[Cite as *Plump v. Firestone Grismer Tire*, 2010-Ohio-6108.]

IN THE COURT OF APPEALS FOR MONTGOMERY COUNTY, OHIO

CLARENCE T. PLUMP	:	
Plaintiff-Appellant	:	C.A. CASE NO. 23863
v.	:	T.C. NO. 09CVI1499
FIRESTONE GRISMER TIRE	:	(Civil appeal from Municipal Court)
Defendant-Appellee	:	
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O P I N I O N

Rendered on the 10th day of December, 2010.

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CLARENCE T. PLUMP, 300 Blairwood Drive, Trotwood, Ohio 45426
Plaintiff-Appellant

FIRESTONE GRISMER TIRE, 840 E. Main Street, Trotwood, Ohio 45426
Defendant-Appellee

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FROELICH, J.

{¶ 1} Clarence T. Plump, pro se, appeals from a judgment of the Montgomery County Area One Court (nka Montgomery County Municipal Court), which found in favor of Firestone Grismer Tire ("Grismer") on Plump's small claims complaint. For the following reasons, the trial court's judgment will be affirmed.

{¶ 2} According to Plump's complaint, on October 23, 2009, Plump took his

2000 Saturn to Grismer for an oil change. Grismer later called Plump and advised him that, during their inspection, they found that the brakes needed to be changed, the fluids were "dirty," and the car needed a tune-up. Plump had recently changed the brakes himself, and he "knew" that the vehicle did not need a tune-up. Plump decided, however, to purchase four new tires for the Saturn.

{¶ 3} When Plump picked up his car the following day, he noticed that the vehicle "was not performing well" and there "was a sound in the engine." Plump called Grismer, which allegedly told him that it would charge a "diagnosis charge" if he brought the car back. Plump stated that he had to obtain a replacement engine for the Saturn. Plump sought damages of $2,238.31, apparently representing the cost of the engine replacement, plus interest at a rate of 7.5 percent.

{¶ 4} On December 3, 2009, Plump filed a small claims action against Grismer for alleged damage to his vehicle. A trial was scheduled for January 4, 2010. A transcript of the trial is not in the record. However, the record contains Plaintiff's Exhibit 1, an invoice from Adams Auto Service and Sales LLC for an engine replacement to Plump's 2000 Saturn. The invoice was dated November 18, 2009; the total cost on the invoice was $2,238.31.

{¶ 5} On January 26, 2010, the trial court found in favor of Grismer, stating: "This cause came on to be heard upon the claim of the Plaintiff and the evidence and after due consideration of all the evidence, the Court is of the opinion and so finds judgment for the Defendant. ***"

{¶ 6} Plump appeals from the trial court's judgment. Although Plump has not set forth any assignments of error as required by App.R. 16(A)(3), the essence

of his claim is that the trial court's judgment was against the manifest weight of the evidence.

{¶ 7} In a civil action, such as this one, Plump was required to prove his claim by a preponderance of the evidence. "Preponderance of the evidence simply means 'evidence which is of a greater weight or more convincing than the evidence which is offered in opposition to it.'" *In re Starks*, Darke App. No. 1646, 2005-Ohio-1912, ¶15, quoting Black's Law Dictionary (6th Ed.1998) 1182.

{¶ 8} The weight to be given the evidence and the credibility of the witnesses are primarily matters for the trier of fact (in this case, the trial judge) to determine. *In re Guardianship of Smith*, Clark App. No. 09 CA 69, 2010-Ohio-4528, ¶19, citing *State v. DeHass* (1967), 10 Ohio St.2d 230. The court of appeals has an obligation to presume that the findings of the trier of fact are correct. *State v. Wilson*, 113 Ohio St.3d 382, 2007-Ohio-2202, ¶24. "This presumption arises because the trial judge [or finder-of-fact] had an opportunity 'to view the witnesses and observe their demeanor, gestures and voice inflections, and use these observations in weighing the credibility of the proffered testimony.' *** 'A reviewing court should not reverse a decision simply because it holds a different opinion concerning the credibility of the witnesses and evidence submitted before the trial court. A finding of an error in law is a legitimate ground for reversal, but a difference of opinion on credibility of witnesses and evidence is not.'" (Internal citations omitted.) Id.

