

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

Frederick J. Jenkins,	:	
	:	
Plaintiff-Appellant,	:	
	:	
v.	:	No. 11AP-1074
	:	(C.P.C. No. 06CVH-11-15048)
State Farm Mutual Automobile	:	
Insurance Company et al.,	:	(ACCELERATED CALENDAR)
	:	
Defendants-Appellees.	:	
	:	

D E C I S I O N

Rendered on March 26, 2013

Doucher & Doucher, LPA, Kimberly A. Doucher, and Paul Michael Doucher, for appellant.

Gallagher, Gams, Pryor, Tallan & Littrell L.L.P., and James R. Gallagher, for appellee.

APPEAL from the Franklin County Court of Common Pleas

CONNOR, J.

{¶ 1} Plaintiff-appellant, Frederick J. Jenkins ("appellant"), appeals from a judgment entered by the Franklin County Court of Common Pleas granting judgment against defendant-appellee, State Farm Mutual Automobile Insurance Company ("State Farm"), in the amount of \$21,000, pursuant to a jury verdict, and conditioning appellant's recovery of said judgment upon appellant's production of a salvage certificate of title.¹ Appellant also appeals from the court's judgment entry granting summary judgment in

¹ Default judgment as to liability was also granted against the uninsured driver, defendant Joseph E. Messer. However, Joseph E. Messer is not part of this appeal.

favor of State Farm on appellant's claim of bad faith regarding the appraisal process and on appellant's claim for punitive damages.

I. FACTS AND PROCEDURAL BACKGROUND

{¶ 2} Appellant was involved in a motorcycle accident on January 12, 2006, in Franklin County, Ohio. According to his complaint, appellant was operating a 2003 Harley Davidson Wide Glide motorcycle, which appellant had customized. While sitting in traffic on Georgesville Road near the intersection of Clime Road, appellant was struck from behind by Joseph E. Messer ("Messer"), an uninsured driver operating a 1995 Chevrolet Monte Carlo. As a result of the accident, appellant sustained bodily injury. In addition, appellant's motorcycle was severely damaged. Appellant initiated a property damage claim under his insurance policy with State Farm. State Farm determined the motorcycle was a "total loss."

{¶ 3} In evaluating the pre-accident value of the motorcycle, State Farm initially arrived at a value of \$16,540 using ADP Autosource, a national database. State Farm then retained an independent appraiser, Thomas E. Hamby ("Hamby"), of H & B Appraisers, who valued the motorcycle at \$20,000, based in part by his reliance upon a national database for valuation known as the NADA guide. Consequently, State Farm offered appellant \$20,855 to settle the claim, but if appellant chose to keep the motorcycle, which had a \$9,000 salvage value, State Farm offered to pay appellant \$11,855.

{¶ 4} Appellant did not accept this offer and hired his own appraiser. Shawn Belville ("Belville"), the general manager of Ace Brothers Motorcycle Company, valued the motorcycle at \$35,000. Belville's valuation method did not rely upon any national databases. Instead, Belville's method involved totaling all receipts for work done to the motorcycle since the date of purchase, including maintenance work and duplicate replacement parts.

{¶ 5} Following receipt of Belville's appraisal, State Farm offered to advance appellant the full amount of State Farm's appraisal up front, while still allowing appellant to recover a higher amount through an appraisal process described below. In the event that the appraisal process produced a result that was less than the amount already paid, appellant would be permitted to keep any overpayment. State Farm also offered to reduce

the salvage value to \$4,500 and to pay appellant \$16,355. However, appellant rejected that offer.

{¶ 6} The State Farm insurance policy at issue provides that, in the event State Farm and a policyholder cannot agree on the value of a damaged vehicle, either party can request that the dispute be resolved via a binding appraisal process. Under the terms of the policy, each party would select one appraiser. Those two appraisers would then select the third appraiser. A written decision supported by two of the three appraisers would constitute a binding decision as to the value of the vehicle. State Farm chose Hamby as its appraiser, while appellant chose Belville. However, the process broke down before the third appraiser was selected.

