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IN THE
COURT OF APPEALS OF INDIANA

SCHMIDT AUTOMOTIVE, INC.,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-0806-CV-562
	)	
COZETTA RUCKER,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Gary L. Miller, Judge
Cause No. 49D05-0703-PL-013025

SEPTEMBER 8, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

HOFFMAN, Senior Judge

Appellant-Defendant Schmidt Automotive, Inc. appeals the trial court's judgment in favor of Appellee-Plaintiff Cozetta Rucker.

We affirm.

Schmidt presents five issues for our review, which we restate and consolidate as:

I. Whether Conclusion of Law #1 is clearly erroneous.

II. Whether the trial court's judgment is clearly erroneous.

III. Whether the trial court erred by not making findings regarding Rucker's compliance with any conditions precedent in the engine warranty.

IV. Whether the trial court erred in awarding damages.

In June 2006, Rucker took her vehicle to Schmidt for repairs. Rucker informed Schmidt that the engine light was on and that the vehicle was "jerking" and "missing." Tr. at 13. Schmidt determined that the vehicle needed a new engine. Rucker authorized Schmidt to install a remanufactured engine into her vehicle. After installation of the remanufactured engine, Rucker returned the vehicle to Schmidt within five days with the same concerns that the engine light was on and that the vehicle was jerking and missing. Schmidt made repairs. Seven days later, Rucker again returned the vehicle to Schmidt with the same problems regarding the engine light, jerking, and missing. Schmidt again made repairs. Rucker's vehicle continued to miss and jerk, and the engine light was still on. Rucker did not take her vehicle back to Schmidt but instead took the vehicle to a dealership where they replaced the vehicle's fuel lines and fuel injectors. Approximately six months later, Rucker also had the vehicle's head gasket replaced.

Rucker filed suit against Schmidt in small claims court. The small claims court entered judgment in favor of Rucker, and Schmidt appealed. The case was redocketed in the Marion County Superior Court, and a bench trial was held on April 23, 2008. On May 27, 2008, the trial court issued its Findings of Fact and Conclusions of Law in support of its judgment in favor of Rucker in the amount of $4,485.87. Schmidt now appeals that judgment.

Prior to the commencement of trial, Schmidt requested the trial court to enter findings of fact and conclusions of law. When the trial court enters findings of fact and conclusions of law, we apply a two-tiered standard of review: first, we determine whether the evidence supports the findings and, second, whether the findings support the judgment. *S.C. Nestel, Inc. v. Future Const., Inc.*, 836 N.E.2d 445, 449 (Ind. Ct. App. 2005). The trial court's findings and conclusions will be set aside only if they are clearly erroneous. *Id*. "Findings of fact are clearly erroneous when the record lacks any evidence or reasonable inferences from the evidence to support them." *St. John Town Bd. v. Lambert*, 725 N.E.2d 507, 518 (Ind. Ct. App. 2000). A judgment is clearly erroneous when it is not supported by the findings of fact. *Id*. Put another way, a judgment is clearly erroneous when a review of the record leaves us firmly convinced that a mistake has been made. *S.C. Nestel, Inc.*, 836 N.E.2d at 449. In determining whether the findings or judgment are clearly erroneous, we consider only the evidence favorable to the judgment and all reasonable inferences flowing therefrom. *St. John*

Town Bd., 725 N.E.2d at 518. Moreover, we will not reweigh the evidence or assess witness credibility. *S.C. Nestel, Inc.*, 836 N.E.2d at 449.

Schmidt first contends that Conclusion of Law #1 is erroneous because it is neither supported by the trial court's findings nor supported by the evidence. The trial court's Conclusion of Law #1 states:

> 1. [Rucker] established by a preponderance of the evidence that [Schmidt] did not properly diagnose the problems to her vehicle and did not properly make repairs to her vehicle.

Appellant's Appendix at 7. In support of its assertion, Schmidt points to the testimony of John Bieszk, an employee of Schmidt who performed the work on Rucker's vehicle. Bieszk testified at trial that he recommended that Rucker replace the engine in her vehicle, that Rucker authorized Schmidt to put a remanufactured engine into her vehicle, and that he performed the work. Schmidt argues that Conclusion #1 is erroneous because there were no findings that the remanufactured engine was not needed, was not provided, or that the remanufactured engine had repair issues or defects.

