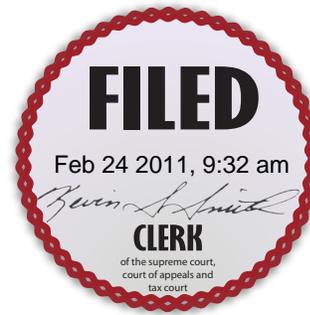


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



APPELLANT PRO SE:

**CURTIS L. WESTBROOK**  
Muncie, Indiana

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**IN THE  
COURT OF APPEALS OF INDIANA**

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CURTIS L. WESTBROOK, )

Appellant-Plaintiff, )

vs. )

No. 18A02-1004-SC-451

NYE'S WRECKER SERVICE, )

Appellee-Defendant. )

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APPEAL FROM THE DELAWARE CIRCUIT COURT  
The Honorable Peter D. Haviza, Special Judge  
Cause No. 18C04-0910-SC-2019

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**February 24, 2011**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**NAJAM, Judge**

## **STATEMENT OF THE CASE**

Curtis L. Westbrook, pro se, appeals the small claims court's judgment denying his claim against Nye's Wrecker Service ("Nye's" or "the towing company") arising from the impounding of Westbrook's vehicle. We consider a single issue on review, namely, whether the trial court erred when it denied Westbrook relief.

We affirm.

## **FACTS AND PROCEDURAL HISTORY**

In the early morning hours of May 23, 2009, Westbrook's twenty-two-year-old son, Todd, was driving Westbrook's 1989 Mercury Grand Marquis when he was pulled over and arrested by police on an outstanding warrant. The arresting officer allowed Todd to call someone to pick up the vehicle, and Todd telephoned his mother, Allison, who is Westbrook's former wife.<sup>1</sup> When the car had not been picked up later that day, the police asked Nye's to impound it. Nye's towed it to its storage lot on May 23.

On the day the car was impounded, Westbrook was suffering from a painful hernia. Westbrook testified that he had suffered from that condition for four or five days. And due to that condition, he had asked Allison to retrieve the car. Nye's would have released the car for \$100 on May 23. On May 24, Allison and her younger son drove to Nye's to pick up Westbrook's vehicle. En route to the storage lot, Allison telephoned Nye's to explain that she would be picking up the car at Westbrook's request. Nye's informed her that only the owner may pick up the car. As a result, Allison did not continue on to Nye's.

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<sup>1</sup> For clarity, we use first names to refer to Westbrook's son and former wife.

On June 9, Barbara Lacey of Nye's<sup>2</sup> sent a letter to Westbrook, the State Department of Revenue, and a financing company, stating that if the car were not picked up and the accrued towing and storage fees paid, the car would be sold at a public sale. In a July 15 letter to Lacey, Westbrook expressed his disagreement with the towing company's policy that only owners may retrieve towed vehicles. He also stated that he would "seek[] restitution" if Nye's acted "illegally" by selling Westbrook's car. Appellant's App. at 18. On July 16, Nye's attempted to sell Westbrook's car at a public sale, but no one purchased the car.

On July 24, Lacey sent Westbrook a letter, explaining the mechanic's lien sale process and referencing the relevant statute. She gave Westbrook until August 16 to retrieve the car, for a charge of \$1077.50, the amount at which the car had been offered for sale, to cover the towing, storage, and administrative costs. On August 12, Westbrook wrote to Nye's, again questioning the company's policy of releasing impounded vehicles only to owners and stating that he would pay \$100 to retrieve his car. On August 13, Lacey sent correspondence to Westbrook again explaining the reason for its policy of releasing cars only to owners, though she also stated that other arrangements could be made in "a few exceptions . . . , such as if the owner of the vehicle is not in the area, is incarcerated or is in the hospital." *Id.* at 21. On August 28, Westbrook filed his notice of claim.

Trial was held on Westbrook's claim on March 15, 2010. Westbrook appeared pro se, and Nye's appeared by Lacey, who is not an attorney. At the conclusion of the

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<sup>2</sup> Lacey works at Nye's and corresponded with Westbrook on behalf of Nye's. Unless otherwise indicated, Lacey's conduct was on behalf of Nye's, and our references to her pertain equally to Nye's.

evidentiary hearing, the court took the matter under advisement. And on March 25, the trial court made special findings and entered judgment denying recovery to Westbrook. Westbrook now appeals.<sup>3</sup>

## DISCUSSION AND DECISION

Westbrook appeals from judgment denying him relief in small claims court. Our standard of review in such cases is well settled:

Judgments in small claims actions are subject to review as prescribed by relevant Indiana rules and statutes. Under Indiana Trial Rule 52(A), the clearly erroneous standard applies to appellate review of facts determined in a bench trial with due regard given to the opportunity of the trial court to assess witness credibility. 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 the parties according to the rules of substantive law. But this deferential standard does not apply to the substantive rules of law, which are reviewed *de novo* just as they are in appeals from a court of general jurisdiction.

