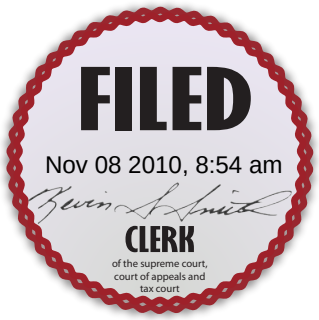

ATTORNEY FOR APPELLANT:

DENNIS J. STANTON
Schererville, Indiana

IN THE
COURT OF APPEALS OF INDIANA

NOBLE ADIGBLI,	)	
	)	
Appellant-Plaintiff,	)	
	)	
vs.	)	No. 45A05-0912-CV-698
	)	
DAVE NOVAK, d/b/a NOVAK & CO. LLC, d/b/a STEAMSHOWERS4LESS.COM,	)	
	)	
Appellees-Defendants.	)	

APPEAL FROM THE LAKE SUPERIOR COURT
The Honorable Julie N. Cantrell, Judge
Cause No. 45D09-0812-SC-4231

November 8, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

BROWN, Judge

Noble Adigbli appeals the trial court's judgment in favor of Dave Novak d/b/a Novak and Co. LLC d/b/a STEAMSHOWERS4LESS.COM ("Novak"). Adigbli raises two issues, which we consolidate and restate as whether the trial court erred in entering judgment for Novak. We affirm.[1]

The relevant facts follow.[2] Adigbli purchased a steam shower unit from Novak, who had an online business, for $2000 in November 2007. Adigbli planned to install the unit in a house which was under construction, and the unit was shipped through Roadway Express, Inc. After the unit was delivered, Adigbli discovered that some of the unit's parts were damaged and that other parts were missing. Adigbli eventually recovered the purchase price of the shower unit from Roadway Express, Inc.

Adigbli brought suit against Novak in the small claims division of the Lake Superior Court for other alleged expenses which he incurred including lender charges associated with the delay and labor charges to dismantle the unserviceable unit, install a replacement, and repair drywall. The small claims court held a hearing on Adigbli's

[1] We note that Novak did not file an appellee's brief. When an appellee fails to submit a brief, we need not undertake the burden of developing an argument on the appellee's behalf. A.S. v. T.H., 920 N.E.2d 803, 805 (Ind. Ct. App. 2010). Rather, we will reverse the trial court's judgment if the appellant's brief presents a case of *prima facie* error. Id. Adigbli needs to establish only *prima facie* error, which is error at first sight or appearance. Id.

[2] We note that the record does not include an appellant's appendix or a chronological case summary in connection with the proceedings below. We remind Adigbli that Indiana Appellate Rule 49(A) provides that "[t]he appellant shall file its Appendix with its appellant's brief" and Indiana Appellate Rule 50(A)(2) provides in part that "[t]he appellant's Appendix shall contain a table of contents and copies of the following documents, if they exist: (a) the chronological case summary for the trial court or Administrative Agency; . . . [and] (f) pleadings and other documents from the Clerk's Record in chronological order that are necessary for resolution of the issues raised on appeal . . . ."

claims on July 17, 2009. At the hearing, Adigbli argued that when the unit was delivered to the job site, it was discovered that the back panels and some other parts were scratched and that glass parts were missing. Novak testified that he had sent everything to Adigbli and that he was willing to send extra parts for an additional charge. On August 10, 2009, the court issued an order which provided in part:

> [Novak] is an internet company specializing in the sale of steam shower systems. [Adigbli] purchased a system to install in a house he had under construction. The unit was shipped through Roadway Express, Inc. and delivered to [Adigbli] on January 16, 2008. [Adigbli] was not present at the time of delivery however; workers on site accepted the shipment. On February 7, 2008, plumbers installing the system notified [Adigbli] of damage to the unit and missing parts. [Adigbli] notified [Novak] and told him of the problems. [Novak] explained he shipped all crates and placed the blame on Roadway for the damage and missing parts. However, he explained he could replace the missing parts for a fee of approximately $950.00. [Adigbli] declined and turned his attention to Roadway. Roadway, through their investigation, determined [Adigbli] had not notified them within a reasonable time, over three weeks after delivery, and initially refused to accept liability. However, through due diligence by [Adigbli], Roadway eventually honored his claim and reimbursed him the full purchase price of $2,000.00. [Adigbli] is now bringing suit against [Novak] for additional costs incurred due to removing the old system, cost of a new system, and delays in construction.
>
> [Novak] contends he sent all parts required to install the unit and they were not damaged. He further reiterated the responsibility was that of Roadway as evidenced by their ultimate acceptance of liability.
>
> It has long been held in Indiana, that the Plaintiff in a case, small claims or otherwise, has the burden of proof "by a fair preponderance of evidence." Kempf v. Himsel, 98 N.E.2d 200 (Ind. [Ct.] App. 1951).
>
> The Court finds [Adigbli] has failed to show the damage or missing parts were the fault of [Novak]. The fact that Roadway ultimately reimbursed [Adigbli] the entire amount requested indicates they accepted responsibility. The fact that the builders had to remove the old unit or that

> [Adigbli] purchased a more expensive unit to install resulting in delays and additional costs was not in any way attributable to [Novak].
>
> Therefore, the Judgment is for [Novak]. [Adigbli] takes nothing on his claim.

