[Cite as *Harper v. Neal*, 2016-Ohio-7179.]

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
HOCKING COUNTY

JAY HARPER AND AMY HARPER, :

Plaintiffs-Appellees, : Case No. 15CA25

vs. :

BRUCE NEAL,[1] : DECISION AND JUDGMENT ENTRY

Defendant-Appellant. :

APPEARANCES:

Bruce Neal, Logan, Ohio, pro se appellant.

Jay and Amy Harper, Logan, Ohio, pro se appellees.

CIVIL CASE FROM COMMON PLEAS COURT
DATE JOURNALIZED:9-13-16

ABELE, J.

{¶ 1} This is an appeal from a Hocking County Municipal Court judgment that awarded Jay and Amy Harper, plaintiffs below and appellees herein, $2,000. Bruce Neal, defendant below and appellant herein, assigns the following errors for review:

FIRST ASSIGNMENT OF ERROR:

"THE JUDGMENT ENTRY WAS FILED ELEVEN MONTHS FOLLOWING PROCEEDINGS [SIC]."

[1] The complaint lists appellant as "Bruce Neal dba T&B Transmission." We, however, use the name as it appears on the trial court's judgment entry.

SECOND ASSIGNMENT OF ERROR:

"WARRANTY FOR TRANSMISSION WORK ONE YEAR HAD EXPIRED [SIC]."
THIRD ASSIGNMENT OF ERROR:

"WARRANTY WORK DONE ON VEHICLE TWO WEEKS AFTER ORIGINAL WORK COVERED BY THE APPELLANT."

FOURTH ASSIGNMENT OF ERROR:

"IN SIXTEEN MONTHS, FOUR MONTHS AFTER ONE YEAR WARRANTY, THE VEHICLE HAD 42,000 MILES."

FIFTH ASSIGNMENT OF ERROR:

"O-RING WORKED FOR SIXTEEN MONTHS AND 42,000 MILES, WHILE HAULING WOOD AND EQUIPMENT IS NOT A PREPONDERANCE OF THE EVIDENCE [SIC]."

{¶ 2} On May 6, 2014, Jay and Amy Harper filed a complaint against Bruce Neal dba T&B Transmission and alleged that (1) appellant agreed to rebuild the transmission on their vehicle and that appellant failed to fulfill the terms of his agreement; (2) appellant "negligently rebuilt or negligently attempted to rebuild a transmission for" their vehicle; and (3) appellant was unjustly enriched. Appellees sought $5,491 in damages.

{¶ 3} At the December 11, 2014 trial, Mr. Harper testified that in early September 2012, appellant agreed to rebuild the transmission on Mr. Harper's truck, which had over 100,000 miles on it. Appellees paid appellant $500 and gave him a trailer worth $1,500 as payment.

{¶ 4} Mr. Harper explained that after driving the truck with the rebuilt transmission for a couple of months, the "check engine" light illuminated. Mr. Harper "decoded" the truck and discovered that the "transmission components were slipping." Mr. Harper took the truck to

appellant and he stated that he "forgot to clear the computer * * * when he put [Mr. Harper's] transmission back in." Mr. Harper "let him clear it back out." Mr. Harper stated that a couple of weeks later, "it did the same thing" and he again took the truck to appellant for servicing. Mr. Harper picked it up five days later, and he "started having problems with it shifting hard and things." Mr. Harper once again returned the truck to appellant. Appellant stated that he needed to adjust it.

{¶ 5} Mr. Harper stated that the truck later started to overheat. He returned to appellant and told him that the truck was overheating and appellant told him that "as long as it don't [sic] get over the operating temperature of the engine, you're okay." Mr. Harper stated that the vehicle continued to "run[] hot." When it rose "above the engine temperature," he returned to appellant, and appellant replaced the transmission core.

{¶ 6} After appellant replaced the transmission core, Mr. Harper started having problems with the engine stalling. He took the truck to appellant and appellant told Mr. Harper that he was busy, but Mr. Harper could leave the truck and appellant would work on it when he had time. Mr. Harper stated that he did not want to be without his truck yet again, so he asked appellant if he would call when he had time to work on it. Mr. Harper stated that appellant never called.

{¶ 7} In January 2014, Mr. Harper took the truck, that now had approximately 160,000 miles on it, to Athens Transmission. Athens Transmission installed a re-manufactured transmission, and Mr. Harper paid $3,490.69. Mr. Harper testified that since Athens Transmission installed the re-manufactured transmission, he has not had any issues with the truck.

