly compensates Creason for the loss she actually suffered by Wilson's decision not to replace the entire frame.

Section 2 – The trial court did not err by declining to award Creason damages and attorney fees on her theft claim.

[13] Creason next argues that the trial court's findings support a judgment for civil damages for theft, but the court erred in failing to make an award for theft, treble damages, or attorney fees. Specifically, she contends that Wilson's failure "to disclose to [her] his unilateral decision to deviate from the State Farm Estimate … constitutes … an unauthorized possession of [Creason's] insurance proceeds from State Farm." Appellant's Br. at 17.

[14] Indiana Code Section 34-24-3-1, sometimes referred to as the Indiana Crime Victim's Relief Act, permits a person who suffers a pecuniary loss as a result of another's criminal conduct to bring a civil action against the person who caused the loss and recover up to three times the amount of the actual damages, plus the costs of the action, a reasonable attorney's fee, and other enumerated expenses. A criminal conviction is not a condition precedent to recovery in a civil action brought under the Crime Victim's Relief Act, but the claimant must prove all the elements of the criminal act by a preponderance of the evidence. *Larson v. Karagan*, 979 N.E.2d 655, 661 (Ind. Ct. App. 2012).

[15] Creason asserts that Wilson committed theft under Indiana Code Section 35-43-4-2, which provides, "A person who knowingly or intentionally exerts unauthorized control over property of another person, with intent to deprive the other person of any part of its value or use, commits theft." Indiana Code Section 35-43-4-1(b) states, in relevant part, that a person's control over property of another person is "unauthorized" where it is exerted "[b]y creating or confirming a false impression in the other person" or "[b]y promising performance that the person knows will not be performed."

[16] Although the trial court made no specific findings regarding whether Creason carried her burden to prove by a preponderance of the evidence that Wilson committed theft, it implicitly rejected her theft allegation when it denied her motion to correct error. Creason claims that the following findings establish that Wilson exerted unauthorized control over the insurance proceeds: although Wilson may have discussed deviating from the estimate with State Farm, the customer was Creason; Wilson did not discuss with Creason his decision to deviate from State Farm's estimate; State Farm paid Wilson for a new frame; and it should have been Creason's decision whether to install a new frame. *See* Appellant's Br. at 19 (citing Appealed Order at 1). Creason adds that Wilson did not obtain her consent to weld the new bracket onto the existing frame.

[17] We disagree that these findings and evidence lead solely to the conclusion that Wilson exerted unauthorized control over the insurance proceeds by knowingly or intentionally creating or confirming a false impression or by promising performance that he knew he would not perform. We observe that Wilson's

state of mind is essential to finding evidence of criminal intent. As this Court has observed, "the mens rea requirement differentiates criminal conversion from the more innocent breach of contract or failure to pay a debt situation that the criminal conversion statute was not intended to cover." *Whitaker v. Brunner*, 814 N.E.2d 288, 297 (Ind. Ct. App. 2004) (quoting *Greco v. KMA Auto Exch., Inc.*, 765 N.E.2d 140, 147 (Ind. Ct. App. 2002)) (quotation marks omitted), *trans. denied* (2005). Wilson testified, and under our standard of review, we must give due regard to the trial court's opportunity to assess his credibility. Therefore, we cannot say that the trial court's rejection of Creason's theft claim is clearly erroneous. Accordingly, we affirm the judgment.

[18] Affirmed.

Bradford, C.J., and Tavitas, J., concur.