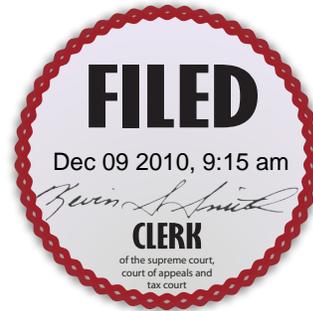


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



APPELLANT PRO SE:

**JEAN LUKES**  
Anderson, Indiana

---

**IN THE  
COURT OF APPEALS OF INDIANA**

---

JEAN LUKES, )  
 )  
 Appellant, )  
 )  
 vs. ) No. 48A02-0909-CV-837  
 )  
 LISA A. MOORE, )  
 )  
 Appellee. )

---

APPEAL FROM THE MADISON CIRCUIT COURT  
The Honorable Thomas Clem, Judge  
Cause No. 48E02-0809-SC-2367

---

**December 9, 2010**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**FRIEDLANDER, Judge**

Jean Lukes appeals a small-claims judgment in favor of Lisa A. Moore in an action against Lukes arising from home improvements performed by Moore. Lukes presents the following consolidated, restated issues for review:

1. Did the small claims court err in concluding that a valid contract existed between Moore and Lukes?
2. Did the small claims court err in entering judgment in favor of Moore?

We affirm.

Lukes solicited bids for remodeling work on her home. On June 28, 2008, after Moore did a walk-through with Lukes, she submitted an estimate for installing 32 sheets of drywall and patching 120 holes. The next day, Lukes phoned Moore and asked her to submit bids for painting as well. Moore responded that she would need to take measurements to do so, but Lukes asked her to guess and then make the necessary adjustments later. Moore estimated the job to be 2093 square feet at 60 cents per square foot. It later turned out that the actual square footage was 3341. Lukes called Moore on June 30 and accepted the bids. In a harbinger of things to come, Lukes asked Moore if she could do some other things for Lukes as well. In the next approximately two months, Lukes periodically asked Moore to do other jobs such as clean and paint awnings, scrape, fix, and paint windows, re-hang guttering, repair interior water damage, patch the roof, cut down a tree, and more. Lukes periodically paid sums of money to Moore. On some occasions the amount paid correlated to the entire cost of a particular job and on other occasions Lukes paid only a portion of the amount due for a particular job.

On July 17, Lukes traveled out of state. While she was gone, she and Moore spoke by phone about several other “things that were wrong with the house.” *Exhibit 1*<sup>1</sup> at 2. According to Moore, Lukes “just kept saying ‘keep track ... I don’t expect you to do all of this for nothing.’” *Id.* As time went on, Lukes asked Moore to do more and more repair work. On August 6, Moore requested payment of \$2054 for some of the extra work she had done and for the painting that had been completed at that point. Lukes paid Moore \$1000 in cash and gave her a check for \$1050. Moore left on a trip the next day and while she was gone, Lukes stopped payment on the check. Upon her return, Moore found more holes in the walls that had been made by electricians performing work in the house. According to Moore, “At this point, I had had it with this job. I just wanted to be done, paid, and out!” *Id.* at 3. On August 14, after speaking with Lukes, Moore prepared a new invoice on which she separated the cost of painting from the cost of doing the extra work that had not been a part of the original bid. By August 16, Moore had completed all painting and wall repairs. On August 18, Lukes paid Moore \$150.

On August 21, according to Moore:

**I told Jean that she had signed the invoice which plainly says “due upon completion”. She said she **didn’t have that much in her account**. At this point, we still weren’t asking for the total amount on the extras, and she wasn’t even willing to pay for the original agreement. **I wanted \$1261.20 (\$1186.20 painting balance and the other \$75.00 for extra holes). She waited until the bank closed****

---

<sup>1</sup> As we will explain in more detail below, Moore submitted Plaintiff’s Exhibit 1 at the trial in this matter. The exhibit was descriptively titled, “Dated Series Of Events.” In a January 5, 2010 order (*January 5 Order*), the small claims court advised the parties and this court that it had “adopted” this exhibit along with several others in formulating its decision and that it “accepts Plaintiff’s Exhibit #1 in its entirety as the best evidence in the case and such is the basis for the Court’s decision.” *January 5 Order*. This order is contained in the appellate materials, but is not a part of the appendix.

**and withdrew the maximum of \$300.00 from the ATM.** I told her to make arrangements by tomorrow for the **balance of \$961.20.** At that point, it got ugly. **She demanded that I finish the awnings and windows and the 9/12 pitch roof. I told her I was not doing that, so she refused payment.** That was not part of the painting bid. Those were all extras. Her Dad said, “Don’t pay them, or they won’t come back”. She was trying to force us to do work not included in order to get paid for work completed. She said I can’t just come in and pick and choose what I want to do. She said that wasn’t legal.

*Id.* at 3-4 (emphasis in original). On August 22, Moore again attempted to collect from Lukes. Lukes paid a portion of the balance, but not all. The final chapter in their relationship, dated August 23, was described by Moore as follows:

I had told Jean, when she was going through the receipts, that we had done so many extras that we hadn’t charged her for. And now, if she was going to short change me, then I would have to charge her for all for the extra work. At that point, she told me to quit whining ... she was sick and tired of hearing about all of the extra work I hadn’t been paid for. Although, the entire time she kept saying she didn’t expect me to work for nothing, **she now refused to pay the final bill and wasn’t answering my calls.** I ended up having to **mail her the final bill, and she proceeded to lock some of my tools in the garage.** Even when the **police were involved, she refused** to give them to me.