{¶ 8} Patrick Gryszka, the owner of Athens Transmission, stated that when he examined Mr. Harper's truck, he noticed a lot of metal and "clutch material inside the pan of [the]

transmission." Gryszka believes that whoever rebuilt the transmission incorrectly used silicone as a sealant, instead of a gasket. Gryszka stated that without a gasket, "[t]he transmission leaks, gets low on fluid, and then it fails."

{¶ 9} Appellant testified that he is the owner of T&B Transmission Auto Repair. He stated that he used "silicone around the case connector O-ring to make a better seal." Appellant explained that Mr. Harper returned with the truck approximately two weeks after he finished working on it and appellant fixed a cooling system problem. Appellant explained that Mr. Harper did not return the truck to his repair shop until late December 2013 or early January 2014. Appellant specifically disputed Mr. Harper's claim that Mr. Harper brought the truck in for repair numerous times between September 2012 and December 2013.

{¶ 10} Appellant testified that when Mr. Harper returned with the truck, the transmission needed to be redone. Appellant claimed that Mr. Harper told appellant that Mr. Harper had been "hauling wood behind his house and had had [sic] to rev it up to get it up out of wherever he was in behind his home * * *. [H]e had overheated it revving it trying to get it out of the woods and then it started killing the engine." Appellant informed Mr. Harper that the warranty for the rebuilt transmission had expired and that Mr. Harper would need to pay for further service to the transmission.

{¶ 11} In rebuttal, Gryszka testified that failing to use a gasket and instead, using only silicone, is not good workmanship. Gryszka stated that failing to use a gasket can cause the transmission to leak and eventually fail.

{¶ 12} On November 12, 2015, the trial court found that appellees "established part of the allegations within the complaint by the required preponderance of the evidence" and awarded them

$2,000 in damages.[2] This appeal followed.

I

PRO SE APPEAL

{¶ 13} Before we consider appellant's assignments of error, we observe that appellant is acting pro se in this appeal. Because we ordinarily prefer to review a case on its merits rather than dismiss it due to procedural technicalities, we afford considerable leniency to pro se litigants. E.g., Viars v. Ironton, 4th Dist. Lawrence No. 16CA8, 2016-Ohio-4912, ¶25; Miller v. Miller, 4th Dist. Athens No. 14CA6, 2014-Ohio-5127, ¶13; In re Estate of Pallay, 4th Dist. Washington No. 05CA45, 2006–Ohio–3528, ¶10; Robb v. Smallwood, 165 Ohio App.3d 385, 2005–Ohio–5863, 846 N.E.2d 878, ¶ 5 (4th Dist.); Besser v. Griffey, 88 Ohio App.3d 379, 382, 623 N.E.2d 1326 (4th Dist.1993); State ex rel. Karmasu v. Tate, 83 Ohio App.3d 199, 206, 614 N.E.2d 827 (4th Dist.1992). "Limits do exist, however. Leniency does not mean that we are required 'to find substance where none exists, to advance an argument for a pro se litigant or to address issues not properly raised.'" State v. Headlee, 4th Dist. Washington No. 08CA6, 2009–Ohio–873, ¶6, quoting State v. Nayar, 4th Dist. Lawrence No. 07CA6, 2007–Ohio–6092, ¶28. Furthermore, we will not "conjure up questions never squarely asked or construct full-blown claims from convoluted reasoning." Karmasu, 83 Ohio App.3d at 206. We will, however, consider a pro se litigant's appellate brief so long as it "contains at least some cognizable assignment of error." Robb at ¶5; accord Coleman v. Davis, 4th Dist. Jackson No. 10CA5, 2011–Ohio–506, ¶14

[2] We note that the trial court's judgment did not explicitly dispose of the three claims for relief asserted in appellees' complaint. By determining that appellees established part of the allegations within their complaint, however, the trial court necessarily rejected the remaining claims. The trial court's judgment finding in appellees' favor and awarding them $2,000 had the effect of rendering any remaining claims for relief moot. See Wise v. Gursky, 66 Ohio St.2d 241, 243, 421 N.E.2d 150 (1981) (stating that "a judgment in an action which determines a claim in that action and has the effect of rendering moot all other claims in the action as to all other parties to the action is a final appealable order pursuant to R.C. 2505.02, and Civ.R. 54(B) is not applicable to such a judgment").

