MEMORANDUM DECISION

ATTORNEY FOR APPELLANT

Edgardo Javier Martinez
Indianapolis, Indiana

APPELLEE PRO SE

Adaobi Alston
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Nica Auto and Fleet Repair,
Appellant-Defendant,

v.

Adaobi Alston,
Appellee-Plaintiff.

May 31, 2023

Court of Appeals Case No. 22A-SC-1472

Appeal from the Marion County Small Claims Court Wayne Township Division

The Honorable Gerald B. Coleman, Judge

Trial Court Cause No. 49K08-2203-SC-1213

Memorandum Decision by Judge Brown
Judges Bailey and Weissmann concur.

Brown, Judge.

[1] Nica Auto and Fleet Repair ("Nica") appeals the small claims court's judgment in favor of Adaobi Alston. We reverse.

Facts and Procedural History

[2] On April 13, 2022, Alston filed an amended Notice of Claim against Nica in small claims court alleging that she took her car to Nica for repair and was assured her car could be fixed after running a diagnosis, and Nica damaged some things in her car, told her it could not fix the car, and refused to accept responsibility for the damage.

[3] On May 18, 2022, the court held a bench trial.[1] Alston testified that she took her car to Nica because it "was bring[ing] out smoke and had a check engine light." Transcript Volume I at 5. She stated that they ran a diagnosis, took her to the back of the garage, showed her the items that "needed to be changed in the front," told her the cost would be $2,276, and informed her she should call in three days to pick up her car. *Id.* She testified that Nica eventually told her it could not fix her car and that she should take the car to the dealer and refunded her the money she had paid for the diagnosis. She stated that she noticed her

---

[1] The transcript contains the following "Reporter's Note":

> I was assigned the preparation of this transcript but was not the court reporter present in the courtroom on the day of the trial. Of the four microphones used only one was recording and [sic] audio. It has been very difficult to hear most of the testimony that occurred. I have used due diligence and listened to the audio recording multiple times to prepare this transcript. Unfortunately there are places where the audio was not able to be heard.

Transcript Volume I at 4 (some capitalization omitted).

dashboard "like where you play the music – I don't know, they punched it or something" and "[t]here was like ink all over the screen." *Id.* at 6.

[4] According to Alston's testimony, she went back inside "to speak to her" about the problem and she was told she should leave and that they would call her. *Id.* She stated:

> In his words that, okay, that's no problem. That we should go to the dealer and have the car diagnosed because they would have the right equipment to see what's really wrong with the car. And then I should come back to him. His insurance is going to take care of it.

Id. at 7.

[5] Alston had possession of the car from the time she picked it up in October 2021 until she took it to Mercedes-Benz of Indianapolis on December 15, 2021. The court admitted an invoice dated February 1, 2022, from Mercedes-Benz which listed certain services including: "CS Auxiliary Battery Malfunction is On," "Replace Radio Screen Unit (Audio Screen is Distorted)," and "Replace Engine Wiring Harness (Damaged Engine Wiring Harness)," which amounted to $7,502. Exhibits Volume at 5 (capitalization omitted). It also admitted photographs of Alston's vehicle and a receipt from Nica.

[6] Cynthia Palmer, an employee at Nica, testified that Alston paid for the diagnostic and said she would return "to get the repairs done." Transcript Volume I at 32. Ronald Jarquin, the owner of Nica testified that he gave Alston the diagnostics on October 6th, Alston took the car that day, and she

later returned on the 18th.[2] Specifically, the following exchange occurred on direct examination:

> Q Okay, so to give her that, the diagnostics on October 6th?
>
> A Yes, sir.
>
> Q And you tell her what's wrong with the car?
>
> A I told her then.
>
> Q Okay.
>
> A And I show her, I really show what's wrong with the car.
>
> Q Okay. Did you keep the car that day?
>
> A No, they took the car.
>
> Q They took the car and (inaudible). Okay. When did they call back? Do you remember?
>
> A I'm not sure but I think it was on the – (inaudible) I'm not sure. But we (indiscernible) when they brought it back.

Id. at 36-37. Jarquin stated that "three days after they (indiscernible) because they brought it in, we brought the car inside," they were busy, they did not do anything on the car, they tried to start the car, and they saw the "DEF light on." *Id.* at 37. He testified that he told Alston they could not proceed with the job because something else was wrong with the car, she should go to the

[2] The transcript states "Inaudible" when the owner of Nica was asked to state his name. Transcript Volume I at 35. On appeal, Nica asserts that Ronald Jarquin is its owner.

dealership, and "[w]e just use the computer," and "[w]e don't touch anything on that." *Id.* at 38. He also testified:

> And I tell him, okay, go ahead to the dealership, you know. And ask the dealership if – if I broke the car I'll pay for it. You know, we have insurance (indiscernible) and – and I pay for it. You know. But dealership got (indiscernible) we – we broke that radio. She was talking about like that. We opening and we do other stuff but – is no way she can – I hope she got a video with the – with the whole (indiscernible). There's no way, Judge you can help (sic) and work behind the radio. It's no way. It's no way.