The evidence reveals that the trial court is referring to Schmidt's failure to diagnose and repair the faulty fuel injectors in Rucker's vehicle and the inference flowing directly from this evidence that the new engine was not necessary. Bieszk testified that when Rucker brought her vehicle in she complained that the engine light was on and that the vehicle was jerking. Tr. at 54. Bieszk recommended that Rucker replace her engine. After the engine was replaced, Rucker returned to Schmidt within five days with exactly the same complaints that she had originally presented to Schmidt: the engine light was

on, and the vehicle was jerking and missing. Tr. at 15, 16 and 60. Bieszk testified that cylinder #6 was misfiring. Tr. at 60. He made some repairs, test drove the vehicle, and returned it to Rucker. Seven days later, Rucker again returned the vehicle to Schmidt with complaints that the engine light was on and that the engine was missing and jerking. Tr. at 17-18, 61 and 62. Bieszk testified that cylinder #3 was misfiring and that he removed two fuel injectors to flow test them. Tr. at 63. However, he was unable to perform the flow test on the fuel injectors in the shop's machine. Tr. at 63. He admitted that he could not determine whether the fuel injectors needed to be replaced but that being able to do flow testing on the injectors "would have been a great help." Tr. at 65, 77. Bieszk also testified that fuel injector problems can cause a vehicle to "jerk." Tr. at 70 and 79. Similarly, Gerald Kelly, service manager at Honda West, testified that problems with the fuel line or the fuel injectors would cause the engine light to come on and would cause the car to jerk. Tr. at 41-42. In addition, at trial an invoice from Honda West was admitted as an exhibit. The invoice showed that Honda West replaced all six fuel injectors on Rucker's vehicle on August 28, 2006. Thus, the evidence supports the findings, and the findings support Conclusion #1.

Furthermore, Schmidt claims that the court's Finding of Fact #22, which states "[t]he engine warranty did not cover the fuel injectors, but did cover the head gasket," somehow negates any claim that problems with the fuel injectors were related to work Schmidt performed on Rucker's vehicle. This argument is simply misplaced. The trial

court concluded that Schmidt failed to properly diagnose and repair the vehicle with regard to the fuel injectors, regardless of whether the repairs were covered by a warranty.

Next, Schmidt asserts that the judgment of the trial court is erroneous and specifically refers to Findings of Fact ## 4, 11, 12, 13, 14, 15, 17B, 20, and 22. These Findings provide as follows:

> 4. Schmidt Automotive ran a diagnostic test on the vehicle but did not have the equipment to properly check the fuel injectors on the engine.
>
> 11. Schmidt Automotive made more repairs to the vehicle and found that cylinder number three was misfiring on the engine, and attempted to test the fuel injectors but did not have the equipment to test the fuel injectors. They again returned the vehicle to Cozetta Rucker.
>
> 12. Schmidt Automotive did not inform Cozetta Rucker that they did not have the proper equipment to test the possible fuel injector problem.
>
> 13. Cozetta Rucker continued to experience problems with the vehicle, and on July 18 took the vehicle to Honda West for service and replacement.
>
> 14. Honda West replaced some of the connections between the engine and the fuel injectors.
>
> 15. Cozetta Rucker again brought the vehicle back to Honda West on August 29, 2006, at which time the fuel injectors were replaced and Honda West identified that the head gasket was leaking.
>
> 17. Cozetta Rucker incurred the following charges for the repair of her vehicle:
>
> A. *****;
> B. $1,245.23 to Honda West;
> C. ****.
>
> 20. Schmidt Automotive replaced two cylinders on the vehicle but did not have the proper equipment to test the fuel injectors.

> 22. The engine warranty did not cover the fuel injectors, but did cover the head gasket.

Appellant's App. at 4-6.

We again note that findings of fact are clearly erroneous when the record lacks any evidence or reasonable inferences from the evidence to support them. *St. John Town Bd.*, 725 N.E.2d at 518. A judgment is clearly erroneous when it is not supported by the findings of fact. *Id*. In determining whether the findings or judgment are clearly erroneous, we consider only the evidence favorable to the judgment and all reasonable inferences flowing therefrom. *Id*. We will not reweigh the evidence or assess witness credibility. *S.C. Nestel, Inc.*, 836 N.E.2d at 449.

As we stated in our discussion of the previous issue, there was evidence presented at trial regarding Schmidt's failure to diagnose and repair the faulty fuel injectors in Rucker's vehicle. The evidence and testimony, as set forth above, clearly supports Findings of Fact ##4, 11, and 15. Further, Michael Schmidt, general manager of Schmidt Automotive, testified that he did not advise Rucker that Schmidt could not check the fuel injectors. Tr. at 89. This evidence supports Finding of Fact #12.

Rucker testified that Schmidt installed the engine, and that she returned the vehicle to Schmidt two times within twelve days of the installation of the engine with the same problems that occurred prior to the installation of the engine. Tr. at 15-19. Rucker also testified that the vehicle continued to have the same problems, and she decided to take the

car to Honda West for repairs in July 2006. Tr. at 20-22; Exhibit 4. This uncontradicted evidence clearly supports the trial court's Finding of Fact #13.