(considering pro se litigant's brief when it contains "some semblance of compliance" with appellate rules of practice and procedure). In the case sub judice, we believe that appellant's brief contains at least some cognizable assignments of error that we may consider on the merits.

II

APPELLEES' FAILURE TO FILE BRIEF

{¶ 14} We additionally point out that appellees did not file an appellate brief. When an appellee fails to file an appellate brief, App.R. 18(C) authorizes us to accept an appellant's statement of facts and issues as correct, and then reverse a trial court's judgment as long as the appellant's brief "reasonably appears to sustain such action." In other words, an appellate court may reverse a judgment based solely on consideration of an appellant's brief. See Fed. Ins. Co. v. Fredericks, 2nd Dist. No. 26230, 2015-Ohio-694, 29 N.E.3d 313, 330–31, ¶79; Sites v. Sites, 4th Dist. Lawrence No. 09CA19, 2010-Ohio-2748, ¶13; Sprouse v. Miller, Lawrence App. No. 06CA37, 2007-Ohio-4397, at fn. 1. In the case at bar, however, appellant's brief does not reasonably appear to support a reversal of the trial court's judgment.

III

MANIFEST WEIGHT OF THE EVIDENCE

{¶ 15} Appellant has not formulated proper assignments of error. Assignments of error should designate specific rulings that the appellant challenges on appeal. North Coast Cookies, Inc. v. Sweet Temptations, Inc., 16 Ohio App.3d 342, 476 N.E.2d 388 (8th Dist. 1984), paragraph one of the syllabus. They may dispute the final judgment itself, or other procedural events in the trial court. Id. In the case at bar, appellant's assignments of error do not challenge specific rulings, but instead, seem to be fragmented factual challenges to the court's decision. Our review

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Thus, we do not believe that any claims remain pending so as to affect our jurisdiction to consider this appeal.

of appellant's assignments of error and his appellate brief leads us to believe that appellant essentially challenges the propriety of the trial court's judgment and we construe appellant's assignments of error as asserting that the trial court's judgment is against the manifest weight of the evidence.

{¶ 16} Generally, appellate courts will uphold trial court judgments so long as the manifest weight of the evidence supports it. When an appellate court reviews whether a trial court's decision is against the manifest weight of the evidence, the court "'"weighs the evidence and all reasonable inferences, considers the credibility of witnesses and determines whether in resolving conflicts in the evidence, the [fact-finder] clearly lost its way and created such a manifest miscarriage of justice that the [judgment] must be reversed * * *."'" Eastley v. Volkman, 132 Ohio St.3d 328, 2012–Ohio–2179, 972 N.E.2d 517, ¶20 (clarifying that the same manifest-weight standard applies in civil and criminal cases), quoting Tewarson v. Simon, 141 Ohio App.3d 103, 115, 750 N.E.2d 176 (9th Dist.2001); State v. Thompkins, 78 Ohio St.3d 380, 387, 678 N.E.2d 541 (1997). A reviewing court may find a trial court's decision against the manifest weight of the evidence only in the "'exceptional case in which the evidence weighs heavily against the [decision].'" Thompkins, 78 Ohio St.3d at 387, 678 N.E.2d 541, quoting Martin, 20 Ohio App.3d at 175; accord State v. Lindsey, 87 Ohio St.3d 479, 483, 721 N.E.2d 995 (2000). Moreover, when reviewing evidence under the manifest weight of the evidence standard, an appellate court generally must defer to the fact-finder's credibility determinations. Eastley at ¶21. As the Eastley court explained:

> "'[I]n determining whether the judgment below is manifestly against the weight of the evidence, every reasonable intendment must be made in favor of the judgment and the finding of facts. * * *
>
> If the evidence is susceptible of more than one construction, the reviewing

> court is bound to give it that interpretation which is consistent with the verdict and judgment, most favorable to sustaining the verdict and judgment.'"

Id., quoting Seasons Coal Co., Inc. v. Cleveland, 10 Ohio St.3d 77, 80, 461 N.E.2d 1273 (1984), fn. 3, quoting 5 Ohio Jurisprudence 3d, Appellate Review, Section 60, at 191–192 (1978).

{¶ 17} Additionally, as this court previously explained in State v. Murphy, 4th Dist. No. 07CA2953, 2008–Ohio–1744, 2008 WL 1061793, ¶31:

> "It is the trier of fact's role to determine what evidence is the most credible and convincing. The fact finder is charged with the duty of choosing between two competing versions of events, both of which are plausible and have some factual support. Our role is simply to insure the decision is based upon reason and fact. We do not second guess a decision that has some basis in these two factors, even if we might see matters differently."