{¶ 7} Hamby submitted the names of three individuals as suggestions for the third appraiser. Counsel for appellant complained that Hamby and the three individuals he suggested were not qualified to value customized motorcycles. Although the policy stated that the two appraisers were to work together to select the third appraiser, counsel for appellant contacted Alan Cabral ("Cabral"), Chief Executive Officer of Big Dog Motorcycles, to be the third appraiser and submitted Cabral's name to Hamby via a letter submitted under Belville's name. However, Belville claimed he did not recommend Cabral and intended to recommend someone else. Believing that Cabral had been chosen by appellant's counsel, rather than by appellant's appraiser, Hamby refused to consider Cabral.

{¶ 8} Another letter was sent to Hamby under Belville's name expressing dissatisfaction with Hamby's refusal to consider Cabral as the third appraiser. Nevertheless, the letter contained a recommendation for Terry Frysinger of Precision Cycles for the third appraiser. Apparently, this letter was the last communication regarding the selection of the third appraiser before appellant filed his lawsuit asserting breach of contract and bad faith, as well as a claim for punitive damages.

{¶ 9} On April 30, 2008, the trial court granted State Farm's motion to bifurcate the bad-faith claim from the claim for property damage.

{¶ 10} State Farm filed a motion for summary judgment regarding the bad faith and punitive damages claims on September 4, 2009. Appellant opposed the motion. On

October 5, 2009, the trial court denied the motion finding there were genuine issues of material fact remaining.

{¶ 11} The matter proceeded to jury trial on May 18, 2010 on the claim for compensatory damages. The trial ended on May 24, 2010 with a jury verdict against State Farm in the amount of \$28,000.² Appellant has not provided this court with a transcript of the trial proceedings or with a transcript for any hearings which occurred subsequent to the trial. Nevertheless, based upon other information contained in the record, the following is established.

{¶ 12} According to the trial court's January 7, 2011 decision and entry granting defendant's renewed motion for summary judgment, State Farm renewed its motion for summary judgment on the issue of bad faith at the close of the trial on valuation. The parties then appeared for a hearing on that issue on June 15, 2010. The record also reflects that a notice of hearing for June 15, 2010 was issued on May 26, 2010.

{¶ 13} On June 8, 2010, State Farm filed a notice of submission of proposed partial judgment entry which stated that: (1) a jury had determined the fair-market value of the motorcycle to be \$28,000, (2) the parties had stipulated the salvage value of the motorcycle to be \$6,500, which was to be deducted from the jury verdict, and (3) appellant was entitled to judgment against State Farm in the amount of \$21,000. The proposed entry also stated the matter would continue to remain pending, subject to the resolution of the remaining issues set forth in the complaint. Importantly, however, this particular entry was not signed by the trial judge.

{¶ 14} On June 16, 2010, appellant filed a motion for prejudgment interest, which State Farm opposed. Approximately one year later, on June 17, 2011, a decision and entry denying appellant's motion for prejudgment interest was filed.

{¶ 15} Prior to the issuance of the decision on appellant's request for prejudgment interest, appellant filed a notice of appeal with this court on February 4, 2011, appealing the trial court's January 7, 2011 decision and entry granting State Farm's renewed motion for summary judgment on the bad faith and punitive damages claims. On September 30, 2011, this court issued a decision dismissing that appeal for lack of a final appealable

² For reasons unknown to this court, the jury's verdict, which contains a handwritten date of May 24, 2010, was not filed with the clerk of courts until June 13, 2011.

order on the grounds that several claims were still unresolved and the trial court had not included Civ.R. 54(B) language in its January 7, 2011 judgment entry. For example, as of the time of the filing of the appeal, the trial court had not entered judgment in favor of appellant regarding his breach of contract claim and his request for compensatory damages, despite the fact that a jury had found in appellant's favor. Thus, that claim remained pending.

{¶ 16} Subsequent to our dismissal for lack of a final appealable order, the trial court issued a final judgment entry on November 2, 2011, granting judgment in favor of appellant and against defendants Messer and State Farm in the amount of \$21,000. The trial court explained that the judgment amount was based upon the \$28,000 fair-market value of the motorcycle as determined by the jury, less the \$6,500 stipulated salvage value and less the \$500 deductible required under the policy. The entry further stated that appellant could not recover on this judgment unless and until he obtained a salvage certificate of title and furnished a copy to State Farm, as required pursuant to R.C. 4505.11(C)(3).

