

## MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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## IN THE COURT OF APPEALS OF INDIANA

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Costco Wholesale Corporation,  
*Appellant-Defendant,*

v.

James Rush,  
*Appellee-Plaintiff.*

August 22, 2022

Court of Appeals Case No.  
22A-SC-232

Appeal from the  
Marion Small Claims Court

The Honorable  
Steven G. Poore, Judge

Trial Court Cause No.  
49K07-2011-SC-2106

**Molter, Judge.**

- [1] Before driving from Indianapolis to Cincinnati, James Rush fueled his diesel-powered car at an Indianapolis Costco, which displayed signage promising its

diesel had no more than 5% biodiesel added. When Rush was in Cincinnati, the engine light on his dashboard lit up, so he took his car to a repair shop once he returned to Indianapolis. A repair shop technician determined that two of the car's fuel injectors were damaged because the fuel in the car was 30–35% biodiesel, a percentage considered too high for diesel vehicles.

[2] Rush sued Costco in small claims court, contending Costco's fuel damaged his fuel injectors. Costco denied the claim, and it introduced evidence at trial that the bill of lading reflects the fuel which Rush purchased before the Cincinnati trip contained no biodiesel, that no other customers raised concerns that biodiesel may have been added, and that Costco has quality control measures in place to ensure there is no improper introduction of biodiesel into the fuel mix. The trial court instead credited Rush's evidence and entered judgment in his favor for \$2,125.17 plus court costs and interest.

[3] On appeal, Costco argues Rush failed to prove the fuel he bought from Costco was 30–35% biodiesel and damaged his car. But this is a request that we reweigh the evidence, which we are not permitted to do. We therefore affirm.

### **Facts and Procedural History**

[4] In March 2017, Rush bought a diesel Mercedes Benz 350 GL Blue Tech. When driving in Indianapolis, Rush usually fueled his car at Costco, most often at the Costco on Michigan Road. Rush was careful to put only diesel fuel into his car, so he only fueled from Costco pumps displaying a sign that read, "low sulfur diesel fuel has no more than 5% biodiesel added.'" Ex. Vol. 3 at 6.

- [5] On August 20, 2020, Rush filled his tank at Costco and did the same on September 1, 2020, before leaving the next day for a meeting in Cincinnati. When Rush was in Cincinnati, the engine light on the dashboard lit up. After soon returning to Indianapolis, Rush took his car to a Mercedes-Benz dealership, and one of the dealership's technicians assessed the engine and determined that two fuel injectors were damaged, stating, "engine runs rough off idle and fuel adaptations are moving to limits for cylinders 1 and 2." Tr. Vol. 2 at 8; Ex. Vol. 3 at 5. The technician tested the fuel in the car twice and concluded the fuel contained "30–35% biodiesel," much higher than the factory recommended maximum of 5% biodiesel for diesel engines. Ex. Vol. 3 at 5–6, 10. The dealership replaced the damaged fuel injectors, reset the fuel calibration, and charged Rush about \$2,000.
- [6] In November 2020, Rush filed a Notice of Claim in small claims court, alleging that Costco's fuel damaged his engine and asking the trial court to award him about \$2,200. Appellant's App. Vol. 2 at 12. A bench trial was held in July 2021, and on January 3, 2022, the trial court entered judgment for Rush and awarded him \$2,125.17. Costco now appeals.

## **Discussion and Decision**

- [7] Costco asks us to reverse the trial court's judgment because it claims Rush failed to prove the fuel he bought from Costco on September 1, 2020, contained a 30–35% mixture of diesel fuel, which damaged the fuel injectors in Rush's car.

[8] We will affirm a judgment for a plaintiff if a reasonable finder of fact could conclude that the plaintiff proved her claim by a preponderance of evidence. *Scott-LaRosa v. Lewis*, 44 N.E.3d 89, 93 (Ind. Ct. App. 2015). This deference 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.” *Id.* (quoting Ind. Small Claims Rule 8(A)). We do not reweigh the evidence or assess the credibility of witnesses but consider only the evidence supporting the judgment and the reasonable inferences drawn from that evidence. *City of Dunkirk Water & Sewage Dep’t v. Hall*, 657 N.E.2d 115, 116 (Ind. 1995). We review substantive issues of law de novo. *Lae v. Householder*, 789 N.E.2d 481, 483 (Ind. 2003).

[9] The trial court could have reasonably determined the fuel Rush bought from Costco on September 1 contained 30–35% biodiesel and damaged his car. Once his engine light came on, Rush took his car to the dealership, which performed several diagnostic tests, including two tests of the fuel in Rush’s car. Both tests showed the fuel contained 30–35% biodiesel, greatly exceeding the recommended maximum of 5%. Rush testified that he almost always purchased his diesel fuel from Costco, and he introduced a Costco statement showing that, for example, in the thirteen days before Rush’s trip to Cincinnati, he fueled his car only at Costco, first on August 20 and next on September 1, the day before he drove to Cincinnati. Thus, it would have been reasonable for the trial court to conclude that, when the dealership technician tested the fuel in Rush’s car, the fuel was exclusively fuel that Rush had purchased at Costco.

[10] Costco claims the evidence affirmatively established the fuel did not contain 30–35% biodiesel, but its arguments ask us to reweigh the evidence, which we cannot do. Costco claims the fuel that Rush bought on September 1 was delivered to Costco on August 20 and that the bill of lading for that fuel showed that it did not contain any biodiesel. *See* Tr. Vol. 2 at 36; Ex. Vol. 3 at 13. Costco contends that on August 31, the day before Rush fueled his car, it sampled its fuel, and the sampling showed the fuel was clear and contained no debris. *See* Ex. Vol. 3 at 14. Costco also argues the fuel could not have contained any biodiesel because if any biodiesel had mistakenly been put into the underground storage tank, the gas station would have “immediately” shut down. *See id.* at 41–42.

[11] It was the trial court’s prerogative to weigh Costco’s evidence, so we will not second-guess its decision to credit Rush’s evidence over Costco’s evidence. *See City of Dunkirk*, 657 N.E.2d at 116. Thus, we decline Costco’s request to reverse the judgment.

[12] Affirmed.

Mathias, J., and Brown, J., concur.