MEMORANDUM DECISION

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.

ATTORNEY FOR APPELLANT

Y. Jason Huang
Indianapolis, Indiana

ATTORNEY FOR APPELLEE

Joshua Radicke
Bloomington, Indiana

IN THE

COURT OF APPEALS OF INDIANA

Zaiquiao Ye,
Appellant-Defendant,

v.

Zhenglin Li,
Appellee-Plaintiff

November 9, 2021

Court of Appeals Case No. 21A-SC-1248

Appeal from the Monroe Circuit Court

The Honorable Kara E. Krothe

Trial Court Cause No. 53C08-2011-SC-897

Tavitas, Judge.

Case Summary

[1] Zaiquiao Ye appeals a small claims decision in favor of Zhenglin Li resulting from a driving school car accident. Ye claims that the trial court committed error when it admitted screenshots of messages in Chinese exchanged between

the parties, and that, to the extent that the trial court relied on those messages, the trial court's findings were clearly erroneous. We conclude that Ye's decision to omit a transcript of the trial from her findings irretrievably hampers our review, and, accordingly, we affirm the trial court.

Issues

[2] Ye raises two issues, which we restate as:

I. Whether the trial court erred when it admitted screenshots purporting to be messages between the parties.

II. Whether the trial court's findings were clearly erroneous.

Facts

[3] Based on a meager record that lacks a transcript, we discern that Ye operated a vehicle belonging to Li, and that, as a result, the vehicle suffered damage. Ye claims, but the record does not support, that Ye was driving a vehicle provided by Li's car dealership for purposes of a driving lesson. According to Ye, Ye was driving with Li, and the car "ran against a curb and sustained minor damages." Appellant's Br. p. 6. On November 10, 2020, Li filed a notice of a small claims in the Monroe Circuit Court, and Li sought damages in the amount of $4,516.93 for the costs of repair to the vehicle, as well as court costs. Appellant's App. Vol. II p. 9. The trial court held a contested hearing on March 18, 2021. During the hearing, the trial court admitted screenshots of

messages allegedly exchanged between Ye and Li. The messages were written in Chinese.[1]

[4] The trial court found that the damages alleged by Li were a result of Ye's negligence and awarded to Li the amount requested. Ye filed a motion to correct error, which was denied. Ye then filed a notice of appeal. On July 7, 2021, Ye filed a "Notice to Court of Appeals," wherein Ye stated:

> 2. Appellant/Defendant filed Notice of Appeal in a timely manner on June 23, 2021.
>
> 3. Appellant/Defendant's true intent is to request the Trial Court Reporter to provide and certify Appellee/Plaintiff's exhibits D and E, which were admitted into evidence under objection, for the Court of Appeals.
>
> 4. *Appellant/Defendant is NOT requesting the Court Reporter to provide a transcript of the trial.*
>
> 5. Appellant/Defendant does not need a transcript of the trial for her Appeal. Appellant/Defendant, by Counsel, on June 28, 2021, had notified the Court Reporter of the Monroe Circuit Court 8 of her true intent that no Court transcript shall be requested.
>
> 6. The Court Reporter agreed to put the preparation of transcript on hold pending this filing.

---

[1] The record does not specify precisely which language or dialect was used in these messages, and, thus, we will adopt Appellant's description of the language as "Chinese" for simplicity's sake.

Appellant's July 7, 2021 filing (emphasis added). Ye now contends that the trial court's findings "are clearly erroneous as [they] relate to the trial court's admitting, over Appellant's objection, Exhibits D and E which consist of eleven (11) pages of screenshots of phone conversation between Appellant and Appellee . . . written in the Chinese language without any English translation." Appellant's Br. p. 5.

Analysis

[5] We first note that Li did not file an appellees' brief. "[W]here, as here, the appellees do not submit a brief on appeal, the appellate court need not develop an argument for the appellees but instead will 'reverse the trial court's judgment if the appellant's brief presents a case of prima facie error.'" *Salyer v. Washington Regular Baptist Church Cemetery*, 141 N.E.3d 384, 386 (Ind. 2020) (quoting *Front Row Motors, LLC v. Jones*, 5 N.E.3d 753, 758 (Ind. 2014)). "Prima facie error in this context means 'at first sight, on first appearance, or on the face of it.'" *Id*. This less stringent standard of review "relieves [us] of the burden of controverting arguments advanced in favor of reversal where that burden properly rests with the appellee." *Jenkins v. Jenkins*, 17 N.E.3d 350, 352 (Ind. Ct. App. 2014) (citing *Wright v. Wright*, 782 N.E.2d 363, 366 (Ind. Ct. App. 2002)). We are obligated, however, to correctly apply the law to the facts in the record in order to determine whether reversal is required. *Id*. (citing *Trinity Homes, LLC v. Fang*, 848 N.E.2d 1065, 1068 (Ind. 2006)).

I. Admission of Evidence

[6] Ye contends that the trial court erred when it admitted the screenshots of the conversations between the parties, written in Chinese, into evidence. We afford a trial court broad discretion in ruling on the admissibility of evidence. *Sims v. Pappas*, 73 N.E.3d 700, 705 (Ind. 2017). We will disturb the trial court's ruling only where the trial court has abused its discretion. *Id*. "An abuse of discretion occurs when the trial court's decision is clearly against the logic and effect of the facts and circumstances before it." *Id*.