II. ASSIGNMENTS OF ERROR

{¶ 17} This appeal now follows, in which appellant asserts the following six assignments of error.

Assignment of Error Number 1: The Trial Court Erred by Stopping the Trial After Valuation of the Motorcycle but Before the Issue of Bad Faith was Heard by the Jury.

Assignment of Error Number 2: The Trial Court Abused its Discretion by Invading the Province of the Jury By Engaging in Fact Finding, thus Making Determinations and Rulings without Involvement of the Jury.

Assignment of Error Number 3: The Trial Court Erred by Refusing to Issue a Judgment (Either In Part or In Full) in Favor of Plaintiff-Appellant and against Defendant-Appellee Following the Valuation of the Motorcycle by the Jury.

Assignment of Error Number 4: The Trial Court Erred by Failing to Order Damages to Plaintiff-Appellant Despite the Jury's Determination of Damages Due and Owing to Plaintiff-Appellant.

Assignment of Error Number 5: The Trial Court Erred by Entertaining a Motion for Summary Judgment Presented by Defendant-Appellee Well After the Commencement of Trial.
Assignment of Error Number 6: Defendant-Appellee Was Not Entitled to Summary Judgment as a Matter of Law.

III. ANALYSIS

A. Notice of Appeal

{¶ 18} As a preliminary matter we note that, during the course of oral argument, State Farm argued that appellant's notice of appeal only referenced his appeal from the November 2, 2011 judgment entry which granted judgment in favor of appellant in the amount of \$21,000. State Farm argued appellant's notice of appeal failed to appeal from the January 7, 2011 judgment entry granting summary judgment in favor of State Farm on the bad faith and punitive damages claims. Consequently, State Farm submitted this court lacks jurisdiction to consider appellant's assignments of error addressing the bad faith and punitive damages issues.

{¶ 19} "The principal function of a notice of appeal is to advise the opposite party of the taking of an appeal." " *Moore v. Foreacher*, 91 Ohio App. 28, 32 (10th Dist.1951), quoting *Castleberry v. Evatt*, 147 Ohio St. 30, 37 (1946) (Zimmerman, J., dissenting). App.R. 3(D), which governs the content of the notice of appeal, provides that "[t]he notice of appeal shall specify the party or parties taking the appeal; shall designate the judgment, order or part thereof appealed from; and shall name the court to which the appeal is taken." "App.R. 3 must be construed in light of the purpose of a notice of appeal, which is to notify appellees of the appeal and advise them of 'just what appellants * * * [are] undertaking to appeal from.' " *State v. Rolf*, 5th Dist. No. 12-CA-39 (Dec. 3, 2012), quoting *Parks v. Baltimore & Ohio RR.*, 77 Ohio App.3d 426, 428 (8th Dist.1991).

{¶ 20} We note that appellant's notice of appeal specifically states he is appealing from the trial court's November 2, 2011 judgment entry, which granted judgment in favor of appellant in the amount of \$21,000 and finalized the last of the issues remaining in this matter. A copy of that judgment entry is attached to his notice of appeal. While the notice of appeal does not specifically reference by date the earlier judgment entry of January 7, 2011, which we had previously determined was not a final appealable order and whereby the trial court granted summary judgment in favor of State Farm on the bad faith and

punitive damages claims, the docketing statement attached to the notice of appeal makes it clear that appellant is also appealing the earlier decided bad-faith claim.

{¶ 21} Given this, and the fact that appellant had previously attempted to appeal the bad faith and punitive damages issues, State Farm could reasonably anticipate that appellant would also be including assignments of error addressing these issues, even if his notice of appeal only listed the date of the order that actually made the case final and appealable. *See In re: Erin N.*, 6th Dist. No. E-95-029 (Apr. 12, 1996) (where the notice of appeal only listed the date of the judgment entry relating to the dispositional phase of the proceedings and the assignments of error related to the adjudicatory phase of the proceedings, the court determined the two orders were linked and the appellee could reasonably anticipate that the appellant would also include assignments of error addressing the adjudication order, even if the notice only listed the date of the order that made the case final and appealable).

{¶ 22} Consequently, we shall address assignments of error related to both of those judgment entries.