Id. He also testified that he works on only exhaust problems. When asked if he "touch[ed] the car on the inside," he answered: "No, sir." *Id.* at 39. He also testified that Alston never reported to him that there was anything wrong with the radio or anything inside of the car. He further testified that Alston did not say anything about the inside of the car being wrong when she left. When asked if he remembered how many days after she came back complaining about the radio, he answered: "I can't tell, I can't remember." *Id.*

[7] Upon questioning by the court, Alston testified that Nica returned her diagnostic fee. The following exchange occurred between the court and Alston:

> Q Okay, so when did you first see that problem on the dashboard?
>
> A The day that they called – the day they called me to come get my car.
>
> Q When was that? When was that? Was it the 18th or before?

A I don't think that it was on the 18th. Because the 18th they call me to come get my –

Q Well, ma'am, I need to know – I need to know when that is. I'm trying to understand the timeline here. I can't just make up dates. I need to know exactly what happened and when. If you can't give me a date then you can't give me a date, but when did you first see the problem with the dashboard is what I'm trying to get at.

A I think on the 18th.

Q Okay, you think that it was on the 18th? So, that was when you went – you were going there on the 18th because they told you that you needed a battery. Is that why you went on the 18th?

A Yeah, they called me on the 18th to tell me I needed a battery.

Q Okay, so you were going down there to buy a battery. Okay?

A Sur? [sic]

Q You were going down there to –

A To replace the battery.

Q Okay.

A Yes.

Q But then it says here "cannot do repair until light is gone. Return diagnostic fee money. Customer is aware of why we cannot proceed with the job that was told".

A Sir, this was after they messed – they messed the car up. After they fix my car they put on these my car (sic).

Q Ma'am, I have no idea when it was but – cause the only document I have is this right here. I don't have anything else. And I have no reference to the – the dashboard or anything. All I have is – it said the light is on. Cannot be repaired. And I'm

> assuming – I heard your testimony that you didn't eventually take your vehicle to the Mercedes after this, right?
>
> A Yes, sir.

Id. at 42-44.

[8] Alston testified that she took the car to Mercedes and Mercedes fixed the part related to the smoke coming from her vehicle and told her the problem with the dashboard and the screen was related to "a mis wiring [sic] in [her] engine." *Id.* at 47. The court stated: "Okay. And I'm trying to show why – there would be no – based on the reason that you brought your car there, there would be no reason for them to wire anything. That's what I don't understand." *Id.*

[9] The following exchange occurred:

> THE COURT: Have you – did you deny telling [Alston] that you would get insurance to fix something in the vehicle. D[o] you remember?
>
> DEFENDANT: I say – I say the dealership right on there, say the (indiscernible) or something like that. You know. We pay for you know, it's not a problem. But not or problem (inaudible).

Id. at 48.

[10] Alston stated that, after she was told at Nica to take the car to the dealer, she went to her car, noticed the dashboard, and "spoke to the girl [who] told [her] that there was no problem as long as they [sic] problem came from them." *Id.*

at 49. Alston stated that "he said that there was no [p]roblem, that his insurance was going to take care of it." *Id.*

[11] The following exchange occurred:

> DEFENDANT[:] What she does – what she does – what she saying. You know, what I'm saying, you know, she (indiscernible) whatever I did – because I a hundred percent sure that we didn't touch the radio. We didn't do –
>
> THE COURT: Did you tell her that, at that day?
>
> DEFENDANT: Yes, I tell her then. Both of them.
>
> MS. ALSTON: He did say that.
>
> THE COURT: I don't think he said that. Because I don't think he said that because if you would have said that, you wouldn't then say it, check with Mercedes and we have insurance we will cover it. That's what doesn't make sense to me.
>
> DEFENDANT: Ask him, ask him.
>
> THE COURT: I will. What exactly –
>
> DEFENDANT: I don't tell them.
>
> THE COURT: What exactly did he tell you? Were you there?
>
> UNIDENTIFIED PERSON: Um hm.
>
> THE COURT: What did he tell you?
>
> * * * * *
>
> UNIDENTIFIED PERSON: The (indiscernible) that there is no problem. If you take the car to Mercedes and it is (indiscernible) or properly that not, you should bring it back. That the dash broke. There's insurance, we will fix that.

