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# IN THE
# COURT OF APPEALS OF INDIANA

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|---|---|---|
| JEFFERY T. CURRY, | ) | |
| | ) | |
| Appellant, | ) | |
| | ) | |
| vs. | ) | No. 49A02-0902-CV-132 |
| | ) | |
| PERFECTION COLLISION, | ) | |
| | ) | |
| Appellee. | ) | |

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Thomas J. Carroll, Judge
Cause No. 49D06-0704-CC-17143

**October 23, 2009**

**MEMORANDUM DECISION – NOT FOR PUBLICATION**

**MATHIAS, Judge**

Perfection Collision sued Jeffery Curry ("Curry") in Marion Superior Court alleging that Curry failed to pay for repairs Perfection Collision made to his truck. Curry filed a counterclaim alleging that Perfection Collision negligently repaired the truck. A judgment was issued in favor of Perfection Collision in the amount of $794.21 and against Curry on his counterclaim. Curry appeals and argues that the trial court's judgment is not supported by the evidence and is contrary to Indiana law. We affirm.

**Facts and Procedural History**

Curry's Ford F-150 pickup truck was damaged in a collision on August 23, 2006. Curry's insurer, State Farm, prepared an estimate of the repairs. On or about September 25, 2006, Curry delivered the truck to Perfection Collision to make the necessary repairs. Perfection Collision later determined that additional repairs were required and State Farm approved the supplemental repairs. The truck was returned to Curry on October 10, 2006, with an unpaid balance due of $794.21. The balance represented the supplemental repairs Perfection Collision made to the truck. Curry received a check from State Farm for that amount, but refused to remit the check to Perfection Collision.

On October 30, 2006, Perfection Collision filed a complaint against Curry in Marion Small Claims Court seeking the unpaid balance of $794.21 for the supplemental repairs made to the truck. Curry filed a counterclaim against Perfection Collision alleging that the "repairs made were not performed properly and additional repairs are required." Appellant's App. p. 6. Curry requested an award of damages in the amount of $3920.00. On January 10, 2007, the Small Claims Court entered a judgment in favor of Perfection Collision in the amount of $794.21 plus costs, and found against Curry on his

counterclaim. In its order, the court stated that "Curry's concerns could easily be 'cured' if" Perfection Collision was allowed to do so, but Curry refuses to allow Perfection Collision the opportunity to cure." Appellant's App. p. 9.

Curry then filed an appeal of the small claims judgment in Marion Superior Court. Initially, the trial court granted default judgment in favor of Curry after Perfection Collision failed to replead as ordered by the court.[1] However, the trial court granted Perfection Collision's motion to set aside default judgment on July 27, 2007. A bench trial was held on Perfection Collision's complaint and Curry's counterclaim on January 5, 2009. The next day, the court issued its judgment in favor of Perfection Collision awarding $794.20 plus costs, and finding against Curry on his counterclaim. Curry now appeals. Additional facts will be provided as necessary.

**Discussion and Decision**

The trial court entered a general judgment in favor of Perfection Collision without findings of fact and conclusions of law. Thus, we will treat the judgment as a general judgment and will affirm it if it can be sustained upon any legal theory consistent with the evidence. Benge v. Miller, 855 N.E.2d 716, 719 (Ind. Ct. App. 2006). In reviewing the trial court's judgment, we consider only the evidence favorable to the judgment and all reasonable inferences flowing therefrom. Id. We will neither reweigh the evidence nor assess the credibility of the witnesses. Id.

[1] Rule 81.1C of the Marion Circuit and Superior Court Civil Division provides that a party may appeal from the judgment of a Marion County Small Claims Court to the Marion Superior Court within sixty days from the entry. When proceeding with such an appeal in the Marion Superior Court, the party must "replead[ ] his complaint in accordance with the Indiana Rules of Trial Procedure." Id.

Curry argues that Perfection Collision was hired to perform work on the truck, including replacing the hood, a fender, and a headlight, repairing a bumper, and painting the truck, and that Perfection Collision failed to make those repairs in a "workmanlike manner." Appellant's Br. at 10. Further, Curry claims that Perfection Collision breached its contract with Curry because it failed to perform the repairs in a workmanlike manner.[2] Curry also argues that Perfection Collision "engaged in oppressive and negligent conduct" because it promised the truck would be ready in four or five days, but kept the truck for approximately two weeks.