Trinity Homes, LLC v. Fang, 848 N.E.2d 1065, 1067-68 (Ind. 2006) (citations and quotations omitted).

We note that a small claims court cannot be required to make findings. Bowman v. Kitchel, 644 N.E.2d 878, 879 (Ind. 1995). Thus, we commend the trial court for its specific findings explaining its reasoning and decision. But, again, where a small claims court has entered findings *sua sponte* we “shall not set aside the findings or judgment unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of witnesses.” Ind. Trial Rule 52(A); see also Trinity Homes, LLC, 848 N.E.2d at 1067.

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<sup>3</sup> Nye’s has not filed an appellee’s brief. In such a case, we need not undertake the burden of developing arguments for Nye’s. See Splittorff v. Aigner, 908 N.E.2d 669, 671 n.2 (Ind. Ct. App. 2009), trans. denied. Applying a less stringent standard of review, we may reverse the trial court if the appellant establishes *prima facie* error. Id.

Further, Westbrook had the burden of proof at the trial court and, therefore, is appealing from a negative judgment and must, therefore, establish that the court's judgment is contrary to law. See M.K. Plastics Corp. v. Rossi, 838 N.E.2d 1068, 1074 (Ind. Ct. App. 2005). A judgment is contrary to law only if the evidence in the record, along with all reasonable inferences, is without conflict and leads unerringly to a conclusion opposite that reached by the court. Id. at 1074-1075. We review conclusions of law de novo and give no deference to the court's determinations about such questions. Id. at 1075.

The crux of Westbrook's claim is that the towing company's policy of returning impounded vehicles only to the vehicle's owner is illegal. Specifically, Westbrook claims that the towing company's policy of releasing impounded automobiles only to the automobile owner violates Indiana Code Section 9-17-5-1. We cannot agree.

Indiana Code Section 9-17-5-1 provides:

A person having possession of a certificate of title for a motor vehicle, semitrailer, or recreational vehicle because the person has a lien or an encumbrance on the motor vehicle, semitrailer, or recreational vehicle must deliver not more than ten (10) business days after receipt of the payment the satisfaction or discharge of the lien or encumbrance indicated upon the certificate of title to the person who:

- (1) is listed on the certificate of title as owner of the motor vehicle, semitrailer, or recreational vehicle; or
- (2) is acting as an agent of the owner and who holds power of attorney for the owner of the motor vehicle, semitrailer, or recreational vehicle.

(Emphasis added). Westbrook contends that "I.C. [§] 9-17-5-1 is a legislated right for motor vehicle owners" and "is the proverbial 'clear directives' [sic] information 'as to

how to release a vehicle[.]’ ” Appellant’s Brief at 23. Westbrook misunderstands the statute.

Indiana Code 9-17-5-1 applies to cases in which a lienholder has possession of the title to a debtor’s vehicle, not the vehicle itself, as security for the lien. In such cases, Section 9-17-5-1 sets the deadline for the lienholder to return the title to the owner after the owner has paid the lien in full. The statute does not contemplate circumstances where, as here, a lienholder has possession of the vehicle but not the certificate of title.

Westbrook does not allege, and the record does not show, that Nye’s has ever had possession of the title to Westbrook’s vehicle.<sup>4</sup> And Indiana Code Section 9-17-5-1 does not direct the return of impounded vehicles. Thus, Westbrook has not shown that the trial court erred when it denied his claim under Section 9-17-5-1.

Westbrook argues that the trial court did not accord proper weight to certain evidence, although he does not challenge the trial court’s findings of fact. But we may not reweigh the evidence on appeal. City of Dunkirk Water and Sewage Dep’t v. Hall, 657 N.E.2d 115, 116 (Ind. 1995). Thus, Westbrook’s argument that the trial court improperly weighed certain evidence must also fail.

In sum, Westbrook has not made a prima facie showing that the trial court erred when it determined that he was not entitled to relief under Indiana Code Section 9-17-5-1. Westbrook also has not challenged the trial court’s findings of fact except to argue that the trial court should have afforded more weight to certain evidence. Again, we

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<sup>4</sup> In fact, the record shows that even Westbrook did not, at the time of trial, have possession of the title to his car. However, the parties agree that Westbrook is the owner of the impounded Grand Marquis.

cannot reweigh the evidence on appeal. Id. Indeed, we conclude that the trial court correctly determined that that statute is inapplicable on these facts. As such, the trial court did not err when it determined that Westbrook was not entitled to \$6000 in damages.<sup>5</sup> We affirm the trial court's order.

Affirmed.

DARDEN, J., and BAILEY, J., concur.

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<sup>5</sup> The trial court found that Westbrook had requested only monetary damages, namely, \$6000, as relief and had not requested the return of his car. The transcript shows that Westbrook initially requested damages for the towing company's allegedly wrongful policy and conduct but later said he would take that amount plus return of his vehicle less the amount Nye's was charging for the return of the car.