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APPELLANT PRO SE:

OSCAR GUILLEN, SR.
Carlisle, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

OSCAR GUILLEN, SR.,)
)
Appellant-Plaintiff,)
)
vs.) No. 45A04-0608-CV-414
)
KERUSSO PROPERTIES,)
)
Appellee-Defendant.)

APPEAL FROM THE LAKE SUPERIOR COURT
The Honorable Mary Beth Bonaventura, Special Judge
Cause No. 45D07-0503-SC-351

June 28, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

MAY, Judge

Oscar Guillen, Sr., *pro se*, appeals the trial court's decision not to award him prejudgment interest. We affirm.

PROCEDURAL HISTORY

On April 13, 2006, the trial court entered the following order:

On 8-13-03, the Court entered judgment against [Kerusso Properties] in the amount of \$1488.02 inclusive of court costs. The Court now assesses 8% interest on said amount retroactive to 8-3-03 [sic]. Further, the court grants [Kerusso Properties] until 6-1-06 to pay said judgment. Therefore, the total interest amount is \$367.30 if paid on or about 6-1-06. The total amount to be paid into an escrow account in the Clerk's Office is \$1855.32. The Court orders said amount to be disbursed to [Guillen] upon his release from the Department of Corrections [sic] or to his Power of Attorney, Martha Guillen.

(Appellant's Case Summary at 6.)¹ The court subsequently denied Guillen's motion to correct error.

DISCUSSION AND DECISION

We begin by noting Kerusso Properties did not submit an appellee's brief. In such a situation, we do not undertake the burden of developing arguments for the appellee. Applying a less stringent standard of review with respect to showings of reversible error, we may reverse the lower court if the appellant can establish *prima facie* error. *AmRhein*

¹ Guillen failed to include in his brief a copy of the order being appealed. See Ind. Appellate Rule 46(A)(10) ("The brief shall include any written opinion, memorandum of decision or findings of facts and conclusions thereon relating to the issues raised on appeal."). Guillen also failed to include in his appendix a table of contents, the chronological case summary, and a verification of accuracy. See App. R. 50(A)(2). Although the appendix includes the order denying Guillen's motion to correct error, it does not include a copy of the trial court's prior order, a document arguably "necessary for resolution of the issues raised on appeal." App. R. 50(A)(2)(f). Neither did Guillen comply with App. R. 51(C) ("All pages of the Appendix shall be numbered at the bottom consecutively, without obscuring the Transcript page numbers, regardless of the number of volumes the Appendix requires."). Guillen's failure to comply with those rules hindered our review.

v. Eden, 779 N.E.2d 1197, 1205 (Ind. Ct. App. 2002). *Prima facie* is defined in this context as “at first sight, on first appearance, or on the face of it.” *Id.* at 1205-06. The purpose of this rule is not to benefit the appellant. Rather, it is intended to relieve us of the burden of controverting the arguments advanced for reversal where that burden rests with the appellee. *Id.* at 1206. Where an appellant is unable to meet that burden, we will affirm. *Id.*

Guillen argues he is entitled to prejudgment interest under Ind. Code § 34-51-4-7, which provides: “The court may award prejudgment interest as part of a judgment.” However, this statute applies only to a “civil action arising out of tortious conduct.” Ind. Code § 34-51-4-1. Guillen’s claim sounds in contract and not in tort. Guillen has failed to establish *prima facie* error and we accordingly affirm.²

² Guillen also asserts “the delay of time until judgement is payed off states a new claim of action, in which can be adjudicated in the pending case.” (Br. of Appellant at 2.) He argues he is entitled to supplemental damages:

However, due to this unlawful unprofessional & disrespectful two years & six months payment with interest “delay”, plus the prior two years uncalled for “delay” took it’s toll on this man Mr. Guillen’s physical & mental health in which amounts to and establishes to tangible & intangible “injeries” in which constitutes to compensatory damages that are [] “not” discretionary as this defendant for the last two years & a half has violated Mr. Guillen Sr’s “constitutional” rights of the “due process” of the law & of coarse my 14th Amendment constitutional right of life, liberty & property, as he did so knowingly did not appear with in this civil action confirming deliberate reckless & malice, indifference to Mr. Guillen’s rights to the effect this defendant’s out wrong desire to cause injury. As this unlawful actions constitutes “nominal” damages & in turn this man Mr. Guillen Sr. is also entitled to “punitive” damages. Undisputedly (*Id.* at 7-8) (formatting, spelling in original.) In support of this claim, Guillen tenders “into evidence physical documentary proof of my injury(s).” (*Id.* at 9.) Guillen appears to have presented a substantially similar claim to the trial court in his motion to correct error and the trial court found “the motion . . . does not state a claim upon which relief can be granted.” (App. at 8.)

A party may not raise an issue for the first time in a motion to correct error. *Van Winkle v. Nash*, 761 N.E.2d 856, 859 (Ind. Ct. App. 2002). Guillen’s failure to properly raise an issue before the trial court results in waiver of that issue on appeal. *See id.* We also note it is the role of the trial court, and not this

Affirmed.

BAILEY, J., and SHARPNACK, J., concur.

court, to receive evidence. *GKC Ind. Theatres, Inc. v. Elk Retail Investors, L.L.C.*, 764 N.E.2d 647, 651 (Ind. Ct. App. 2002).