{¶ 23} Furthermore, for ease of discussion, we shall address appellant's assignments of error out of order. Because some of appellant's assignments of error are intertwined, we shall address some of them together.

B. Third and Fourth Assignments of Error—Judgment Entry Establishing Valuation and Damages Amounts

{¶ 24} In his third assignment of error, appellant asserts the trial court erred by refusing to issue a judgment in favor of appellant and against State Farm after the jury returned with its verdict regarding the valuation of the motorcycle. Similarly, in his fourth assignment of error, appellant argues the trial court erred by failing to order damages in favor of appellant, despite the jury's verdict finding that such damages were due and owing to appellant.

{¶ 25} Although appellant's brief sets forth an assignment of error claiming the trial court erred by refusing to enter judgment following the jury's valuation of the motorcycle, as well as an assignment of error claiming the trial court erred by failing to order damages, appellant has failed to argue either of these assignments of error and has failed to identify in the record the error upon which these assignments of error are based.

Appellant has failed to comply with App.R. 16. *See* App.R. 16(A)(7) (appellant's brief shall include an argument containing the contentions of the appellant as to each assignment of error presented for review and the reasons supporting those contentions, along with citation to the authorities, statutes, and parts of the record upon which the appellant relies).

{¶ 26} Moreover, in conducting an independent review of the record, it is readily apparent that the trial court has in fact issued such a judgment, which ordered damages in the amount of \$21,000 (conditioned upon the production of a salvage certificate of title) on November 2, 2011, in response to our September 30, 2011 decision dismissing the action for lack of a final appealable order. (R. 168.) In fact, this is the very judgment entry from which appellant has appealed.

{¶ 27} Accordingly, appellant's third and fourth assignments of error are overruled.

C. First and Second Assignments of Error—"Stopping" the Trial and Invading the Province of the Jury

{¶ 28} In his first assignment of error, appellant argues the trial court erred by stopping the trial after the valuation of the motorcycle was determined, but before the jury heard the bad-faith claim. Similarly, in his second assignment of error, appellant argues the trial court abused its discretion by engaging in fact-finding and by making determinations and rulings without the jury's involvement, thereby invading the province of the jury.

{¶ 29} Appellant claims the trial court erred by "stopping" the trial and by ruling on the bad-faith claim without jury involvement. However, appellant has the burden of demonstrating error and, in this case, appellant has failed to provide this court with a transcript of the proceedings from the valuation trial, or from the discussions that purportedly occurred immediately following the valuation trial, or from the hearing that was held on June 15, 2010 regarding State Farm's request to renew its previously filed motion for summary judgment, which had been denied in 2009.

{¶ 30} There is a presumption that the trial court proceedings were validly conducted. Absent a complete transcript or an acceptable alternative (such as is described in App.R. 9(C)), we must presume that the trial court's decision is correct.

{¶ 31} The duty to provide a transcript for appellate review is on the appellant, who has the burden of showing error by referencing matters in the record. *Whiteside v. Madison Corr. Inst.*, 10th Dist. No. 04AP-401, 2005-Ohio-1844, ¶ 11, citing *Knapp v. Edwards Laboratories*, 61 Ohio St.2d 197, 199 (1980). Without a complete transcript, we have no way to determine what evidence and testimony is or is not included in the record. *Id.* When portions of the transcript necessary for the resolution of assigned errors are omitted from the record, an appellate court has nothing to pass upon and consequently, as to those assigned errors, the reviewing court must presume the validity of the trial court proceedings and affirm. *Knapp* at 199. See also *Beer v. Beer*, 10th Dist. No. 04AP-93, 2004-Ohio-4559, ¶ 8 (where portions of the transcript necessary for the resolution of assigned errors are omitted from the record, the reviewing court has nothing to pass upon and must presume the validity of the trial court's proceedings and affirm its decision, because the appellate court is unable to evaluate the merits of the assignments of error); and *Simmerman v. McCallister*, 10th Dist. No. 02AP-62, 2002-Ohio-6735, ¶ 23, quoting *Columbus v. Hodge*, 37 Ohio App.3d 68, 68-69 (10th Dist.1987) (" 'in the absence of all the relevant evidence, a reviewing court must indulge the presumption of regularity of the proceedings and the validity of the judgment in the trial court. It is the appellant's responsibility to include all the evidence in the appellate record so that the claimed error is demonstrated to the reviewing court' ").