{¶ 9} A trial court's judgment will be reversed only if its factual findings are against the manifest weight of the evidence. *KeyBank Natl. Assn. v. Mazer Corp.*,

Montgomery App. No. 23483, 2010-Ohio-1508, ¶36. In the civil context, a judgment will not be reversed by a reviewing court as being against the manifest weight of the evidence if there is some competent, credible evidence going to all the essential elements of the case. *C.E. Morris Co. v. Foley Constr. Co.* (1978), 54 Ohio St.2d 279, syllabus; *State v. Wilson*, 113 Ohio St.3d 382, 2007-Ohio-2202, ¶24.

{¶ 10} In his brief, Plump argues that he went to Adam's Auto Service and Saturn of Dayton, both of which confirmed that the timing chain in the engine was bad due to a lack of oil in the bottom of the engine. Plump states that Adam's Auto Service had concluded that, after the oil was drained during the oil change, the car was started with no oil in the engine. Plump further states that Grismer acknowledged at trial that there had not been a need for an engine replacement when the car was inspected by Grismer.

{¶ 11} In response to Plump's appeal, Rob Lowery, the manager of the Grismer business located at 840 East Main Street in Trotwood, wrote that Grismer performed a free safety inspection as part of an oil change on Plump's vehicle on Saturday, October 23, 2009. Grismer recommended to Plump that all fluids be flushed because they were "very dirty" and the oil level was low on arrival. Grismer also recommended that the front brake pads and rotor be replaced (rear looked new), a tune-up because the car was not running well, a complete carbon and fuel system cleaning, a new fuel filter, and an alignment. The vehicle had 157,000 miles and the hoses and front brake pads and rotors were original equipment. Grismer changed the oil and put new tires on the vehicle.

{¶ 12} Lowery further responded that Plump had called on the following Monday to complain that the car "was running bad and what were we going to do about it." Lowery told Plump that Grismer would take car of it if "it was something we did," but that Grismer would charge a diagnostic fee if it were not something Grismer had caused. Plump came into the store and shouted that Grismer would have lied about the diagnosis and told Grismer that his mechanic blamed Grismer for the engine going bad. Lowery called the mechanic, who told Lowery that he did not blame Grismer. Lowery attributed the broken timing chain to Plump's neglect of his vehicle (low oil on arrival).

{¶ 13} Although both parties have presented their version of events in their briefs, the record does not contain a transcript of the trial. Absent a transcript of the hearing, we cannot speculate what the testimony was at trial and we are constrained to presume the regularity of the proceedings below unless the limited record for our review affirmatively demonstrates error. *Banks v. Regan*, Montgomery App. No. 21929, 2008-Ohio-188, ¶2; *State v. Like*, Montgomery App. No. 21991, 2008-Ohio-1873, ¶33.

{¶ 14} From the limited record before us, we do not know what evidence was before the trial court, with the exception of the Adam's Auto Service invoice (Plaintiff's Exhibit 1). As a result, we are unable to evaluate the trial court's determination that judgment in favor of Grismer was appropriate. Hence, we must presume the regularity of the proceedings below. In short, in the absence of the trial transcript, we cannot conclude the trial court's judgment was against the manifest weight of the evidence.

{¶ 15} The judgment of the trial court will be affirmed.

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DONOVAN, P.J. and OSOWIK, J., concur.

(Hon. Thomas J. Osowik, Sixth District Court of Appeals, sitting by assignment of the Chief Justice of the Supreme Court of Ohio).

Copies mailed to:

Clarence T. Plump
Firestone Grismer Tire
Hon. Adele M. Riley