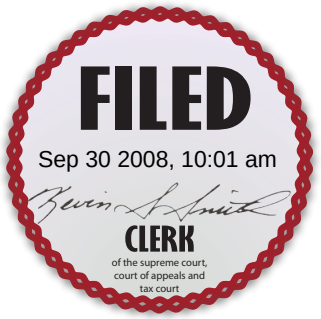

ATTORNEY FOR APPELLANT:

SAMUEL G. VAZANELLIS
Cohen & Thiros, PC
Merrillville, Indiana

IN THE
COURT OF APPEALS OF INDIANA

GUARANTEED MUFFLER AND BRAKE,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 45A03-0806-CV-270
	)	
ARTHUR M. ROSALES	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE LAKE COUNTY SUPERIOR COURT
The Honorable Julie Cantrell, Judge
Cause No. 45D09-0705-SC-1444

September 30, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

Guaranteed Muffler and Brake (Guaranteed) appeals the small claims court's judgment awarding Arthur M. Rosales monetary damages relating to repair work performed on Rosales's car by Guaranteed. The following issue is dispositive of the appeal: Did the trial court err in concluding that Guaranteed is liable to Rosales because it failed to warn him about the defective fuel rail in his engine and the immediate dangers inherent therein?

We affirm.

The facts favorable to the judgment are that Rosales purchased a used vehicle in October 2006. In March 2007, Rosales, who had some training as a mechanic, was working on his vehicle when the engine caught fire. He quickly extinguished it, but not before the fuel line melted. By that time, Rosales had removed the engine's fuel rail.[1] Because it was beyond his ability, Rosales engaged the services of Guaranteed to install new fuel lines. Anastasio Pilatos, who was Guaranteed's store manager, worked on Rosales's car. Rosales informed Pilatos that he only wanted the fuel lines replaced and did not want any other work performed on the car. Pilatos quoted a price of $300 for the specified work and Rosales accepted.

The car was towed to Guaranteed's shop. Rosales gave Pilatos the new fuel line that was to replace the old one, and left. After examining the engine, Pilatos telephoned Rosales and informed him that the fuel rail, which was still disconnected at that point, needed to be replaced. Rosales replied that he had his own fuel rail and he would install it himself at a later time. After Pilatos finished installing the new fuel line, he installed the old fuel rail in

[1] A fuel valve and fuel rail are components of the system that delivers fuel to the engine's carburetor. The fuel valve is part of the fuel rail. We note that the terms are used almost interchangeably at times in the appellate materials. For our purposes, however, it does not matter which of the two, or both, malfunctioned.

order to start the car and check his work. Pilatos started the engine, took it for a test drive, and then allowed the car to run for ten minutes. Guaranteed phoned Rosales and told him his car was ready. When Rosales arrived, he started his car and heard a knocking noise. Pilatos told him the longer the car ran, the better it got. Rosales was told that the car had an air intake leak that would affect his fuel mileage, but no other problems were mentioned. At that point, Rosales thought the old fuel rail worked fine and did not need to be replaced. He drove home.

After arriving home, Rosales went inside and took a shower. He then dressed, got into and started his car. By then it had been approximately one hour since he had picked up the car from Guaranteed. He backed out of the driveway, braked to a stop, and shifted the car into drive. When he did so, something in the front end of the car "clicked" and "the whole front end" of the car caught fire. *Transcript* at 12. By the time firefighters arrived on the scene and doused the fire, the car was a total loss.

Rosales sued Guaranteed in small claims court. The Notice of Claim read as follows: "A Buick Park Avenue was brought to the shop to repair fuel lines and they also put in the fuel rails. An hour later and [sic] the entire engine caught fire which eventually lead the car to being totaled." *Appellant's Appendix* at 52. Following a hearing, the trial court issued a judgment stating, in relevant part:

> Plaintiff purchased the vehicle from Defendant[2] in October 2006. During the winter of 2007, Plaintiff, who has mechanical training, was attempting to repair the fuel manifold when the engine caught fire. Although the fire was minor, it damaged the fuel lines. Plaintiff than [sic] purchased new fuel lines and brought the vehicle to Defendant to install them. During the repair, Defendant's employees realized that the fuel valve was faulty. They informed Plaintiff of this who then purchased a new fuel valve and brought it to Defendant. However, when Plaintiff arrived with the part, Defendant did not install it. Rather Plaintiff was told that the vehicle was drivable and that the longer it ran the better it would run. With regard to the fuel valve, the only caution given to Plaintiff was that the faulty fuel valve would result in poor gas mileage.
>
> Defendant drove the vehicle home. Within an hour when he attempted to drive it again, the vehicle caught fire and was totaled. The court now finds that the fire was caused by the faulty fuel valve.
>
> The court concludes that Defendant's failure to advise Plaintiff of potential problems with the fuel valve and the importance of immediately replacing it was the direct cause of the fire. As such the court is satisfied that the services provided by Defendant were not of workmanlike quality. Defendant is in breach of the parties' repair agreement. The court finds that Defendant is entitled to the cost of replacing his vehicle as well as the amount paid for the repair, which would exceed this court's jurisdictional limit. Accordingly, judgment will be capped at $6000.00.

Id. at 5. Guaranteed appeals the judgment against it.