{¶ 32} Here, without the transcript, appellant has failed to demonstrate error. Contrary to appellant's assertions, the record before us does not reflect that the trial in this matter was "stopped." What the record here does reflect is that the compensatory damages phase of the trial was bifurcated from the bad-faith claim. See April 30, 2008 decision and entry granting State Farm's motion to bifurcate. (R. 69.) The record further reflects that a jury trial commenced on May 18 and ended on May 24, 2010, and it involved compensatory damages regarding appellant's motorcycle. (R. 129.) See jury instructions (R. 152.) and proposed jury instructions. (R. 125.) The record also reflects that State Farm renewed its motion for summary judgment on the bad-faith claim following the close of trial on valuation (see trial court's January 7, 2011 decision and entry granting State Farm's renewed motion for summary judgment; (R. 139-41.)), and that a hearing was held on said motion on June 15, 2010 (see notice of hearing for

June 15, 2010 filed May 26, 2010; (R. 128.); and trial court's January 7, 2011 decision and entry. (R. 139-41.)).

{¶ 33} Without a complete transcript, appellant cannot properly demonstrate that he objected to the hearing on the renewed motion for summary judgment, that he objected to the procedure or was in disagreement with proceeding in that fashion, or even that he objected to the trial court granting summary judgment on the bad-faith claim via the renewed motion.

{¶ 34} Furthermore, without a complete transcript, appellant cannot demonstrate that he objected during the proceedings to any purported mistakes made by the trial court. Without evidence that he objected in the trial court, appellant has failed to properly preserve the issue he now assigns as error on appeal. *See Hudson v. P.I.E. Mut. Ins. Co.*, 10th Dist. No. 10AP-480, 2011-Ohio-908, ¶ 12, quoting *Gentile v. Ristas*, 160 Ohio App.3d 765, 2005-Ohio-2197, ¶ 74 (10th Dist.) (" 'It is well settled that a litigant's failure to raise an issue before the trial court waives the litigant's right to raise that issue on appeal.' "); *Stores Realty Co. v. Cleveland*, 41 Ohio St.2d 41, 43 (1975) ("Ordinarily, errors which arise during the course of a trial, which are not brought to the attention of the court by objection or otherwise, are waived and may not be raised upon appeal."); *In re Baby Girl Baxter*, 17 Ohio St.3d 229, 236 (1985) (Holmes, J., dissenting) ("It is axiomatic under Ohio law that in order to preserve an issue for appeal one must bring the claimed error to the attention of the trial court in time to avoid the commission of the claimed error in the first place."); *Brancatelli v. Soltesiz*, 11th Dist. No. 2011-L-012, 2012-Ohio-1884, ¶ 57 (assignment of error found to be without merit where appellant failed to preserve any perceived error because he failed to raise an objection at the appropriate time in the trial court); and *Goldfuss v. Davidson*, 79 Ohio St.3d 116, 121 (1997) ("we have long recognized, in civil as well as criminal cases, that failure to timely advise a trial court of possible error, by objection or otherwise, results in a waiver of the issue for purposes of appeal.").

{¶ 35} Moreover, while waiver or forfeiture can be "tempered" by the plain error doctrine, it is generally disfavored in civil cases and should be applied only in extremely rare cases involving exceptional circumstances where the legitimacy of the underlying

judicial process is challenged. *Hudson* at ¶ 13; *Goldfuss* at syllabus. We have no evidence of that here.

{¶ 36} Accordingly, appellant's first and second assignments of error are overruled.

D. Fifth and Sixth Assignments of Error—Hearing on Summary Judgment and Summary Judgment as a Matter of Law

{¶ 37} In his fifth assignment of error, appellant argues the trial court erred by hearing a motion for summary judgment that was presented after the commencement of trial. In his sixth assignment of error, appellant asserts State Farm was not entitled to summary judgment as a matter of law.

