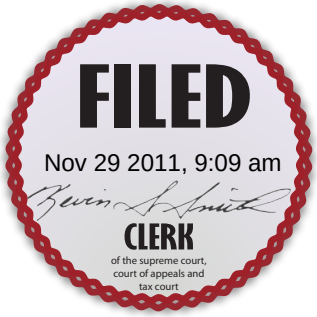

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LaPorte, Indiana

IN THE
COURT OF APPEALS OF INDIANA

McCOY TILE,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 46A03-1102-SC-102
	)	
MEYER GLASS & MIRROR,	)	
	)	
Appellee-Defendant,	)	
	)	
and	)	
	)	
ROBERT FRYER,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE LaPORTE SUPERIOR COURT
The Honorable Jennifer Koethe, Judge
Cause No. 46D03-1010-SC-2745

November 29, 2011

MEMORANDUM DECISION – NOT FOR PUBLICATION

RILEY, Judge

STATEMENT OF THE CASE

Appellant-Defendant, McCoy Tile (McCoy), appeals the trial court's judgment in favor of Appellee-Plaintiff, Robert Fryer (Fryer), with respect to Fryer's claim that McCoy improperly installed tile in Fryer's shower.

We affirm.

ISSUES

Fryer raises two issues on appeal, which we restate as the following:

(1) Whether the trial court erred in finding that McCoy was liable to Fryer for improperly installing tile in Fryer's shower; and

(2) Whether the trial court erred in granting judgment in favor of Fryer even though the warranty on the tile work in Fryer's shower had allegedly expired before a leak occurred.

FACTS AND PROCEDURAL HISTORY

In March or April of 2008, Fryer hired McCoy to install and tile a shower in his home in LaPorte, Indiana. A few weeks after McCoy installed the tile, Meyer Glass & Mirror (Meyer) installed a glass shower door. In June of 2010, the base of the shower began to leak. Fryer contacted both McCoy and Meyer to determine the cause of the leaky shower, but both parties denied liability. As a result, Fryer contacted tile experts who concluded that the leak was the result of McCoy's failure to properly wrap the curb on the bottom of the shower in order to prevent water from penetrating the curb.

On October 7, 2010, Fryer filed a Complaint against McCoy and Meyer, requesting damages for his costs to repair the shower. On January 19, 2011, the trial court held a bench trial. At trial, Brian McCoy, the owner of McCoy, testified that McCoy used the "Wedi" method of tile installation, for which wrapping the curb is not completely required. Brian McCoy also testified that when he went to Fryer's home to investigate the leak, he noticed something drilled through the curb that had interfered with the waterproofing of McCoy's original work. On January 27, 2011, the trial court entered findings and its judgment, finding McCoy liable and awarding Fryer $1,924.40 in damages.

McCoy now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

I. *Liability*

First, McCoy argues that the trial court erred in finding McCoy liable for Fryer's damages because Meyer's act of drilling holes in the curb of Fryer's shower to install a shower door destroyed the waterproofing of McCoy's tiling. The trial court found that McCoy should have reasonably expected that a glass shower door would be installed and screwed into the base of the tile. McCoy challenges this conclusion, arguing that it does not specialize in the installation of shower doors, so it could not have known where the shower door would be installed. McCoy also alleges that there are multiple methods of installing shower doors that could have prevented any perforation to the waterproofing system used in Fryer's shower.

Initially, we note that Appellees have not submitted briefs. Under such circumstances, an appellant may prevail by establishing a *prima facie* case of error, or "error at first sight." *Id.* This standard relieves this court of the burden of developing arguments for the appellee. *Id.*

Under Indiana Small Claims Rule 11(A), judgments in small claims actions are "subject to review as prescribed by relevant Indiana rules and statutes." *Lile v. Kiesel*, 871 N.E.2d 995, 997 (Ind. Ct. App. 2007). In the appellate review of claims tried by the bench without a jury, the reviewing court shall not set aside the judgment unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses. *Id.* A judgment is clearly erroneous when a review of the materials on appeal leaves us firmly convinced that a mistake has been made. *Id.* In our review, we presume that the trial court correctly applied the law, and we will not reweigh the evidence or determine the credibility of witnesses but will consider only the evidence that supports the judgment and the reasonable inferences to be drawn therefrom. *Id.* This deferential standard of review is particularly important in small claims actions, where trials are informal, with the sole objective of dispensing speedy justice between the parties according to the rules of substantive law. *Id.*

McCoy does not argue that Fryer failed to present evidence to support the trial court's findings; rather McCoy argues that we should give more weight to his evidence that his tiling would have been waterproof without Meyer's interference. In effect, McCoy asks us to reweigh the evidence on appeal, which we will not do. *See id.* When

we interpret the evidence in the light most favorable to the trial court, it did not err in finding McCoy liable for the leaking shower. Fryer presented the conclusions of multiple experts that the curb on the bottom of Fryer's shower was not properly wrapped and that this deficiency was the cause of the leak. This lack of wrapping was also indicated in the photographs admitted into evidence before the trial court. In addition, we cannot disagree with the trial court's conclusion that a company installing a shower should reasonably expect that a shower door will be installed and screwed into the base of the shower's tile. Accordingly, we find that the trial court did not err with respect to finding McCoy liable for the leaky shower.

II. *Warranty*

Next, McCoy argues that the trial court erred in awarding damages to Fryer because the two year warranty for McCoy's tile work had expired before the shower had started to leak. However, McCoy fails to support its claims with any evidence of a warranty, or the expiration of a warranty. In fact, at trial, Brian McCoy was questioned regarding whether or not a warranty existed, and he replied: "No, [it is] usually not in the contract or proposal[.] [It is] usually just a handshake. I stand by my word." (Transcript p. 23). Accordingly, we do not find merit to McCoy's argument that the shower's warranty had expired and conclude that the trial court did not err in awarding damages to Fryer.

CONCLUSION

Based on the foregoing, we hold that (1) the trial court did not err in finding McCoy liable for improperly installing tile in Fryer's shower; and (2) the trial court did not err in awarding Fryer damages for the leak in Fryer's shower even though the warranty on McCoy's work had allegedly expired.

Affirmed.

NAJAM, J. and MAY, J. concur