Appellant's Brief, Order at 2.

The issue is whether the trial court erred in entering judgment in favor of Novak. Judgments in small claims actions are "subject to review as prescribed by relevant Indiana rules and statutes." Ind. Small Claims Rule 11(A). Our standard of review is particularly deferential in small claims actions, where "the trial shall be informal, with the sole objective of dispensing speedy justice between the parties according to the rules of substantive law." Ind. Small Claims Rule 8(A); Mayflower Transit, Inc. v. Davenport, 714 N.E.2d 794, 797 (Ind. Ct. App. 1999). Nevertheless, the parties in a small claims court bear the same burdens of proof as they would in a regular civil action on the same issues. Ind. Small Claims Rule 4(A); Mayflower Transit, 714 N.E.2d at 797. While the method of proof may be informal, the relaxation of evidentiary rules is not the equivalent of relaxation of the burden of proof. Mayflower Transit, 714 N.E.2d at 797. It is incumbent upon the party who bears the burden of proof to demonstrate that it is entitled to the recovery sought. Id.

Adigbli's brief violates a number of provisions of Ind. Appellate Rule 46. We initially note that Adigbli does not cite to the record in his Statement of the Case. Ind. Appellate Rule 46(A)(5) governs the Statement of Case and provides in part that "[p]age references to the Record on Appeal or Appendix are required in accordance with Rule

22(C)."[3] Further, Adigbli does not include the applicable standard of review in his appellant's brief. Ind. Appellate Rule 46(A)(8)(b) states in part that "[t]he argument must include for each issue a concise statement of the applicable standard of review; this statement may appear in the discussion of each issue or under a separate heading placed before the discussion of the issues." In addition, Adigbli fails to cite to the record in the argument section of his brief. Ind. Appellate Rule 46(A)(8)(a) provides that "[e]ach contention must be supported by citations to the authorities, statutes, and the Appendix or parts of the Record on Appeal relied on, in accordance with Rule 22."

Ind. Appellate Rule 46(A)(8)(a) also provides that "[t]he argument must contain the contentions of the appellant on the issues presented, supported by cogent reasoning." The argument section of Adigbli's brief consists of one page and states in its entirety:

> The Magistrate's decision is contrary to the uncontradicted evidence. Adigbli met his burden of proof on all issues by a preponderance of the evidence which was uncontradicted, Kempf v. Himsel [98 N.E.2d 200 (Ind. Ct. App. 1951)].
>
> The uncontradicted evidence clearly establishes a breach of implied warranty merchantability that the good sold was suited for its intended particular purpose. The absence of glass panels makes it useless. Novak an expert by his own advertisement said he packed(inference)and sent everything ordered. Of course this is not true. Quaere [sic], how could glass panels disappear from sealed boxes never opened until the boxes arrived? Maybe the "Black Cloud" from "Lost" escaped and stole them!! The only logical conclusion is that the Novak never shipped them so he collect another $950.00. Lawson [v.] Hale, [902 N.E.2d 267 (Ind. Ct. App. 2009).]

[3] Ind. Appellate Rule 22(C) provides in part that "[a]ny factual statement shall be supported by a citation to the page where it appears in an Appendix, and if not contained in an Appendix, to the page it appears in the Transcript or exhibits, e.g., Appellant's App. p.5; Tr. p. 231-32."

> The warranty provisions must be liberally construed for the protection of the buyer. Frantz [v.] Cantrell, [711 N.E.2d 856 (Ind. Ct. App. 1990)].

Appellant's Brief at 5. In the summary of argument section of his brief, Adigbli states that "when opened at the destination the boxes did not contain the glass sides making the steam room useless and not merchantable for the particular purpose for which it was intended and a breach of Ind.Code 26-1-2-34[4]; giving rise to the undisputed and uncontradicted damages recoverable under IC 26-1-2-715." Id. at 4.[5] In the conclusion section of his brief, Adigbli states that "[t]he decision of the trial court should be reversed and an Order entered in favor of Adigbli in the amount of $7,309.00." Id. at 6. Adigbli presents no argument with regard to the relevancy in the present action of the statutory provisions to which he cites in the summary of argument section of his brief or the cases to which he cites in the argument section of his brief.

Based upon our review of Adigbli's brief, we conclude that Adigbli fails to put forth a cogent argument or cite to the record. As a result, the issues he raises on appeal are waived. See Loomis v. Ameritech Corp., 764 N.E.2d 658, 668 (Ind. Ct. App. 2002) (holding argument waived for failure to cite authority or provide cogent argument), reh'g denied, trans. denied; Thacker v. Wentzel, 797 N.E.2d 342, 345 (Ind. Ct. App. 2003) (holding that "we will not consider an appellant's assertion on appeal when he has not

[4] Ind. Code § 26-1-2-34 does not exist. It appears that Adigbli intended to cite to Ind. Code § 26-1-2-314 which relates to implied warranty, merchantability, and usage of trade.

[5] The "ARGUMENT-SUMMARY" section of Adigbli's brief is presented on page 4 of his brief, although that page was mistakenly labeled as page "5."

presented cogent argument supported by authority and references to the record as required by the rules").

For the foregoing reasons, we affirm the small claims court's judgment in favor of Novak.

Affirmed.

DARDEN, J., and BRADFORD, J., concur.