THE COURT: Yeah, that's what doesn't make any sense to me. That's what doesn't make any sense to me.

MS. ALSTON: Yeah, she was there when . . . he said that. She was there.

THE COURT: That's what doesn't make any sense to me. That's what doesn't make any sense. You know, the – the – you are an auto mechanic not me. You know, you are the expert. But, and so I am listening to what you are saying here, but – but you [were] just fixing a car that has a smoke problem and had the check engine light. And the customer is accusing you of damaging he [sic] radio. The first thing that you would say is ma'am there's no possible way that I could have damaged this radio. There's no possible way. And then he says take it to the Mercedes Benz dealer and – take it to the dealership and come back and I'll see if insurance will cover it. That doesn't make any sense.

DEFENDANT: That's words they say, I never say that. That's words they say.

THE COURT: But you brought up – say – go ahead, go ahead.

DEFENDANT: What I say is, if we damage something – if we damage something we cover – we have insurance.

THE COURT: Yes.

DEFENDANT: We damage something we cover it. You know. That's – that what we said – that's what I'm saying. We do the dealership, you know (sic).

THE COURT: Okay.

DEFENDANT: Go to the dealership, you know, if they say we damage the radio for this and we (indiscernible) the radio cause we don't (indiscernible) it. So, if they say we did it, okay we pay for it. We talk them [sic] you know, it's not like I say okay, we damage (indiscernible) No.

THE COURT: Okay.

DEFENDANT: I would try to say that way, you know.

[Defense Counsel]: That's what any responsible business would say. If we did something wrong, we'll take responsibility. I mean that – that – that's not an admission of guilt – (indiscernible).

THE COURT: Okay, well I'll –

DEFENDANT: I[f] they told me that I did something wrong and then I will take care of it.

[Defense Counsel]: - took responsibility.

THE COURT: Okay.

[Defense Counsel]: And that the only thing that they did was to collect the car to (indiscernible) the diagnostic. They haven't done – (inaudible) they didn't do anything inside of the vehicle. She had complained – (inaudible due to background noise). If we did something wrong we'll take care of it. (inaudible).

* * * * *

THE COURT: Okay, I – that's the reasonable argument and I can understand that. Somebody could say that that [sic] as a way of you know appeasing their customer. That listen if we did something wrong, we will pay for it. Take to the dealership. So that you know I could understand the defendant saying that. I guess the other thing is that you now, you are being adamant about the fact that there is no way that that could have happened. I guess that's another perspective but I'm not saying that – that, you know, different people maybe respond a little bit differently. I'm not – that response is not necessarily a – a bad response. And – and maybe I would expect you to be a little more adamite [sic] that there's no way that you could have cause[d] that problem. But – all right.

Id. at 50-54.

[12] The court indicated that it would take the matter under advisement and that Alston had the burden to prove that her version of events was more likely than not true. It also stated that "there's some evidence here that's missing" including the lack of dates on the photos of the dashboard and "I don't know exactly what Mercedes said that the defendant did to cause your radio or your dashboard to have this problem." *Id.* at 55. It also stated:

> And so, you are asking the Court to make some assumptions here. And because the Mercedes does not say exactly what the defendant did. And you know we can't – base judgments on assumptions. I am going to think about it. I'll think about it but – I'm just letting you know; those are the issues that – that make it difficult – more difficult for the Court to rule in your favor.

Id. at 56.

[13] On May 27, 2022, the court entered an order awarding Alston $7,502 plus costs. The order states:

> The Court finds that [Alston] has met her burden in showing that it is more likely than not that [Nica] damaged [her] vehicle during its repair. After [Alston] went to pick up her vehicle from [Nica], she noticed damage to her display console and start system. When she confronted [Nica] with the damage, [Nica] did not deny that it caused the damage, but instead stated that insurance would take care of any damage it caused. While the Court does not consider this a direct admission by [Nica], it is sufficient evidence for the Court to conclude that [Nica], with expertise in auto repair, believed that it was likely that [Nica]

> caused the damage in question during the repair of [Alston's] vehicle.
>
> [Nica] argues that it was not possible that it caused the damage in question given the type of repair that it performed. However, if [Nica] believed that it was not possible that it could have caused the damage in question given the type of repair that was done by [Nica], [Nica] could have easily stated this at the time [Alston] confronted [Nica]. Instead, [Nica] acknowledged the possibility that it caused the damage. Furthermore, there was no evidence presented that [Alston's] vehicle had the damage in question prior to the vehicle repair by [Nica]. Finally, the Mercedes-Benz dealer where [Alston] took her vehicle for repair identified the damage to [Alston's] vehicle that caused the problem with her console. The Court finds that it is more likely than not that the damage to [Alston's] vehicle occurred during [Nica's] repair. [Alston] is entitled to compensation related to the damages caused. Accordingly, the Court will award damages for the CS auxiliary battery malfunction, the screen unit and the engine wiring harness.

