MEMORANDUM DECISION

APPELLANT PRO SE

Darren Huggins
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Darren Huggins,
Appellant-Plaintiff/Counterclaim Defendant,

v.

National Van Lines,
Appellee-Defendant/Counterclaimant

February 22, 2022

Court of Appeals Case No. 21A-SC-1538

Appeal from the Marion Small Claims Court, Warren Township

The Honorable Garland E. Graves, Judge

Trial Court Cause No. 49K06-2007-SC-1324

Crone, Judge.

Case Summary

[1] Darren Huggins, pro se, appeals the small claims judgment entered in favor of National Van Lines (National) on his claim for breach of contract damages against National. We affirm.

Facts and Procedural History

[2] In June 2020, National hired Huggins to prepare and pack household goods for transport and to load them onto a truck.[1] Huggins performed those duties and was owed $2,750 for his services, but National never paid him.

[3] On July 22, 2020, Huggins filed a claim against National in small claims court seeking breach of contract damages of $2,750 from National for services rendered. National filed a counterclaim against Huggins for negligence in the handling of two separate shipments, seeking total damages of $7,781.15 ($10,531.15 in damages minus $2,750 National owed but admittedly did not pay Huggins). The trial court rendered judgment in favor of National on Huggins's claim and in favor of Huggins on National's counterclaim, with neither party recovering any damages by way of their claims. In short, the trial court determined "the requested amount of the main claim and the damage and counter claim would offset." Tr. Vol. 2 at 48. Only Huggins now appeals.

[1] Huggins was hired "on a[n] as needed basis" to perform packing and loading services. Tr. Vol. 2 at 7.

Discussion and Decision

[4] We begin by observing that National has not filed an appellee's brief. In such cases, we do 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, which is an error at first sight, on first appearance, or on the face of it. *DECA Fin. Servs., LLC v. Gray*, 12 N.E.3d 897, 899 (Ind. Ct. App. 2014) (quoting *Zoller v. Zoller*, 858 N.E.2d 124, 126 (Ind. Ct. App. 2006)).

[5] We must also observe that "our standard of review in small claims cases is particularly deferential in order to preserve the speedy and informal process for small claims." *Heartland Crossing Found., Inc. v. Dotlich*, 976 N.E.2d 760, 762 (Ind. Ct. App. 2012). Indiana Trial Rule 52 provides that claims tried in a bench trial are reviewed pursuant to a clearly erroneous standard. *Vance v. Lozano*, 981 N.E.2d 554, 557-58 (Ind. Ct. App. 2012). Specifically, the appellate court cannot set aside the judgment unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witness. *Id*. Indeed, the small claims court is the sole judge of the evidence and the credibility of witnesses, and on appeal we neither reweigh the evidence nor reassess witness credibility. *Heartland*, 976 N.E.2d at 762.

[6] Here, based upon the evidence presented, the trial court entered judgment in favor of both parties on their respective claims. The court concluded that National breached its agreement with Huggins by admittedly failing to pay him for services rendered. The trial court concluded that Huggins also breached the

agreement, as well as his duty to National to provide services in a workmanlike manner. When a person contracts to perform services, failure to perform in a workmanlike manner may constitute both a breach of contract and the tort of negligence. *Wilson v. Palmer*, 452 N.E.2d 426, 429 (Ind. Ct. App. 1983). Our review of the record reveals that National provided ample evidence that Huggins failed to perform some of his packing duties in a workmanlike manner, and his assertions to the contrary are merely a request to reweigh that evidence, which we will not do.[2]

[7] "It is a well-established principle that damages are awarded to fairly and adequately compensate an injured party for [his] loss, and the proper measure of damages must be flexible enough to fit the circumstances." *Bokori v. Martinoski*, 70 N.E.3d 441, 444 (Ind. Ct. App. 2017) (quoting *Bader v. Johnson*, 732 N.E.2d 1212, 1220 (Ind. 2000)). We think it warrants acknowledging that the trial court had evidence before it that would have supported an offset damages award in favor of National and against Huggins.[3] However, the trial

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[2] Huggins makes numerous claims on appeal, without citation to the record or any legal authority, that the trial court failed to consider numerous general defenses (e.g., failure to mitigate) to National's negligence claim against him. These arguments are waived for failure to provide cogent argument. *See Zavodnik v. Harper*, 17 N.E.3d 259, 264-66 (Ind. 2014) (noting that pro se litigant is held to same standards as trained attorney; Appellate Rule 46(A)(8)(a) specifies that argument section of appellant's brief "must contain the contentions of the appellant on the issues presented, supported by cogent reasoning"; failure to comply with rule results in waiver of claims on appeal).

[3] Huggins asserts that the trial court erred in essentially making him indemnify National, in the absence of an express indemnity agreement, for amounts National was compelled to pay third parties due to his negligence. First, Huggins did not raise the indemnity issue at trial and therefore it is waived. *See Gaddis v. Stardust Hills Owners Ass'n, Inc.*, 804 N.E.2d 231, 236 (Ind. Ct. App. 2004) (issues not raised before small claims court are not preserved for appeal). Moreover, contrary to his assertion, an express indemnity agreement is not required, as it is well settled that a right to indemnity may be implied at common law. *Rotec, Div. of Orbitron, Inc. v. Murray Equip., Inc.*, 626 N.E.2d 533, 535 (Ind. Ct. App. 1993) ("In the absence of any express

court decided to enter a complete offset judgment, meaning that neither party took anything by way of their claims. We think this was reasonable under the circumstances. The judgment of the trial court is affirmed.

[8] Affirmed.

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

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contractual or statutory obligation to indemnify, such action will lie only where a party seeking indemnity is without actual fault but has been compelled to pay damages due to the wrongful conduct of another for which he is constructively liable.").