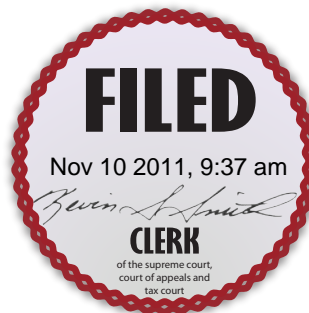


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



APPELLANTS PRO SE:

VASSIL MARINOV
VENETKA MARINOVA
West Lafayette, Indiana

IN THE
COURT OF APPEALS OF INDIANA

VASSIL MARINOV and)
VENETKA MARINOV,¹)

Appellants-Defendants,)

vs.)

No. 79A02-1104-SC-299

WAKE ROBIN ESTATES II)
HOMEOWNER'S ASSOCIATION, INC.)

Appellee-Plaintiff.)

APPEAL FROM TIPPECANOE SUPERIOR COURT
The Honorable Gregory J. Donat, Judge
Cause No. 79D04-1008-SC-3398

November 10, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

¹ The lower court's order lists "Marinov" as the surname for Venetka. The Appellant's brief, in contrast, indicates this surname is "Marinova."

BRADFORD, Judge

Appellants-Defendants Vassil Marinov and Venetka Marinov challenge the small claims court's judgment against them for homeowner's association dues and attorney's fees. Upon appeal, Appellants claim that they are not members of the homeowner's association and therefore do not owe dues. We affirm.

FACTS

According to evidence introduced by Appellee-Plaintiff Wake Robin Estates II Homeowner's Association, the Defendants own title to Lot 113 in Wake Robin Estates II Subdivision in Tippecanoe County, Indiana. The Defendants' property is governed by certain restrictive covenants which include the requirement of membership in any Association. Pursuant to the Association's bylaws, members are required to pay monthly dues, which the Defendants have failed to pay, totaling \$775 in back dues and late fees. The bylaws also provide that the Association is entitled to recover reasonable attorney's fees when seeking collection of unpaid dues.

In approximately January of 2011, the Association sought to collect the Defendants' unpaid dues. There is no dispute that the Defendants refused to pay. Following a January 26, 2011 small claims hearing, the court entered judgment against the Defendants in the amount of \$775 plus \$1000 in attorney's fees. In reaching this judgment, the court found that the Defendants were members of the Association and required to pay its dues.

DECISION

We review the facts determined in a bench trial with due regard given to the opportunity of the trial court to assess witness credibility under the clearly erroneous

standard. *Morton v. Ivacic*, 898 N.E.2d 1196, 1198-99 (Ind. 2008). 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 parties according to the rules of substantive law. *Id.* (quoting Ind. Small Claims Rule 8(A)).

The Association failed to submit an appellee’s brief in this case. Where appellees fail to file a brief on appeal, we may in our discretion reverse the lower court’s decision if the appellant makes a prima facie showing of reversible error. *McGill v. McGill*, 801 N.E.2d 1249, 1251 (Ind. Ct. App. 2004).

Here, however, the Defendants have failed to establish prima facie error. In essence, their claim is that they were not members of the Association. But the Defendants fail to cite to any record evidence in support of their position.² Indeed, the small claims court found to the contrary, and there was ample evidence to support this finding. Exhibits entered at the hearing included a warranty deed establishing the Defendants to be the owners of a lot in the Wake Robin Estates II Subdivision, and the restrictive covenants for that subdivision indicated required membership in any homeowner’s association. To the extent the Defendants argue such membership is unconstitutional, they provide no authority suggesting that this is so.

Finding no clear error, or a prima facie showing thereof, we affirm the judgment of the small claims court.

ROBB, C.J., and BARNES, J., concur.

² Defendants did not include any record citations or an Appellant’s Appendix to aid in our review. We acknowledge that they are Bulgarian and face a significant language barrier.