{¶ 38} In addressing the fifth assignment of error, we note, as previously stated in our analysis of appellant's first and second assignments of error, we do not have a transcript of the proceedings that occurred with respect to the valuation trial or any proceedings subsequent to the trial, such as the hearing that was conducted on June 15, 2010. The information in the record that is before us indicates that the trial court heard a *renewed* motion for summary judgment, pursuant to a request made by State Farm at the close of the valuation trial, which was bifurcated (in advance) from the proceedings regarding bad faith. There is nothing in the record that has been provided to us that supports an argument that the trial court entertained a motion for summary judgment presented well after the commencement of trial as appellant asserts. Accordingly, we overrule appellant's fifth assignment of error.

{¶ 39} Appellant's sixth assignment of error also addresses the issue of the trial court's decision to grant summary judgment on the bad faith and punitive damages claims. Our analysis regarding the lack of a transcript and the conclusion that we must indulge the presumption of the regularity of the proceedings and the validity of the judgment in the trial court seems equally applicable here as well. Nevertheless, we go one step further in briefly looking at the trial court's decision on the renewed motion for summary judgment, based upon the record we do have.

{¶ 40} Under Ohio law, "[a]n insurer fails to exercise good faith in the processing of a claim of its insured where its refusal to pay the claim is not predicated upon circumstances that furnish reasonable justification therefor." *Zoppo v. Homestead Ins. Co.*, 71 Ohio St.3d 552 (1994), paragraph one of the syllabus, citing *Hart v. Republic Mut.*

Ins. Co., 152 Ohio St. 185 (1949), and *Staff Builders, Inc. v. Armstrong*, 37 Ohio St.3d 298 (1988).

{¶ 41} "Mere refusal to pay insurance is not, in itself, conclusive of bad faith." *Hoskins v. Aetna Life Ins. Co.*, 6 Ohio St.3d 272, 277 (1983). "An insurer fails to act in good faith where it denies a claim and such denial 'is not predicated upon circumstances that furnish reasonable justification therefor.' " *Brown v. Nationwide Mut. Fire Ins. Co.*, 174 Ohio App.3d 694, 2008-Ohio-174, ¶ 45 (10th Dist.), quoting *Zoppo* at paragraph one of the syllabus. "A lack of reasonable justification exists where an insurer refuses to pay a claim in an arbitrary or capricious manner." *Id.*, citing *Nationwide Ins. Ent. v. Progressive Specialty Ins. Co.*, 10th Dist. No. 01AP-1223, 2002-Ohio-3070, ¶ 19, citing *Hart* at 188.

{¶ 42} Punitive damages may be recovered against an insurer where there is a breach of its duty of good faith in refusing to pay the claim of its insured and where there is proof of actual malice, fraud, or insult on the part of the insurer. *Staff Builders* at paragraph two of the syllabus. Actual malice is required to award punitive damages. *Cabe v. Lunich*, 70 Ohio St.3d 598, 601 (1994). Punitive damages are not recoverable against an insurer for refusal to pay a legitimate claim unless the refusal is unjustified and in bad faith. *Helmick v. Republic-Franklin Ins. Co.*, 39 Ohio St.3d 71, 75 (1988). *See also* R.C. 2315.21(C)(1) (punitive damages are not recoverable unless the actions or omissions of the defendant show malice or aggravated or egregious fraud).

{¶ 43} In *Helmick*, the Supreme Court of Ohio determined that the trial court erred in denying an oral motion for directed verdict. The court held, after construing the evidence in a light most favorable to the plaintiff, it was unable to comprehend how the trial court had failed to direct a verdict in favor of the insurance company on the bad faith and punitive damages claims. The court further found an absence of any set of facts which would support a finding of bad faith, and furthermore, that the insurer had a reasonable justification for questioning coverage of the claim, given the evidence demonstrating the plaintiff's dire financial straits and the evidence supporting its suspicion that arson was involved at the hands of the plaintiff. Thus, in essence, the *Helmick* court determined that the issue of bad faith should not be submitted to a jury where the evidence demonstrated the insurer had a reasonable basis for its position.

{¶ 44} We acknowledge that a directed verdict is not the same as summary judgment. However, the two procedural devices do share some similarities for purposes of our analysis of this appeal.

{¶ 45} A motion for directed verdict under Civ.R. 50 requires that, after such a motion has been made, the trial court must construe the evidence most strongly in favor of the party against whom the motion is directed and if the court finds upon any determinative issue that *reasonable minds could only come to one conclusion upon the evidence submitted, and that conclusion is adverse to the non-moving party*, the court shall sustain the motion and direct the verdict for the moving party on that issue.

