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**IN THE  
COURT OF APPEALS OF INDIANA**

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ASSET ACCEPTANCE LLC, )  
 )  
 Appellant-Plaintiff, )  
 )  
 vs. ) No. 17A05-1011-CC-729  
 )  
 PHILLIP METZ, )  
 )  
 Appellee-Defendant. )

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APPEAL FROM THE DEKALB SUPERIOR COURT  
The Honorable Monte L. Brown, Judge  
Cause No. 17D02-0609-CC-259

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**June 9, 2011**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**CRONE, Judge**

## Case Summary

A judgment creditor failed to appear at a scheduled proceedings supplemental hearing, after which the trial court entered an order releasing the judgment as paid in full by the debtor, who appeared pro se. The judgment creditor filed a motion to correct error, which the trial court denied. The judgment creditor now appeals, arguing that the record does not support a finding that the judgment has been satisfied and that the trial court abused its discretion when it ordered the judgment released. Concluding that the judgment creditor has shown prima facie error, we reverse and remand.

## Facts and Procedural History

On October 26, 2006, Asset Acceptance LLC obtained the following judgment against Phillip Metz:

This cause of action coming to be heard on the pleadings, and each Defendant named above having been served with process, and having failed to serve responsive pleadings to the Complaint, and having failed to appear, it is adjudged by the Court that the Plaintiff shall have judgment against each Defendant named above **for the sum of \$2,981.36, plus attorney's fees in the amount of \$447.20, plus interest at the rate of 8% per annum from January 31, 2002, until the entry of judgment, and at 8% on the Judgment until satisfied; plus all costs expended by Plaintiff**, for all of which execution may be had.

Appellant's App. at 12 (emphasis added). In August 2010, Asset Acceptance filed a motion for proceedings supplemental in an attempt to enforce the judgment by obtaining a wage garnishment order against Metz. The trial court granted the motion for proceedings supplemental, and a hearing was scheduled for September 9, 2010. Both parties appeared on September 9, 2010, and a "hallway hearing" was held. *Id.* at 2. At that time, Metz, who

appeared pro se, requested that the matter be set for a contested hearing due to his belief that he had already satisfied the judgment in full.

A proceedings supplemental hearing was scheduled and subsequently held on September 29, 2010. Asset Acceptance failed to appear at the hearing due to an alleged calendaring error by counsel. Metz, again appearing pro se, presented evidence to the trial court that he had paid \$3200 toward the judgment. Based upon that evidence, the trial court concluded that Metz had paid the judgment in full and entered an order releasing the judgment. Thereafter, Asset Acceptance filed a motion to reconsider and/or correct error. Asset Acceptance indicated that although Metz had indeed paid \$3200 toward the judgment, the original judgment is for an amount in excess of those payments. The trial court denied Asset Acceptance's motion, and this appeal ensued.

### **Discussion and Decision**

We begin by noting that Metz did not file an appellee's brief. When an appellee does not submit a brief on appeal, we need not undertake the burden of developing an argument on his behalf. *Trinity Homes, LLC v. Fang*, 848 N.E.2d 1065, 1068 (Ind. 2006). Rather, we will reverse if the appellant's brief establishes a case of prima facie error. *Id.* Prima facie error in this context is error "at first sight, on first appearance, or on the face of it." *Id.* However, if the appellant is unable to meet this burden, we will affirm. *Id.*

Asset Acceptance appeals a proceedings supplemental order. Judgment creditors in Indiana have long relied on proceedings supplemental to help enforce judgments. *Rose v. Mercantile Nat'l Bank of Hammond*, 868 N.E.2d 772, 775 (Ind. 2007). Proceedings

supplemental are designed as a remedy where a party fails to pay a money judgment. *Prime Mortg. USA, Inc. v. Nichols*, 885 N.E.2d 628, 668 (Ind. Ct. App. 2008). The proceedings “are merely a continuation of the underlying claim, initiated under the same cause number for the sole purpose of enforcing a judgment.” *Id.* (citing *Illinois Founders Ins. Co. v. Horace Mann Ins. Co.*, 738 N.E.2d 705, 708 (Ind. Ct. App. 2000)).

As provided for in Indiana Trial Rule 69, proceedings supplemental are summary in nature because the claim has already been determined to be a justly owed debt reduced to judgment. *Lewis v. Rex Metal Craft, Inc.*, 831 N.E.2d 812, 820 (Ind. Ct. App. 2005). Thus, a trial court is vested with broad discretion in conducting proceedings supplemental. *Id.* A judgment rendered pursuant to proceedings supplemental is a general judgment that may not be disturbed unless the record fails to support any theory justifying the trial court’s decision. *Prime Mortg. USA*, 885 N.E.2d at 669. Accordingly, we will affirm the judgment on any legal theory supported by the evidence most favorable to the judgment, together with all reasonable inferences to be drawn therefrom. *Id.*

Here, Asset Acceptance has established prima facie error, as the record fails to support any theory justifying the trial court’s decision to release the judgment as paid in full. On its face, the original judgment was for the sum of \$2981.36 plus attorney’s fees in the amount of \$447.20, for a total stated amount of \$3428.56. The judgment further provides for the addition of 8% per annum interest to be calculated from January 31, 2002, until the entry of judgment, October 26, 2006, plus 8% interest on the judgment until satisfied. Asset Acceptance’s costs of execution were also to be included. The trial court’s conclusion that

Metz's payments totaling \$3200 satisfied the original judgment constitutes a clear error or mistake. We recognize and admonish Asset Acceptance that, had it appeared at the hearing, this mistake likely would have been avoided. Nevertheless, it is well settled that proceedings supplemental "are not appropriate vehicles for creating, enlarging or reducing liability." *Gallant Ins. Co. v. Wilkerson*, 720 N.E.2d 1223, 1229 (Ind. Ct. App. 1999). Therefore, we reverse the trial court's order releasing the judgment and remand for further proceedings consistent with this opinion.

Reversed and remanded.

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