In support of his arguments, Curry cites the testimony from the hearing that Perfection Collision's work on the truck was deficient. However, James Evelyn ("Evelyn"), the owner of Perfection Collision testified the work to the truck was performed "competently and correctly." Tr. p. 13. After the truck repairs were complete, Curry did not contact Perfection Collision to express concern about the repairs. In fact, Curry told Evelyn that he would be paid for the supplemental repairs to the truck when Curry received the check from State Farm. Eventually, Curry emailed Evelyn and told Evelyn that he was not going to pay the $794 owed because Evelyn was supposed to do repairs that were not completed. Tr. p. 14. Evelyn also testified that Perfection Collision offers a one-year warranty on repairs, and if Curry had a problem with the repairs, he

[2] In support of his arguments, Curry relies on our court's decision in Aamco Transmission v. Air Sys., Inc., 459 N.E.2d 1215 (Ind. Ct. App. 1984). However, that case dealt with a claim of breach of warranty. Specifically, in that case, our court held that where "opportunity to cure" was not a term of Aamco's warranty, "[t]he trial court's judgment is correct in refusing to find an 'opportunity to cure' as a condition precedent to Air Systems' suit for breach of warranty." Id. at 1217. In his counterclaim, Curry did not allege breach of warranty, and at trial, only briefly mentioned the Aamco holding. Appellant's App. pp. 14-15, 96.

could have returned the truck for additional repair at no charge under that warranty. Tr. p. 18.

Greg Pease ("Pease"), who is an auto estimator for State Farm, saw the truck two to three weeks after Perfection Collision completed the repairs. He testified that he "noticed a couple issues with the alignment on the hood and then a crease in the bumper cover." Tr. p. 23. Further, he stated that both issues would have been "simple thing[s] to correct." Id. Pease testified that the rest of the repairs were satisfactory and done correctly, and Perfection Collision used new parts to repair the truck. Tr. pp. 24, 26.

Brian Dant ("Dant"), who is also an auto estimator for State Farm, prepared the original and supplemental estimates for the repairs to Curry's truck. Dant saw the truck when it was still at Perfection Collision after most of the work had been completed. Dant testified that Perfection Collision had completed the repairs correctly pursuant to his estimate. Tr. p. 30.

This evidence supports the trial court's judgment that Perfection Collision satisfactorily completed the repairs to Curry's truck pursuant to State Farm's original and supplemental estimates. Curry's argument to the contrary and his reliance on the testimony of his own witness that the repairs were deficient is merely a request to reweigh the evidence and the credibility of the witnesses, which our court will not do. See Benge, 855 N.E.2d 719.

Lastly, we address Curry's claim that Perfection Collision "engaged in oppressive and negligent conduct" because it promised the truck would be ready in four or five days, but kept the truck for approximately two weeks. In support of this argument, Curry relies

on Aamco Transmission v. Air Systems, Inc., 459 N.E.2d 1215 (Ind. Ct. App. 1984) and Art Hill Ford, Inc. v. Callendar, 423 N.E.2d 601 (Ind. 1981).

In Aamco Transmission, Aamco promised that the van would be repaired in one to two days and had advertised one day service in most cases. Aamco kept the van over two weeks and failed to properly repair it, which caused additional problems with the transmission.[3] 459 N.E.2d at 1218. In Art Hill, our supreme court held "[t]he period of six months used by Art Hill Ford to complete the repairs on the truck was greater than a 'reasonable' delay for repairs on a new vehicle." 423 N.E.2d at 604.

In this case, Perfection Collision had Curry's truck for approximately two weeks. The delay was caused in part by the additional repairs Perfection Collision discovered after it tore the damaged area down that were supplemental to the original estimate, and the wait for State Farm to approve the supplemental repairs. This is not an unusual or blameworthy delay. Moreover, Perfection Collision satisfactorily completed the repairs to Curry's truck after State Farm approved the additional repairs. We therefore conclude that Curry's argument is not supported by the evidence.

For all of these reasons, we conclude that the trial court's judgment in favor of Perfection Collision and against Curry on his counterclaim is supported by the evidence.

Affirmed.

DARDEN, J., and ROBB, J., concur.

[3] Our court noted that the plaintiff did not claim that Aamco's conduct arose to the level of intentional oppressive conduct warranting a punitive damage award. However, we concluded that the evidence supported the conclusion that Aamco breached its warranty of prompt service. Id. at 1218.