MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Bland's Wrecker Service,
Appellant-Defendant,

v.

George Savanhu,
Appellee-Plaintiff.

March 28, 2022

Court of Appeals Case No. 21A-SC-2262

Appeal from the Monroe Circuit Court

The Honorable Catherine B. Stafford, Judge

The Honorable Marc Kellams, Senior Judge/Judge Pro Tempore

Trial Court Cause No. 53C04-2105-SC-503

Bradford, Chief Judge.

Case Summary

[1] On February 12, 2021, George Savanhu's box truck became stuck on a hilly, snow-covered, gravel road. While he accepted towing services from Bland's Wrecker Service ("Bland's") and paid the invoiced amount, Savanhu subsequently initiated an action in the small claims court, claiming that he was entitled to a full refund of the amount he paid because Bland's had executed an unauthorized towing of his box truck. The small claims court found in Savanhu's favor. It also denied Bland's subsequent motion to correct error. This appeal followed. We affirm.

Facts and Procedural History

[2] On February 12, 2021, a truck owned by Kenworth Premiere ("the Kenworth truck") was stuck on a hill on a gravel road. A representative of Kenworth contacted Bland's and requested assistance. Rockford Studebaker, a "WreckMaster Certified Operator" with Bland's was dispatched to the location where the Kenworth truck was stuck. Ex. Vol. p. 7.

[3] When Studebaker arrived, a box truck driven by Savanhu was stuck on the road behind the Kenworth truck, "blocking the way in the road with heavy snow on the ground." Tr. Vol. II p. 9. Savanhu's box truck "was stuck, he could not retreat, he could not move forward." Tr. Vol. II p. 9. When Studebaker offered to tow Savanhu's box truck to the top of the hill, Savanhu agreed. Once Savanhu's box truck had been safely towed to the top of the hill, Studebaker

"asked [Savanhu] to stand by until [he] could … advise [Savanhu] on charges." Ex. Vol. p. 7. Savanhu did so and ultimately paid $1476.56 for the towing services.

[4] On May 20, 2021, Savanhu filed an action in the small claims court, alleging that Bland's had committed an "unauthorized towing" of his box truck and seeking a full refund of the towing charges. Appellant's App. Vol. II p. 12. The small claims court conducted an evidentiary hearing on July 28, 2021. At the conclusion of the hearing, the small claims court found as follows:

> I do find that Mr. Savanhu is not responsible for this cost. However, there is an additional party who probably should have been joined to this case by Bland's Wrecker Service or by Mr. Savanhu. And that's the original truck, the [Kenworth] truck. Their being stopped on the road meant Mr. Savanhu had to stop in very dangerous condition[s]. If they hadn't been stuck on the hill, he probably could have continued and with momentum it's possible he could have gotten to the top of the hill. We don't know. But at any rate, we do know that the [Kenworth] truck was blocking road and that's why Mr. Savanhu had to stop. And that there's no way that Bland's could have gotten to the [Kenworth] truck without moving his truck. I don't see any evidence besides the statement made by Mr. Studebaker that confirms that Mr. Savanhu was advised before the tow happened that there would be a charge for the tow. And that statement is made, of course, after the fact and there's nothing where there was an estimate made. I don't have any written estimate before his truck was towed. That's a hefty tow charge. Of course, it is for a truck, not a vehicle. A smaller vehicle, such as a car. I am going to find that Mr. Savanhu is due his money back and if Bland's wants to try to retrieve that money from [Kenworth], certainly they can file that case if they wish to.

Tr. Vol. II p. 15.

[5] Bland's filed a motion to correct error on August 27, 2021, arguing that under both the established authority relating to contracts and public policy concerns, Savanhu was not entitled to a refund and was liable for the costs associated with the service he had accepted and received. Specifically, Bland's argued that Savanhu was "the beneficiary of towing services and is liable for the portion of the services that were rendered to his vehicle and charged to him." Appellee's App. Vol. II p. 12. The small claims court held a hearing on Bland's motion to correct error on September 27, 2021. Two days later, on September 29, 2021, the small claims court issued an order denying Bland's motion.

Discussion and Decision

[6] At the outset, we note that this matter was litigated in the small claims court.

> Judgments rendered by a small claims court are subject to review as prescribed by relevant Indiana rules and statutes. The Indiana trial rules apply to small claims proceedings to the extent that they do not conflict with the small claims court rules. Pursuant to Trial Rule 52(A), the findings or judgments rendered by a small claims court are upheld unless they are clearly erroneous. Because small claims courts were designed to dispense justice efficiently by applying substantive law in an informal setting, this deferential standard of review is particularly appropriate. We consider the evidence most favorable to the judgment and all reasonable inferences to be drawn from that evidence. However, we still review issues of substantive law de novo.

N. Ind. Pub. Serv. Co. v. Josh's Lawn & Snow, LLC, 130 N.E.3d 1191, 1193 (Ind. Ct. App. 2019) (cleaned up). "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 inferences to be drawn from that evidence." *City of Dunkirk Water & Sewage Dep't v. Hall*, 657 N.E.2d 115, 116 (Ind. 1995). Furthermore, "[i]t is incumbent upon the party who bears the burden of proof to demonstrate that it is entitled to the recovery sought." *Berryhill v. Parkview Hosp.*, 962 N.E.2d 685, 689 (Ind. Ct. App. 2012).

[7] In addition, we note that Bland's is appealing from the small claims court's denial of its motion to correct error. "We will reverse a [small claims] court's grant or denial of a motion to correct error only for an abuse of discretion." *In re G.R.*, 863 N.E.2d 323, 325 (Ind. Ct. App. 2007). "An abuse of discretion occurs when the trial court's decision is against the logic and effect of the facts and circumstances before the court or if the court has misinterpreted the law." *Id.* at 325–26.

[8] In challenging the small claims court's order, Bland's argues that the only reasonable inference that can be taken from the evidence is that the parties intended to enter into a contract for services, *i.e.*, the towing of Savanhu's box truck in exchange for payment. However, although Savanhu agreed to have Bland's tow his box truck to the top of the hill, Savanhu testified that prior to the towing,

> [t]here was no charges discussed or agreed since I felt I was cooperating with them … [t]heir wish was to get the [the Kenworth truck] out of the snow.… I paid because I was so frustrated, you know, I waited for about 6 hours until I got time to go back.… I wasn't stuck. [The Kenworth truck] was stuck. But for [Bland's] to get to [the Kenworth truck], they had to come through me. And it was going to be very stupid of me to kind of, argue when it was obvious, there was no truck which could come, no cars could come from the other side nor come from my side.

Tr. Vol. II pp. 5–6.

[9] Bland's asserts that the evidence leads to one reasonable conclusion, *i.e.*, that the parties entered into a contract by which Savanhu agreed to pay Bland's in exchange for their services. "An offer, acceptance, plus consideration make up the basis for a contract. A mutual assent or a meeting of the minds on all essential elements or terms must exist in order to form a binding contract." *Homer v. Burman*, 743 N.E.2d 1144, 1146–47 (Ind. Ct. App. 2001) (cleaned up). In finding for Savanhu, the small claims court credited Savanhu's testimony indicating that (1) he did not believe that he had entered into a contract for services with Bland's but rather believed that he was cooperating with Bland's in their effort to provide services to Kenworth and (2) he paid not out of agreement but out of frustration. Bland's appellate challenge to the small claims court's determination amounts to a request to reweigh the evidence before the small claims court, which we will not do. *See City of Dunkirk*, 657 N.E.2d at 116.

[10] The judgment of the small claims court is affirmed.

Crone, J., and Tavitas, J., concur.