{¶ 46} On the other hand, summary judgment, which is governed by Civ.R. 56, is proper when the party moving for summary judgment demonstrates that (1) no genuine issue of material fact exists, (2) the moving party is entitled to judgment as a matter of law, and (3) *reasonable minds could come to but one conclusion and that conclusion is adverse to the party against whom the motion for summary judgment is made*, that party being entitled to have the evidence most strongly construed in that party's favor. Civ.R. 56(C); *State ex rel. Grady v. State Emp. Relations Bd.*, 78 Ohio St.3d 181, 183 (1997).

{¶ 47} In the case at bar, the trial court determined State Farm was reasonably justified in its position and in rejecting the valuation presented by Belville on behalf of appellant. The trial court cited to State Farm's reliance upon two widely recognized valuation databases (the NADA guide and the ADP valuation). It also referenced the testimony of State Farm's expert, Hamby, who had 25 years of experience as an appraiser and whose experience included appraisals for motorcycles, as well as ownership of several of his own motorcycles. Additionally, the trial court cited to the testimony of Paula Sullivan ("Sullivan"), who previously owned a custom motorcycle shop, had worked on and modified Harley Davidson motorcycles, and had experience appraising motorcycles for trade-ins and in modifying motorcycles and valuing modifications. Furthermore, the trial court cited to Sullivan's testimony that Belville's valuation method, which involved simply adding receipts together for various modifications and replacements, was not an accepted standard practice. Finally, the trial court determined there was no evidence that State Farm had ever acted with malice or fraud amounting to bad faith during the

appraisal process.³ Therefore, the trial court found there were no material facts to be resolved at a trial on bad faith with respect to the appraisal process.

{¶ 48} In essence, the trial court determined reasonable minds could only come to the conclusion that State Farm was reasonably justified in its approach to the appraisal process and in rejecting the valuation of appellant's appraiser and, consequently, it was unnecessary for a jury to decide the issues of bad faith and punitive damages. Without a transcript of the proceedings by which to demonstrate error, and in light of the trial court's seemingly thorough analysis, we must indulge the presumption of regularity of the proceedings and the validity of the trial court's judgment. Accordingly, we overrule appellant's sixth assignment of error.

E. Other Arguments

{¶ 49} Finally, although it is not tied to a specific assignment of error, appellant criticizes the trial court for determining that appellant was not entitled to prejudgment interest on its award, due to the fact that there was no finding of bad faith in the settlement negotiations. Appellant argues the trial court failed to consider the contractual nature of the claims between the parties, which would mean that such interest would be governed by statute, rather than by the standard of making a good-faith effort in settlement negotiations. Similarly, without designating it as an assignment of error, appellant, during the course of oral argument, criticized the trial court's decision to condition the recovery of any judgment upon appellant's production of a salvage certificate of title.

{¶ 50} Pursuant to App.R. 12(A)(1)(b), an appellate court must "[d]etermine the appeal on its merits on the assignments of error set forth in the briefs under App.R. 16, the record on appeal under App. R. 9, and, unless waived, the oral argument under App.R. 21." Here, none of appellant's six assignments of error make any reference to any error regarding prejudgment interest. Furthermore, appellant did not address the issue of prejudgment interest at oral argument. These same six assignments of error also failed to make any reference to error requiring the production of a salvage certificate of title in order to recover judgment. In general, appellate courts only rule on assignments of error,

³ Notably, appellant himself acknowledged in his deposition he did not feel he had been treated fraudulently or with malice. (Jenkins deposition, 92-93.)

rather than mere arguments. *Thompson v. Thompson*, 196 Ohio App.3d 764, 2011-Ohio-6286, ¶ 65 (10th Dist.). Because appellant's arguments do not correlate with any of his assignments of error, we will not consider them. *Id.*

IV. DISPOSITION

{¶ 51} In conclusion, we overrule all six of appellant's assignments of error and decline to address the separate arguments which were not raised as assignments of error. The judgment of the Franklin County Court of Common Pleas is affirmed.

Judgment affirmed.

KLATT, P.J., and SADLER, J., concur.