Finding of Fact #14 is substantiated by the testimony of Gerald Kelly, service manager at Honda West, and Exhibit 4. Kelly testified that a fuel line was not making good contact with the motor because it had not been hooked up correctly, and Honda West replaced the fuel line. Tr. at 41. Exhibit 4, the invoice from Honda West, also shows this repair to Rucker's vehicle.

Furthermore, the trial court's Finding of Fact #17B is indisputably established by Exhibits 4 and 5, both of which are invoices from Honda West for repairs made to Rucker's vehicle. Both Exhibit 4 and Exhibit 5 were admitted into evidence at trial without objection by Schmidt.

With regard to Finding of Fact #20, a Schmidt invoice marked as Exhibit 3 notes the inability to run flow tests on the fuel injectors from Rucker's vehicle. Additionally, Bieszk testified that he was unable to test the fuel injectors from Rucker's vehicle in Schmidt's machine. Tr. at 63. However, Rucker neither presented evidence nor claimed that two cylinders were replaced. Thus, the evidence supports only the portion of the Finding that states, "Schmidt automotive [ ] did not have the proper equipment to test the fuel injectors." Appellant's App. at 6. The remainder of Finding of Fact #20 is not supported by the evidence; however, this error is harmless. A finding of fact is not prejudicial to a party unless it directly supports a conclusion. *In Re B.J.*, 879 N.E.2d 7, 20 (Ind. Ct. App. 2008), *trans. denied*. In this case, the court did not use the cylinder

replacement as a basis for any other findings or for any of its conclusions. Moreover, Schmidt does not allege any prejudice resulting from the court's error. Thus, the erroneous portion of Finding of Fact #20 was merely harmless surplusage that did not prejudice Schmidt and, consequently, is not grounds for reversal.

Finding of Fact #22 is supported by both evidentiary and testimonial evidence. The warranty for the remanufactured engine, Exhibit G, states that it does not cover the fuel injectors but does include "heads" within its coverage. *See* Exhibit G. In addition, Michael Schmidt testified that the fuel injectors are not covered by the engine warranty. Tr. at 85. In the same vein, Bieszk testified that fuel injectors are not part of the remanufactured engine and that the engine warranty does not cover fuel injectors. Tr. at 67-69. Gerald Kelly testified that a head gasket is part of a rebuilt engine. Tr. at 46.

Schmidt's entire argument on this issue is devoted to reweighing the evidence and judging the credibility of the witnesses. We will not entertain Schmidt's invitation to do so. Thus, contrary to Schmidt's claims, these Findings of Fact are all supported by the evidence, either directly or through reasonable inferences.

For its third claim of error, Schmidt argues that the trial court should have made findings as to Rucker's compliance with any conditions precedent set out in the engine warranty. Schmidt declares that "[s]uch findings were necessary as the basis of any judgment on a breach of the warranty." Appellant's Brief at 14. However, as we will discuss below, the trial court did not base its damage award on a breach of warranty.

Therefore, the trial court did not err by failing to make a finding as to whether Rucker fulfilled any conditions precedent of the warranty.

With regard to damages, Schmidt asserts that if the trial court found that it breached a contract, the trial court erred in the measure of the damages. Alternatively, Schmidt claims that the trial court erred in the measure of the damages if it found that Schmidt was in breach of the warranty.

The trial court neither based its award upon the breach of a contract nor upon the breach of a warranty. Rather, the trial court's damage award was based upon Schmidt's failure to properly diagnose and repair Rucker's vehicle. As the evidence discloses, Rucker took her vehicle to Schmidt with concerns that the engine light was on and the vehicle was jerking and missing. Schmidt replaced the engine, and Rucker continued to experience the same problems with the vehicle. Schmidt made further minor repairs, and Rucker still returned with the same concerns. Schmidt again made repairs, and Rucker continued to experience the same issues. After three unsuccessful attempts by Schmidt to diagnose and repair Rucker's vehicle, Rucker took her vehicle to a different repair shop that replaced the fuel injectors, which solved the problem. Thus, the trial court awarded $4,485.87 to Rucker, which is the amount Rucker paid to Schmidt for the remanufactured engine because the evidence shows that the new engine did not solve the problem that Rucker requested Schmidt to diagnose and repair. Moreover, the evidence creates the inference that the engine replacement was not necessary.

Based upon the foregoing discussion and decision, we conclude that the evidence supports the trial court's findings and the findings support the judgment.

Affirmed.

DARDEN, J., and RILEY, J., concur.