[7] Appellant's brief is largely devoted to the practices of other jurisdictions with respect to evidence in other languages. We have rarely had occasion to address the admission of documents written in a foreign language without an accompanying English translation. In *White v. Weinhold*, 132 Ind. App. 656, 172 N.E.2d 219 (1961), the parties jointly submitted letters written entirely in German during the trial. On appeal, White contended that there was insufficient evidence to sustain the trial court's verdict, in part because the record contained no English translation of the letters. We found:

> the letters here involved are not thus intrinsically without probative value. They can be void of probative value only if they could not be translated or deciphered. We cannot presume, of course, that the trial judge possessed any knowledge of the German language or that he could translate the contents of said letters. But, since it is possible that said letters could be translated or deciphered, we cannot presume, in order to sustain appellant's contention, that the court was not in some manner advised of the exact contents and meaning of the letters. It cannot be supposed that appellant and appellees joined in the

> introduction of these letters pursuant to their stipulation without knowledge of their contents or with the intention of later attacking the decision of the court on the ground of the asserted lack of probative value. Under the circumstances here appearing, it certainly was the duty of the parties to make manifest to the trial judge the contents of the letters and if they failed to do so, neither would be in a position to now, on appeal, urge an evidentiary insufficiency thereof.

White, 132 Ind. App. at 664-65, 172 N.E.2d at 223.

[8] In this case, we do not presume that the trial court judge was fluent in Chinese and able to translate the messages. But neither can we presume that the trial court was not apprised of the meaning of those messages during the trial. Ye failed to provide a transcript of the trial, and, accordingly, has not provided us with the necessary information to determine whether the Chinese messages were translated into English during the trial.[2] We do not know what evidence was admitted, whether Ye objected to the admission of the evidence, or whether other evidence supports the trial court's order. Without knowing which facts and circumstances were before the trial court, we cannot conclude

---

[2] Appellate Rules 27 and 28 expressly require that the transcript be included in the record on appeal, and detail precisely how that inclusion is to occur. It is true that our Supreme Court has found that failure to include a transcript does not necessarily *waive* issues for appeal. *See Pabey v. Pastrick*, 816 N.E.2d 1138 (Ind. 2004), *reh'g denied*; *but see In re Walker*, 665 N.E.2d 586, 588 (Ind. 1996) (quoting *Campbell v. Criterion Group*, 605 N.E.2d 150, 160 (Ind. 1992)) (". . . failure to include a transcript works a waiver of any specifications of error which depend upon the evidence."). We do not dispose of this appeal, however, on grounds of waiver. Rather, we find that without the transcript, Ye cannot demonstrate on the merits of her raised issues that the trial court erred.

that the trial court's decision to admit the messages into evidence was against the logic and effect of those facts and circumstances.

II. Trial Court's Findings

[9] Before reviewing Ye's claim that the trial court's findings constituted clear error, we recall that the doctrine of "[i]nvited error, which is based on the legal principle of estoppel, forbids a party from taking 'advantage of an error that she commits, invites, or which is the natural consequence of her own neglect or misconduct.'" *Durden v. State*, 99 N.E.3d 645, 651 (Ind. 2018) (quoting *Wright v. State*, 828 N.E.2d 904, 907 (Ind. 2005) ("A party may not invite error, then later argue that the error supports reversal, because error invited by the complaining party is not reversible error.")).

[10]

> "Where a trial court enters findings sua sponte, the appellate court reviews issues covered by the findings with a two-tiered standard of review that asks whether the evidence supports the findings, and whether the findings support the judgment." *Steele-Giri v. Steele*, 51 N.E.3d 119, 123 (Ind. 2016). "A finding is clearly erroneous when there are no facts or inferences drawn therefrom which support it." *Perkinson v. Perkinson*, 989 N.E.2d 758, 761 (Ind. 2013). We neither reweigh the evidence nor judge the credibility of the witnesses. *Id*. We consider only the evidence and reasonable inferences drawn therefrom that support the findings. *Id*. We review the trial court's legal conclusions de novo. *Id*. "Any issue not covered by the findings is reviewed under the general judgment standard, meaning a reviewing court should affirm based on any legal theory supported by the evidence." *Steele-Giri*, 51 N.E.3d at 123-24.

Windy City Acquisitions, LLC v. Est. of Simms, 173 N.E.3d 675, 682 (Ind. Ct. App. 2021).

[11] The record does not reflect whether the trial court entered its findings sua sponte or at the request of the parties. More important is the fact that the record is devoid of the hearing transcript.[3] We are therefore unable to assess the trial court's findings. Indiana Appellate Rule 9(F)(5) explicitly requires:

> A designation of all portions of the Transcript necessary to present fairly and decide the issues on appeal. If the appellant intends to urge on appeal that a finding of fact or conclusion thereon is unsupported by the evidence or is contrary to the evidence, the Notice of Appeal shall request a Transcript of all the evidence.

[12] Because Ye failed to comply with this rule, we cannot know what evidence was presented to the trial court; whether the messages were the only pertinent evidence; whether the messages were translated or contextualized; whether their meaning was contested; or whether the trial court even considered the messages at all. To the extent that there was any error, Ye has failed to prove that error by neglecting to file a transcript, thereby neutralizing our ability to review the actions of the trial court.

---

[3] There is a procedure for circumstances in which no transcript is available. Here, a transcript was available, it was just not requested. Regardless, Ye does not appear to have complied with the protocol set forth in Appellate Rule 31 or Appellate Rule 33.

Conclusion

[13] Ye fails to meet her burden to establish that the trial court abused its discretion in admitting evidence and to show that the trial court's findings constituted clear error. We affirm.

[14] Affirmed.

Mathias, J., and Weissmann, J., concur.