

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE



DIVISION ONE
FILED: 01/26/2012
RUTH A. WILLINGHAM,
CLERK
BY: DLL

BRITTIAN W. YOUNG,) 1 CA-CV 11-0338
)
Plaintiff/Appellant,) DEPARTMENT E
)
v.) MEMORANDUM DECISION
)
STATE OF ARIZONA,) (Not for Publication -
) (Rule 28, Arizona Rules of
Defendant/Appellee.) Civil Appellate Procedure)
)
_____)

Appeal from the Superior Court in Maricopa County

Cause No. CV 2009-093065

The Honorable John R. Ditsworth

AFFIRMED

Brittlian W. Young Phoenix
In Propria Persona

Swenson, Storer, Andrews & Frazelle, P.C. Phoenix
By Michael J. Frazelle
Amanda S. Chua
Attorneys for Appellee

G E M M I L L, Judge

¶1 Plaintiff/Appellant Brittian W. Young ("Young") appeals from the trial court's judgment against him entered after a bench trial. For the following reasons, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

¶2 In reviewing a judgment entered after a bench trial, the applicable standard of appellate review requires that we view the facts in the light most favorable to upholding the decision. *Double AA Builders, Ltd. v. Grand State Constr. L.L.C.*, 210 Ariz. 503, 506, ¶ 9, 114 P.3d 835, 838 (App. 2005).

¶3 Young took his recently purchased 1984 Ford Econoline van for an emissions inspection at a testing station operated by the Arizona Department of Environmental Quality ("ADEQ") for the State of Arizona.¹ After his vehicle failed the emissions test, Young drove the van to a nearby club and then drove it home.² Young estimated that his drive home took "anywhere from an hour and 40 minutes to two hours." The next day, while driving the van to an automotive repair shop, the hood of his car flew up, shattered the windshield and caused him to have a minor accident.

¹ Young testified at trial, but because we do not have a trial transcript, we rely on Young's deposition transcript, which was admitted at trial.

¶14 Young immediately drove to the vehicle inspection testing center and completed an incident report. That same day, the ADEQ inspector, Anthony Jackson, reviewed a videotape of his inspection of Young's vehicle.³ He then prepared a "Statement Form" stating that: "I walked to the front of the van and with both hands I push hard down on the hood to close it in place the hood went down and was locked into place." In his deposition, he testified that he recalled, and the videotape showed, that he slammed the hood of the van and it was closed at the end of the inspection.⁴

¶15 Regardless, the State of Arizona offered to pay Young the van's blue book value of \$2,100.00. Young declined the offer even though he had paid only \$700.00 to purchase the van a few weeks earlier. Instead, he filed a lawsuit against the State of Arizona for negligence seeking \$80,000,000.00.

³ While Young maintains that the defense lost the videotape, the appellate record does not reveal why the videotape was apparently not available at trial. If this subject was addressed at trial, we are compelled to assume, in the absence of a transcript, that the evidence supports the trial court's ruling. See ARCAP 11(b); *Baker v. Baker*, 183 Ariz. 70, 73, 900 P.2d 764, 767 (App. 1995); *Hardin v. Hardin*, 163 Ariz. 501, 502-03, 788 P.2d 1252, 1253-54 (App. 1990).

⁴ We refer to the inspector's deposition testimony because Young did not include the trial transcript as part of the record. The deposition was admitted at the trial.

¶16 Young agreed to submit his claim to arbitration and the arbitrator found for the State. Young appealed to Superior Court. After a bench trial at which Young and the ADEQ inspector testified and Young's exhibits were admitted into evidence, the trial court took the matter under advisement. Ruling in favor of the State of Arizona, the trial court held that Young had failed to meet his burden of proving that the State was negligent:

Too much time and too many miles had elapsed between the time of the accident and the time when the vehicle was last touched by the Defendant's employee. The Court finds that the testimony of the Inspector was credible. He had an independent recollection of the event since it spawned a complaint. He wrote a contemporaneous report. That report was completed after his review of the "daily video" of his inspection lane. The Court accepts his testimony that he shut the hood correctly.

Young timely appealed.

¶17 We have jurisdiction pursuant to Arizona Revised Statutes ("A.R.S.") section 12-2101(A)(1) (2011).⁵

⁵ The Arizona Legislature recently renumbered A.R.S. § 12-2101. See 2011 Ariz. Sess. Laws, ch. 304, § 1 (1st Reg. Sess.) (effective July 20, 2011). We cite the current versions of statutes when no material revisions have been enacted since the events in question.

DISCUSSION

¶8 On appeal from judgment entered after a bench trial, all reasonable inferences must be taken in favor of the prevailing party, and if there is reasonable evidence to support the judgment, it must be affirmed. *Garden Lakes Cmty. Ass'n, Inc. v. Madigan*, 204 Ariz. 238, 240, ¶ 9, 62 P.3d 983, 985 (App. 2003); *Dillig v. Fisher*, 142 Ariz. 47, 51, 688 P.2d 693, 697 (App. 1984).

¶9 Young argues that the evidence about the manner in which the emissions inspector closed the hood was conflicting. Young also argues that there are conflicting statements in exhibits 2 and 12 regarding the method used to close the hood, but does not articulate the perceived conflict between the exhibits, and we see none. In any event, we will not re-weigh the evidence; the credibility of witnesses and weight of the evidence are issues particularly within the province of the finder of fact. See *Estate of Reinen v. N. Ariz. Orthopedics, Ltd.*, 198 Ariz. 283, 287, ¶ 12, 9 P.3d 314, 318 (2000).

¶10 Young also argues that the evidence does not support the judgment. When a party argues that a trial court's ruling was not supported by the evidence, the party must provide on appeal a transcript of the evidentiary hearing. See ARCAP 11(b);

Retzke v. Larson, 166 Ariz. 446, 449, 803 P.2d 439, 442 (App. 1990). Young did not provide a trial transcript. Without a transcript, we must assume the evidence was sufficient to support the trial court's findings and conclusions. See, e.g., *Baker*, 183 Ariz. at 73, 900 P.2d at 767; *Hardin*, 163 Ariz. at 502-03, 788 P.2d at 1253-54. In addition to presuming that the transcript of the trial contains evidence to support the trial court's ruling, we also note that the appellate record reveals important facts supporting the trial court's judgment.⁶

¶11 In its ruling, the trial judge specifically stated that he found the ADEQ inspector to be a credible witness and "accept[ed] his testimony that he shut the hood correctly." This finding combined with Young's acknowledgment that he drove the vehicle from Phoenix to Mesa without incident for an hour and forty minutes or more after the emissions test was completed, led the trial court to conclude that "[t]oo much time and too many miles had elapsed between the time of the accident and the time when the vehicle was last touched by the Defendant's employee." On this record, we conclude that substantial evidence supports the trial court's ruling that the

⁶ Fourteen exhibits were admitted into evidence and reviewed by the trial court.

accident was not the result of negligence on the part of the ADEQ inspector or the State of Arizona.

CONCLUSION

¶12 For the foregoing reasons, we affirm the judgment.

_____/s/_____
JOHN C. GEMMILL, Judge

CONCURRING:

_____/s/_____
PATRICIA A. OROZCO, Presiding Judge

_____/s/_____
PHILIP HALL, Judge