Appellant's Appendix Volume II at 5-6.

Discussion

[14] Nica asserts that the small claims court correctly noted at the trial that the burden of proof was on Alston and described Alston's evidence as lacking. It also asserts that it told Alston that it did not cause damage to her vehicle when she confronted them.

[15] Alston has not filed a brief in this appeal. "When the Appellee fails to submit an answer brief 'we need not undertake the burden of developing an argument on the [A]ppellee's behalf.'" *Front Row Motors, LLC v. Jones*, 5 N.E.3d 753, 758

(Ind. 2014) (quoting *Trinity Homes, LLC v. Fang*, 848 N.E.2d 1065, 1068 (Ind. 2006)). Without a supporting brief, this Court may "reverse the trial court's judgment if the appellant's brief presents a case of prima facie error . . . [which] in this context is defined as, 'at first sight, on first appearance, or on the face of it.'" *Id.* (quoting *Santana v. Santana*, 708 N.E.2d 886, 887 (Ind. Ct. App. 1999)).

[16] Each party to a small claims action has the burden of proof for a claim or counterclaim and is responsible for bringing evidence to court that is sufficient to sustain that burden. *Muldowney v. Lincoln Park, LLC*, 83 N.E.3d 130, 132 (Ind. Ct. App. 2017). Judgments in small claims actions are subject to review as prescribed by relevant Indiana rules and statutes.[3] Ind. Small Claims Rule 11(A); *Eagle Aircraft, Inc. v. Trojnar*, 983 N.E.2d 648, 657 (Ind. Ct. App. 2013). In the appellate review of claims tried by the bench without a jury, the reviewing court shall not 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 witnesses. Ind. Trial Rule 52(A); *Eagle Aircraft*, 983 N.E.2d at 657. In determining whether a judgment is clearly erroneous, the appellate tribunal does not reweigh the evidence or determine the credibility of witnesses but considers only the evidence that supports the judgment and the reasonable

[3] Ind. Code § 33-34-3-15, which "applies only to a judgment of the small claims court entered before July 1, 2018," provides "[a]ll appeals from judgments of the small claims court shall be taken to the circuit court or superior court of the county and tried de novo." Ind. Code § 33-34-3-15.1, which "applies only to a judgment of the small claims court entered after June 30, 2018," provides "[a]ll appeals from judgments of the small claims court shall be taken to the court of appeals in the same manner as a judgment from a circuit or superior court."

inferences to be drawn from that evidence. *Eagle Aircraft*, 983 N.E.2d at 657. A judgment in favor of a party having the burden of proof will be affirmed if the evidence was such that from it a reasonable trier of fact could conclude that the elements of the party's claim were established by a preponderance of evidence. *Id.*

[17] The transcript reveals that the small claims court made comments indicating that Alston had the burden of proof, it had concerns about her meeting that burden, and it could not make assumptions for her. However, it appears that the court did precisely that.

[18] The court's order indicated Nica's statement that insurance would take care of any damage it caused was not a "direct admission" but was sufficient evidence to conclude that Nica believed it was likely that it caused the damage in question during the repair. Appellant's Appendix Volume II at 5. However, at trial, Jarquin testified that he told Alston to take the car to the dealership and "*if* I broke the car I'll pay for it." Transcript Volume I at 38 (emphasis added). He stated he was "a hundred percent sure that we didn't touch the radio." *Id.* at 50. Further, when asked if he told Alston that, he answered: "Yes, I tell her then. Both of them." *Id.* Alston then stated: "He did say that." *Id.* Further, the court noted that some of the photos of the dashboard are undated and it noted Alston's uncertainty about dates. Alston had possession of the vehicle for a minimum of six weeks before taking it to Mercedes-Benz. There was no testimony from anyone at Mercedes-Benz as to the cause of the issues of which Alston complains. Proof is lacking as to the cause. In light of the record, we

conclude that Nica has demonstrated *prima facie* error in the small claims court's order.

[19] For the foregoing reasons, we reverse the small claims court.

[20] Reversed.

Bailey, J., and Weissmann, J., concur.