

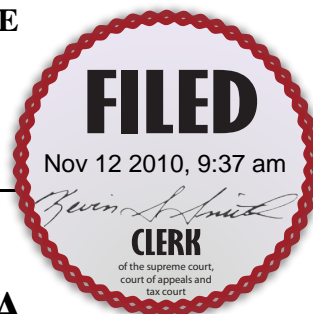
**Pursuant to Ind.Appellate Rule 65(D),
 this Memorandum Decision shall not be
 regarded as precedent or cited before
 any court except for the purpose of
 establishing the defense of res judicata,
 collateral estoppel, or the law of the case.**

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**IN THE
 COURT OF APPEALS OF INDIANA**

PAUL HAGEDORN,)
)
 Appellant-Defendant,)
)
 vs.)
)
 DENNIS TALBOOM,)
)
 Appellee-Plaintiff.)

No. 71A03-1002-SC-48

APPEAL FROM THE ST. JOSEPH SUPERIOR COURT
 SMALL CLAIMS DIVISION
 The Honorable William C. Whitman, Senior Judge
 Cause No. 71D01-0905-SC-4132

November 12, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

MAY, Judge

Dennis Talboom (Contractor) sued Paul Hagedorn (Homeowner) after Homeowner did not pay for materials and labor Contractor provided. Homeowner appears¹ to argue on appeal the trial court erred in determining Contractor's damages were \$2,593.00 plus costs. As the evidence supports that determination, we affirm.

FACTS AND PROCEDURAL HISTORY

The facts most favorable to the judgment are that Homeowner and Contractor agreed Contractor would build a brick walkway and a decorative brick wall around Homeowner's pool. Contractor gave Homeowner an estimate for the job, and Homeowner signed it to indicate his acceptance. After completing some of the wall, Contractor discovered an existing irrigation system was not buried deep enough to allow the wall to be built as planned. Homeowner would not move the sprinkler line so Contractor and Homeowner decided to move the wall further from the pool, which Contractor testified would increase

¹ Initially, we note that it has been particularly burdensome for us to determine what assertions of error Hagedorn is making on appeal, as his brief includes no Statement of the Issues. We remind counsel that he is obligated by the appellate rules to include in his brief a statement of the issues presented for review. Ind. Appellate Rule 46(A)(4).

Nothing is more important in an appeal than a concise statement of the issues upon which an appellant relies, and we must be able to discern the issues from an appellant's brief, without reference to the record. *Lakes and Rivers Transfer, a Div. of Jack Gray Transport, Inc. v. Rudolph Robinson Steel Co.*, 691 N.E.2d 1294, 1294 n.1 (Ind. Ct. App. 1998). In *Moore v. State*, 441 N.E.2d 220, 221-22 (Ind. Ct. App. 1982), we dismissed the appeal when the statement of the issues merely referred us to the issues that had been raised in the appellant's motion to correct error. We determined that such a statement of the issues did not amount to a good faith effort to comply with our rules, *id.* at 222, and we noted that while the strictness of our rules was sometimes "relaxed," that was true only in cases where we could clearly understand from the briefs the questions sought to be presented. *Id.* at 221.

We prefer to decide appeals on the merits when possible, and we choose to do so in this case. However, we remind counsel that the absence of a useful statement of the issues subjects an appeal to dismissal. For purposes of resolution of this case, we adopt Contractor's statement of the issues.

labor and material cost. He testified Homeowner told him, “I don’t care what you got to do, just get it done and do what you have to do.” (App. at 73.) Contractor testified he “informed [Homeowner] throughout the entire project that I was purchasing additional material which he wanted the job done,” but Homeowner indicated “he had no intention of paying me any more money.” (*Id.* at 79.)

Contractor offered an exhibit indicating he was owed \$4,897.23, which reflected “the most that [Homeowner] owes you for what you [Contractor] did less what you didn’t do.” (*Id.* at 75.) That exhibit indicated \$2,958.38 in “Additional costs – material and labor,” (Plaintiff’s Ex. 4), and indicates a \$1,819.00 credit to Homeowner for “undone or unused material and labor.” (*Id.*)

Contractor then offered a second exhibit that reflected the balance Contractor felt he was due if paid in cash, because the parties had agreed Homeowner would receive a 15% discount if he paid in cash. That exhibit indicated Homeowner owed \$3,334.77, because “additional costs - material and labor” were \$2,514.63 and credits were \$1,546.00 for “undone or unused material and labor.” (Plaintiff’s Ex. 5.)

DISCUSSION AND DECISION

Small claims judgments are “subject to review as prescribed by relevant Indiana rules and statutes.” *Hastetter v. Fetter Properties, LLC*, 873 N.E.2d 679, 682 (Ind. Ct. App. 2007) (quoting Ind. Small Claims Rule 11(A)). “In the absence of special findings, we review a trial court decision as a general judgment and, without reweighing evidence or considering

witness credibility, affirm if sustainable upon any theory consistent with the evidence.” *Baxendale v. Raich*, 878 N.E.2d 1252, 1257 (Ind. 2008). This deferential “clearly erroneous” standard of review is particularly important in small claims actions, where trials are designed to speedily dispense justice by applying substantive law between the parties in an informal setting. *Trinity Homes, LLC v. Fang*, 848 N.E.2d 1065, 1068 (Ind. 2006). We consider evidence in the light most favorable to the judgment, together with all reasonable inferences to be drawn therefrom. *Hastetter*, 873 N.E.2d at 682. We will reverse only if the evidence leads to but one conclusion and the trial court reached the opposite conclusion. *Id.* at 682-83.

The computation of damages is a matter within the sound discretion of the trial court. *Brandeis Mach. & Supply Co., LLC v. Capitol Crane Rental, Inc.*, 765 N.E.2d 173, 177 (Ind. Ct. App. 2002). So long as the amount awarded is supported by evidence in the record, no degree of mathematical certainty is required. *Columbus Med. Servs. Org., LLC v. Liberty Healthcare Corp.*, 911 N.E.2d 85, 95 (Ind. Ct. App. 2009).

The award to Contractor was within the scope of the evidence before the trial court. The trial court awarded Contractor \$2593.00 plus costs, but did not explain how it arrived at that amount. There was evidence the total unpaid amount in the contract was \$1,938.85, and Contractor bought additional materials worth \$1,223.96. The trial court could have reasonably determined Contractor was not entitled to recover the full amount for additional materials, and an award of half the amount to which Contractor testified would approximate

the court's award.² The amount of the judgment was therefore not an abuse of discretion, and we affirm.

Affirmed.

ROBB, J., and VAIDIK, J., concur.

² Homeowner asserts Contractor “admitted that he knew the sprinkler lines were in the vicinity of the proposed wall *before* he quoted the job but made no provision for them in his quote. Thereby, [Contractor] expressly accepted liability for any contingency.” (Br. and Argument of Appellant at 8-9) (emphasis in original). Homeowner directs us to nothing in the record demonstrating “express” acceptance of liability “for any contingency,” and we must decline that invitation to reweigh the evidence or rejudge the credibility of the witnesses. *See, e.g., In re T.S.*, 906 N.E.2d 801, 804 (Ind. 2009) (declining to reweigh evidence or assess credibility).