

# MEMORANDUM DECISION

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ATTORNEY FOR APPELLANT

Jarred L. Eib  
Marion, Indiana

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## IN THE COURT OF APPEALS OF INDIANA

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Bret S. Booher,  
*Appellant-Defendant,*

v.

Atlas Services, Inc.,  
*Appellee-Plaintiff*

July 14, 2023

Court of Appeals Case No.  
22A-CC-2301

Appeal from the Grant Superior  
Court

The Honorable Jason D.  
McVicker, Judge

Trial Court Cause No.  
27D03-2112-CC-850

**Memorandum Decision by Judge May**  
Judges Mathias and Bradford concur.

**May, Judge.**

[1] Bret S. Booher (“Bret”<sup>1</sup>) appeals the trial court’s judgment in favor of Atlas Services, Inc., (“Atlas”) for \$5,124.88. Bret raises one issue on appeal, which we revise and restate as whether Bret’s wife Rhonda Booher (“Rhonda”) had apparent authority to authorize work on a rental property that was titled only in Bret’s name. We affirm.

## Facts and Procedural History

[2] In 2012, Bret purchased a house on Michigan Avenue in Marion, Indiana, and Bret registered the title for the house in his name only. He subsequently renovated the house and converted it into a four-unit apartment building. Bret then insured the building through Foremost Insurance.

[3] On February 10, 2016, the daughter of one of Bret’s tenants accidentally drove her vehicle into the front of the building. This left “a giant hole in the wall [and] the window was knocked out[.]” (Tr. Vol. II at 53.) The tenant then called Rhonda and told her about the accident. Rhonda drove by the building to observe the damage, picked Bret up from his place of employment, and returned to the building. Derek Cooper, the Boothers’ insurance adjuster, met Bret and Rhonda at the building. Cooper mentioned that a temporary wall needed to be put in place for the safety of the tenants, and the Boothers authorized Cooper to contact a contractor to put up the temporary wall.

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<sup>1</sup> To differentiate Bret Booher from his wife Rhonda Booher, we will refer to each spouse by first name only.

Cooper called Dennis Rhodes, co-owner of Restoration Contractors (“Restoration”), and asked him to “board up the front of the property, to seal it up from weather[.]” (*Id.* at 9.) Restoration boarded up the building that evening.

- [4] Cooper prepared an estimate that calculated the total cost to repair the exterior damage to the building to be \$5,192.24. After subtracting non-recoverable depreciation and their deductible, Cooper calculated the Boohers’ net claim to be \$3,553.98. Rhodes attempted to contact Bret several times before beginning the more permanent repair of the building, but he was not able to communicate with him. Rhodes did speak with Rhonda over the phone and a contemporaneous note made after that conversation stated:

Dennis spoke to Mrs. Booher about damages. She stated to please board up wall that hit [sic] by car. I told her we had insurance repair estimate and we normally work off this estimate. She said please go ahead get work done because it is winter and renters can’t stay warm with it the way it is. She understands that they owe \$1,000 deductible.

(Ex. Vol. I at 10.) Restoration then proceeded with more permanent repairs. These included installing a new window, hanging drywall, reframing a door, painting, and replacing floor covering.

- [5] On February 19, 2016, Restoration sent Bret an invoice for \$922.71, which represented the cost for the temporary repairs made to the building on the evening of the accident. On February 29, 2016, Restoration sent a second invoice to Bret for \$4,202.17, which represented the cost of the permanent

repairs made to the building. A handwritten note on the invoice stated: “phone calls with owner-re repairs owner picked out windows labor/parts/construction.” (*Id.* at 15.)

[6] At some point, Foremost Insurance paid the Boothers for their claim. On April 1, 2016, Bret sent Rhodes a check for \$922.71. With the check, Bret included a note that stated: “Enclosed you will find a check for the temporary wall that Restoration Contractors Inc. was contracted to erect at 805 S. Michigan. As no other services were contracted for, this concludes our business.” (*Id.* at 17.) Rhodes did not cash the check because he thought doing so would prevent him from recovering the additional amount owed. Restoration subsequently transferred the account to Atlas for collection.

[7] On December 31, 2021, Atlas filed suit against Bret seeking payment for the full cost of the repairs. The trial court then held a two-day bench trial on June 1 and July 20, 2022. Rhodes testified Rhonda told him to perform the repairs and gave him instructions on what she wanted to have done, and in its closing statement, Atlas argued Rhonda was authorized to act on the couple’s behalf. Atlas noted that “[a]ll through the testimony [of Bret and Rhonda] there are comments about we did this, we wouldn’t have done this, Mrs. Booher continuously refers to it as I was going to do whatever I wanted to do with the property.” (Tr. Vol. II at 123.) Atlas asserted:

[Rhonda] was authorized to speak on behalf of repairs. To the extent that Mr. Booher is the title owner it appeared apparent to everybody involved Mrs. Booher has some authority to discuss

these issues, and when she did with Mr. Rhodes that he relied on those representations, he relied on the estimate provided by Mr. Cooper who was the insurance adjuster who sent him the estimate and said here's the work that needs to be done.

(*Id.* at 123-24.) In his closing argument, Bret argued Rhonda was not his agent. He contended that, for Restoration to have had the impression that she was, Restoration “would have to have had some contact, some communication with Mr. Booher for him to create, for him to have created that impression[.]” (*Id.* at 127.)

[8] On July 21, 2022, the trial court entered judgment in favor of Atlas for \$5,124.88, representing the total cost of both the temporary repairs and the subsequent restoration work. Bret filed a motion to correct error on August 19, 2022, reasserting the argument he made during his closing statement at trial. Atlas filed its response on August 25, 2022, and the trial court denied Bret's motion to correct error on August 29, 2022.