{¶ 18} We additionally observe that appellant's failure to request findings of fact and conclusions of law limits our review in the case sub judice. Civ.R. 52 states:

> When questions of fact are tried by a court without a jury, judgment may be general for the prevailing party unless one of the parties in writing requests otherwise * * * in which case, the court shall state in writing the conclusions of fact found separately from the conclusions of law.

The purpose of Civ.R. 52 findings of fact and conclusions of law is "'to aid the appellate court in reviewing the record and determining the validity of the basis of the trial court's judgment.'" In re Adoption of Gibson, 23 Ohio St.3d 170, 172, 492 N.E.2d 146 (1986), quoting Werden v. Crawford, 70 Ohio St.2d 122, 124, 435 N.E.2d 424 (1982). Thus, a party may file a Civ.R. 52 request in order "to ensure the fullest possible review." Cherry v. Cherry, 66 Ohio St.3d 348, 356, 421 N.E.2d 1293 (1981).

{¶ 19} In the absence of findings of fact and conclusions of law, we presume that the trial court applied the law correctly and will affirm its judgment if evidence in the record supports it.

Bugg v. Fancher, 4th Dist. Highland No. 06CA12, 2007–Ohio–2019, ¶10, citing Allstate Fin. Corp. v. Westfield Serv. Mgt. Co., 62 Ohio App.3d 657, 577 N.E.2d 383 (12th Dist. 1989); accord Leikin Oldsmobile, Inc. v. Spofford Auto Sales, 11th Dist. Lake No.2000–L–202, 2002–Ohio–2441, ¶17 ("It is difficult, if not impossible, to determine the basis of the trial court's ruling without findings of fact and conclusions of law * * *."); Yocum v. Means, 2nd Dist. Darke No. 1576, 2002–Ohio–3803, ¶7 ("The lack of findings obviously circumscribes our review * * *."). As the court explained in Pettet v. Pettet, 55 Ohio App.3d 128, 130, 562 N.E.2d 929 (5th Dist. 1988):

> [W]hen separate facts are not requested by counsel and/or supplied by the court the challenger is not entitled to be elevated to a position superior to that he would have enjoyed had he made his request. Thus, if from an examination of the record as a whole in the trial court there is some evidence from which the court could have reached the ultimate conclusions of fact which are consistent with [its] judgment the appellate court is bound to affirm on the weight and sufficiency of the evidence. The message should be clear: If a party wishes to challenge the * * * judgment as being against the manifest weight of the evidence he had best secure separate findings of fact and conclusions of law. Otherwise his already "uphill" burden of demonstrating error becomes an almost insurmountable "mountain."

{¶ 20} In the case at bar, appellant's failure to request findings of fact and conclusions of law means that we presume the court correctly applied the law and will affirm the trial court's judgment so long as some evidence supports it. After our review, we believe that the record contains some competent, credible evidence, if believed, to support the trial court's judgment. Mr. Harper testified that he paid appellant $500 in cash and gave appellant a $1,500 trailer to rebuild the transmission in his truck. After appellant completed the work, Mr. Harper returned his truck to appellant numerous times due to malfunctions. Mr. Harper finally took the truck to a different transmission repair shop, where he learned that he needed to have a re-manufactured transmission installed. According to the new transmission repair shop owner, the prior rebuilt transmission did

not meet the standards of good workmanship due to the failure to use a gasket. Consequently, the foregoing evidence adequately supports the trial court's decision to award appellees $2,000. We do not believe that the trial court's judgment results in a manifest miscarriage of justice.

IV

HARMLESS ERROR

{¶ 21} Appellant also claims that the trial court somehow erred by not issuing its decision in the matter until approximately eleven months after the trial date. Even if one could argue that the court erred, we fail to see how this alleged error caused appellant any prejudice. Therefore, we disregard this alleged error as harmless error. See Civ.R. 61 (explaining that court "must disregard any error or defect in the proceeding" that does not affect a party's substantial rights).

{¶ 22} Accordingly, based upon the foregoing reasons, we hereby overrule appellant's five assignments of error and affirm the trial court's judgment.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the judgment be affirmed and that appellees recover of appellant the costs herein taxed.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Hocking County Municipal Court to carry this judgment into execution.

A certified copy of this entry shall constitute that mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

Harsha, J & McFarland, J.: Concur in Judgment & Opinion

For the Court

BY:

Peter B. Abele, Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.