

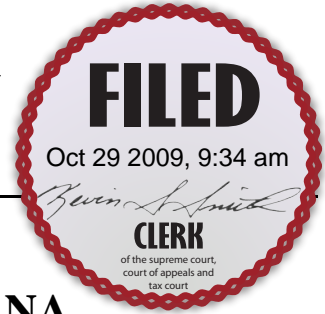
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ATTORNEYS FOR APPELLANT:

ROBERT W. HASH
LORI A. COATES
Indianapolis, Indiana

ATTORNEY FOR APPELLEE:

JILL DOGGETT
Vincennes, Indiana



**IN THE
COURT OF APPEALS OF INDIANA**

RICARDO AUSTIN,)
)
Appellant-Plaintiff,)
)
vs.)
)
PEKIN INSURANCE COMPANY, As Subrogee)
of Patrick Fulford,)
)
Appellee-Defendant.)

No. 77A01-0903-CV-150

APPEAL FROM THE SULLIVAN CIRCUIT COURT
The Honorable Ann Smith Mischler, Judge
Cause No. 77C01-0510-PL-00364

OCTOBER 29, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

SHARPNACK, Senior Judge

STATEMENT OF THE CASE

Plaintiff-Appellant Ricardo Austin appeals the damages awarded to Pekin Insurance Company, as subrogee of Patrick Fulford.

We reverse and remand with instructions.

ISSUE

Austin raises one issue for our review, which we restate as: Whether the trial court's damage award is clearly erroneous.

FACTS AND PROCEDURAL HISTORY

On April 13, 2005, a 2004 Jeep Wrangler, driven by Logan Fulford, was involved in a collision with a vehicle driven by Austin. Logan's father, Patrick, owned the Jeep, which was insured by Pekin Insurance Company ("Pekin").

After a bench trial, the court determined that Logan was 30 percent at fault and that Austin was 70 percent of fault. The trial court found that Pekin should be reimbursed for 70 percent of the \$2,456.58 it paid in medical bills and of the \$2,487.85 it arguably paid for damages sustained to the Wrangler. The trial court ordered that Austin pay Pekin \$3,461.03, which is 70 percent of the total damage amount of \$4,944.43.

On appeal, Austin argues that the trial court clearly erred in determining the amount of damages sustained to the Wrangler. Indeed, he argues that Pekin failed to establish that any damages were paid for damages to the vehicle. More specifically, he argues that there was no evidence to establish the cost or value of the vehicle or the property damage. Accordingly, Austin argues that the trial court's award should have been 70 percent of the medical damages, a total of \$1,719.61.

DISCUSSION AND DECISION

Indiana Trial Rule 52 provides that a court of review has the authority to set aside the trial court's judgment if it is clearly erroneous. Findings are clearly erroneous "only when the record contains no facts to support them either directly or by inference. In order to determine that a finding or conclusion is clearly erroneous, an appellate court's review of the evidence must leave it with the firm conviction that a mistake has been made." *Yanoff v. Muncy*, 688 N.E.2d 1259, 1262 (Ind. 1997).

We will affirm a damage award if it is within the scope of the evidence before the trial court. *Mayberry Café, Inc. v. Glenmark Construction Co.*, 879 N.E.2d 1162, 1170 (Ind. Ct. App. 2008), *trans. denied*. The trial court's award of damages will be reversed only if it is not within the scope of the evidence. *Id.*

Here, Austin concedes that Pekin paid the medical bills totaling \$2,456.58. With regard to other damages, Logan testified that the Jeep was approximately a year old, was in good repair, and was totaled in the accident. Without objection, Logan testified that Pekin paid "around \$2000" as "payment towards a new car." Tr. at 50. Logan's testimony is sufficient to support a judgment of \$2,000 paid by Pekin to replace a nearly new vehicle, but it is not specific enough to support the trial court's order of \$2,487.85. The trial court's order was clearly erroneous, as there was no evidence to support a judgment in excess of \$2,000.

CONCLUSION

We reverse and remand with instructions that the trial court enter judgment for \$3,119.61 (70 percent of \$4,456.58).

FRIEDLANDER, J., and NAJAM, J., concur.