*Id.* at 4 (emphasis in original).

On September 4, 2008, Moore filed a small claims action against Lukes for \$4702, including “the \$100 balance from original bid and also additional work completed that was not included in the original bid.” *Appellant’s Appendix* at A1. Lukes filed a \$1000 counter-claim for “poor workmanship; incomplete work (that they were paid for); wasted materials; damage to paint compressor; compensatory and or punitive damages[.]” *Id.* at A2.

We note that Moore did not file an appellee’s brief. When an appellee fails to submit a brief, we apply a less stringent standard of review with respect to the showing necessary to

establish reversible error. *Zoller v. Zoller*, 858 N.E.2d 124 (Ind. Ct. App. 2006). In such cases, we may reverse if the appellant establishes prima facie error, which is an error at first sight, on first appearance, or on the face of it. *Id.* Moreover, we will not undertake the burden of developing legal arguments on the appellee's behalf. *Id.*

1.

Citing several theories, Lukes contends the small claims court erred in concluding that a valid contract existed between her and Moore. She claims the purported written contract in this case lacked the requisite agreement on essential terms and she claims she did not sign the contract. She also claims the contract (i.e., Moore's bid) violated Indiana Home Improvements Contract Act, Ind. Code Ann. § 24-5-11-1 through -14 (West, Westlaw through 2010 2nd Regular Sess.) in several ways and therefore was not enforceable. Finally, she claims that even if a contract existed it was unconscionable and therefore not enforceable for that reason.

We cannot find in the transcript or appendix any indication that Lukes presented these claims to the small claims court. Generally, issues not presented to a small claims court are not preserved for appeal. *Gaddis v. Stardust Hills Owners Ass'n, Inc.*, 804 N.E.2d 231 (Ind. Ct. App. 2004). ““This rule exists because trial courts have the authority to hear and weigh the evidence, to judge the credibility of witnesses, to apply the law to the facts found, and to decide questions raised by the parties.”” *Newland Resources, LLC v. Branham Corp.*, 918 N.E.2d 763, 770 (Ind. Ct. App. 2009) (quoting *GKC Ind. Theatres, Inc. v. Elk Retail Investors, LLC*, 764 N.E.2d 647, 650 (Ind. Ct. App. 2002)). In part, it ““protects the integrity

of the trial court; it cannot be found to have erred as to an issue or argument that it never had an opportunity to consider.” *Id.* (quoting *GKC Ind. Theatres, Inc. v. Elk Retail Investors, LLC*, 764 N.E.2d at 650). We note in this regard that Lukes contends Moore “*stated* that she did not actually have a contract for the painting.” *Appellant’s Brief* at 6 (emphasis in original). We have reviewed the portion of the transcript Lukes designates in support of this assertion and can find no statement on Moore’s part to the effect that there was no written contract with respect to the painting. Even if there were such a statement, this would not constitute the assertion of a defense to Moore’s claim by Lukes that no contract existed such as is necessary to preserve the issue. Any issue relating to the existence of a contract between the parties is waived. *Newland Resources, LLC v. Branham Corp.*, 918 N.E.2d 763.

2.

Lukes contends the small claims court erred in entering judgment against her on Moore’s claim and on Lukes’s counter-claim. This case was tried before the bench in small-claims court. In such cases, we review for clear error. *McKeighen v. Daviess County Fair Bd.*, 918 N.E.2d 717 (Ind. Ct. App. 2009). Although we are particularly deferential to the trial court in small-claims actions with respect to factual determinations and conclusions flowing from those facts, we owe no deference to a small-claims court’s legal conclusions regarding questions of law, which we review de novo. *Olympus Props., LLC v. Plotzker*, 888 N.E.2d 334 (Ind. Ct. App. 2008).

It appears that Lukes’s primary defense to Moore’s claim below was essentially the same as that offered in support of her appellate claims of trial court error. Basically, she

claims that she paid Moore the agreed-upon fees for the work performed pursuant to the original bid, that said work was performed poorly, and that Moore did not do any additional work not reflected in the original bid. She claims the trial court erred in finding against her on these contentions. Based upon the limited record before us, we are unable to conclude that the trial court's judgment was clearly erroneous.

The chronology of events prepared by Moore represents a fairly detailed account of the bid process, the progress of Moore's work at the site, and the wrangling over payment that seems to have been a more or less constant presence during Lukes and Moore's brief association. This chronology sets forth Moore's description of the work that she did, either at Lukes's behest or with her tacit approval, and of her difficulties in securing payment from Lukes. Further, the trial court accepted Moore's chronology of events "in its entirety as the best evidence in the case and ...[as] ... the basis for the Court's decision." *January 5 Order*. Thus, under these circumstances, after adoption by the court, Moore's chronology is the functional equivalent of findings of fact. In adopting Moore's version of events in this manner, the court clearly indicated that he found Moore's testimony more credible than Lukes's. Mindful of our standard of review and the trial court's superior vantage point from which to make the critical factual findings upon which this case turns, we can find no basis for revisiting those questions and substituting our determinations for those of the small claims court. *See Olympus Props., LLC v. Plotzker*, 888 N.E.2d 334.

Lukes failed to establish prima facie error in the judgment entered against her and in favor of Moore and therefore her claims must fail. *See Zoller v. Zoller*, 858 N.E.2d 124.

Judgment affirmed.

MAY, J., and MATHIAS, J., concur.