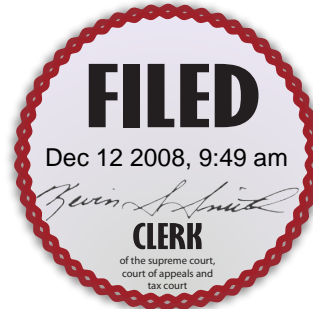


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



APPELLANTS PRO SE:

MARK FORD
ANGELA FORD
Vevay, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

MARK and ANGELA FORD,)
)
)
Appellants-Defendants,)
)
vs.) No. 78A05-0804-CV-243
)
GALS, INC.,)
)
Appellee-Plaintiff.)

APPEAL FROM THE SWITZERLAND SUPERIOR COURT
The Honorable John D. Mitchell, Judge
Cause No. 78D01-0709-SC-47

December 12, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

MAY, Judge

Mark and Angela Ford appeal the denial of their motion to correct error. They raise three issues on appeal, one of which we find dispositive: whether the trial court erred by failing to notify them they had a right to a jury trial. We reverse and remand.

FACTS AND PROCEDURAL HISTORY

GALS, Inc. sued the Fords, its tenants, in small claims court for unpaid rent and other damages. The Fords counterclaimed. The trial court found for GALS but set off the Fords' security deposit against the judgment. The Fords moved for a retrial on the ground they were not advised they had a right to a jury trial. The trial court denied the motion, finding the Fords "did not state a valid reason for the re-trial," (App. at 17), and did not file a demand for jury trial as required by statute.

DISCUSSION AND DECISION

GALS, Inc. filed no brief. In such a situation, we do not undertake the burden of developing arguments for the appellee. *State Farm Ins. v. Freeman*, 847 N.E.2d 1047, 1048 (Ind. Ct. App. 2006). Applying a less stringent standard of review with respect to showings of reversible error, we may reverse the lower court if the appellant can establish *prima facie* error. *Id.* *Prima facie* is defined in this context as "at first sight, on first appearance, or on the face of it." *Id.* The purpose of this rule is not to benefit the appellant. Rather, it is intended to relieve us of the burden of controverting the arguments advanced for reversal where that burden rests with the appellee. *Id.* Where an appellant is unable to meet that burden, we will affirm.

The Fords have shown *prima facie* error. Ind. Code § 33-29-2-7(a) states: “The filing of a claim on the small claims docket is considered a waiver of trial by jury.” However, “[n]otice of the defendant’s right to a jury trial, and the ten (10) day period in which to file for a jury trial, shall be clearly stated on the notice of claim or on an additional sheet to be served with the notice of claim on the defendant.” Ind. Code § 33-29-2-7(c). The notice of claim submitted for the GALS claim and the Fords’ counterclaim includes no such statement, nor does the record include any “additional sheet” that would have informed the Fords of their right to a jury trial.¹ The trial court therefore erred when it denied the Fords’ motion for a retrial.

We reverse the judgment for GALS and remand for a jury trial.²

Reversed and remanded.

ROBB, J., and NAJAM, J., concur.

¹ The Fords asserted in their motion to correct error that the notice of claim did not satisfy the statutory requirement. The trial court issued an Order on Motion to Correct Errors that included findings and conclusions, but that order did not address, or even acknowledge, the Fords’ claim they were not properly notified they had a right to a jury trial.

² The Fords must, of course, satisfy any additional requirements for a jury trial. Ind. Code § 33-30-5-2 provides each judge of a county court shall maintain an offenses and violations docket, a small claims docket for cases where the amount sought or value of the property sought to be recovered is six thousand dollars or less, a docket for certain landlord-tenant possessory actions, and a “plenary docket for all other civil cases.” Ind. Code § 33-29-2-7(d) provides that on the defendant’s deposit of seventy dollars in the small claims docket, the court must transfer the claim to the plenary docket, and the claim loses its status as a small claim. A party demanding a jury trial must also file an affidavit that states there are questions of fact requiring a trial by jury, specifies those questions of fact, and states the demand is in good faith. Ind. Code § 33-29-2-7(b).