As a preliminary matter, we note that Rosales has not filed an appellee's brief. We remind Rosales that we are not required to develop arguments on his behalf, and because he failed to file a brief we may reverse the trial court upon Guaranteed's prima facie showing of reversible error. *McKinney v. McKinney*, 820 N.E.2d 682 (Ind. Ct. App. 2005). In this context, "prima facie" is defined as "'at first sight, on first appearance, or on the face of it.'" *Burrell v. Lewis*, 743 N.E.2d 1207, 1209 (Ind. Ct. App. 2001) (quoting *Johnson County Rural Elec. Membership Corp. v. Burnell*, 484 N.E.2d 989, 991 (Ind. Ct. App. 1985)).

[2] This statement is incorrect, but the error is not germane to this appeal.

Because this case was tried before the bench in small claims court, we review for clear error. *Lowery v. Housing Auth. of City of Terre Haute*, 826 N.E.2d 685 (Ind. Ct. App. 2005). We will affirm a judgment in favor of a party having the burden of proof if the evidence was such that a reasonable trier of fact could conclude that the elements of the claim were established by a preponderance of the evidence. *Id*. We presume the trial court correctly applied the law and give due regard to the trial court's opportunity to judge the credibility of the witnesses. *Id*. We will not reweigh the evidence, and we will consider only the evidence and reasonable inferences therefrom that support the trial court's judgment. *Id*.

We note preliminarily that Rosales claimed, and the trial court determined, that Guaranteed did not warn him that the old fuel rail might leak and that it needed to be replaced immediately. Guaranteed's first argument essentially amounts to a claim that it did, in fact, advise Rosales that the fuel rail needed to be replaced, albeit not immediately. The trial court listened to and observed both of the principals as they presented their conflicting claims on that point. After doing so, the trial court determined that Pilatos failed to warn Rosales. Constrained by our standard of review, we will not revisit that issue. *See id*. Therefore, we will proceed on the assumption that Guaranteed did not warn Rosales.

Neither Rosales nor Guaranteed requested special findings of fact, although the court entered several findings gratuitously. In such case, we presume the trial court's ruling is based on findings supported by the evidence and we will sustain the judgment on any legal theory supported by the record. *Willie's Const. Co., Inc. v. Baker,* 596 N.E.2d 958 (Ind. Ct. App. 1992). In the context of a contract for work, there is an implied duty to do the work skillfully, carefully, and in a workmanlike manner. *Benge v. Miller,* 855 N.E.2d 716 (Ind. Ct.

App. 2006). Negligent failure to do so is both a breach of contract and a tort. *Id.* In this case, the trial court's judgment is based upon breach of contract. We conclude that the decision is affirmable under the theory of negligence.

To base a recovery upon a theory of negligence, a plaintiff must establish the following elements: (1) A duty on the part of the defendant to conform his conduct to a standard of care arising from his relationship with the plaintiff, (2) a failure on the part of the defendant to conform his conduct to the requisite standard of care required by the relationship, and (3) an injury to the plaintiff proximately caused by the breach. *Holt v. Quality Motor Sales, Inc.*, 776 N.E.2d 361 (Ind. Ct. App. 2002), *trans. denied*. The pivotal question in this case is whether Guaranteed had a duty to warn Rosales about the dangerous condition inherent in the fuel rail. Assuming there was such a duty, the elements of breach and causation are clearly supported by the evidence. We balance three factors in considering whether to impose a duty at common law: "'(1) the relationship between the parties, (2) the reasonable foreseeability of harm to the person injured, and (3) public policy concerns.'" *Id.* at 366 (quoting *Webb v. Jarvis*, 575 N.E.2d 992 (Ind. 1991)).

The duty of reasonable care is owed to those who might reasonably be foreseen as being subject to injury by the breach of that duty. *Webb v. Jarvis*, 575 N.E.2d 992. "Imposition of a duty is limited to those instances where a reasonably foreseeable victim is injured by a reasonably foreseeable harm." *Id.* at 997. In this case, Rosales was the owner and principal driver of the vehicle and as such was a reasonably foreseeable victim of any harm that might result from Guaranteed's failure to warn about the dangerous condition of the fuel rail.

We proceed now to a consideration of the reasonable foreseeability of the harm. The fuel rail delivers gasoline to the carburetor. If, as here, the fuel rail leaks fuel, one need not be steeped in the arcana of the mechanics of the internal combustion engine to appreciate the sort of harm that might result. In fact, the most likely harm that might follow is precisely what happened here: the misdirected fuel will ignite and the car will catch fire.

Finally, we believe that public policy mitigates strongly in favor of imposing a duty of care upon an auto repair shop to divulge the existence of a potentially dangerous condition in a vehicle to a customer who is about to drive away in that vehicle on public roads.

In balancing the three factors set out above, we conclude that Rosales's direct customer-client relationship with Guaranteed, the foreseeability that his car could catch fire if the fuel rail malfunctioned, and the foregoing public policy considerations all mitigate in favor of the imposition on Guaranteed of a duty to warn, a duty which the trial court found that Guaranteed failed to discharge. Accordingly, Guaranteed has failed to establish a prima facie case that the trial court's judgment was clearly erroneous.

Judgment affirmed.

DARDEN, J., and BARNES, J., concur