## Discussion and Decision

[9] Bret asks us to reverse the judgment of the trial court and enter judgment in his favor because Atlas was not entitled to judgment under any theory of recovery. Initially, we note Atlas has not filed an appellee's brief. “When an appellee fails to file a brief, we do not develop an argument on the appellee's behalf. Instead, we may reverse the trial court's judgment if the appellant's brief establishes prima facie error.” *Romero v. McVey*, 167 N.E.3d 361, 365 (Ind. Ct.

App. 2021). “Prima facie, in this context, means at first glance or on the face of it.” *McElvain v. Hite*, 800 N.E.2d 947, 949 (Ind. Ct. App. 2003).

[10] Neither party asked the trial court to enter findings of fact and conclusions of law, and the trial court chose not to do so sua sponte. “When reviewing a general judgment issued following a bench trial, we will affirm if there is substantial evidence of probative value supporting the judgment on any legal theory.” *GHPE Holdings, LLC v. Huxley*, 69 N.E.3d 513, 521 (Ind. Ct. App. 2017). We do not reweigh the evidence or judge witness credibility. *PointOne Recruiting Sol., Inc. v. Omen USA, Inc.*, 177 N.E.3d 81, 83 (Ind. Ct. App. 2021). We consider only the evidence most favorable to the verdict along with all reasonable inferences therefrom. *Id.*

[11] Bret argues Rhonda was not acting as his agent in her phone conversation with Rhodes. In Indiana, “[m]arriage does not by itself create an agency relationship between spouses, but the marital relationship is one of the facts and circumstances considered in determining whether an agency relationship exists.” *Marshall v. Erie Ins. Exch.*, 930 N.E.2d 628, 630 (Ind. Ct. App. 2010), *trans. denied*. “The authority of a spouse to act as an agent must be implied from acts and conduct and not merely from his or her position as a spouse.” *Id.*

[12] In *Menard, Inc. v. Dage-MTI, Inc.*, our Indiana Supreme Court explained:

Two main classifications of authority are generally recognized: actual authority and apparent authority. Actual authority is created by written or spoken words or other conduct of the principal which, reasonably interpreted, causes the agent to

believe that the principal desires him so to act on the principal's account. Apparent authority refers to a third party's reasonable belief that the principal has authorized the acts of its agent[.]

726 N.E.2d 1206, 1210 (Ind. 2000) (internal citations and quotation marks omitted). While the concepts are related, apparent authority and apparent agency “are two distinct doctrines.” *Arrendale v. Am. Imaging & MRI, LLC*, 183 N.E.3d 1064, 1068 (Ind. 2022). Apparent authority relates to “the scope of an agent's authority and requires an agency relationship.” *Id.* Apparent agency concerns “whether a principal's manifestations induce a third party to reasonably believe there is a principal-agent relationship.” *Id.*

[13] In *Rogers v. Sigma Chi Intern. Fraternity*, we stated:

If, because of the principal's manifestations, a third party reasonably believes that in dealing with the apparent agent he is dealing with the principal's servant or agent and exposes himself to the negligent conduct because of the principal's manifestations, then the principal may be held liable for that negligent conduct.

9 N.E.3d 755, 764 (Ind. Ct. App. 2014). Such “‘manifestations’ need not be in the form of direct communications, but rather the placing of the agent in a position to perform acts or make representations that appear reasonable to a third person is a sufficient manifestation to endow the agent with apparent authority.” *Id.*

[14] Bret notes he never contacted Rhodes before completion of the repairs, and therefore, he contends “there could not have been any such manifestation for

Restoration Contractors to have formed the reasonable belief that [Rhonda] had the authority to enter into an agreement[.]” (Appellant’s Br. at 9.) However, Bret and Rhonda jointly participated in the insurance claim process from the beginning. The tenant first reported the accident to Rhonda. She surveyed the damage to the building, and she and Bret both met with Cooper at the building after the accident. Rhonda testified Cooper “said of course that we needed to provide safe housing for the tenants, and we either had to relocate them somewhere or have a temporary wall put up, and he asked me if he could contact someone to have that temporary wall put up.” (Tr. Vol. II at 74.) Likewise, Bret testified: “We told I believe um, the insurance adjuster to okay [the temporary repairs].” (*Id.* at 61.) Rhodes attempted to contact Bret several times to speak about the more permanent repairs, but it was Rhonda who spoke with him. She did not simply tell Rhodes to contact Bret. She discussed details about how the repairs were to be made. Given that Rhonda was involved in authorizing the temporary repairs, it was logical for Rhodes to infer she also had the authority to authorize the more permanent repairs. Thus, the record supports the reasonable inference that Rhonda was acting as Bret’s agent when she authorized Rhodes to perform the more permanent repairs, and therefore, Restoration reasonably believed it was dealing with Bret’s authorized agent. *See Malone v. Basey*, 770 N.E.2d 846, 853 (Ind. Ct. App. 2002) (holding independent



insurance agent had apparent authority to bind insurance company), *trans. denied*. Therefore, we affirm the trial court's judgment.<sup>2</sup>

## Conclusion

[15] Because Restoration could have reasonably inferred that Rhonda had authority to authorize the more permanent repairs, we affirm the trial court.

[16] Affirmed.

Mathias, J., and Bradford, J., concur.

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<sup>2</sup> Because we affirm the trial court's judgment on the basis that Rhonda had the apparent authority to authorize the more permanent repairs on Bret's behalf, we need not address Bret's argument, in the alternative, that he could not be liable to Atlas based on the doctrine of unjust enrichment.