

**NOT FINAL UNTIL TIME EXPIRES FOR REHEARING AND, IF FILED, DETERMINED**

**IN THE CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT  
IN AND FOR PINELLAS COUNTY, FLORIDA  
APPELLATE DIVISION**

RUDY PAVLIK,

Appellant,

vs.

Ref. No.: 18-000030-AP-88B

UCN: 522018AP000030XXXXCI

NOVELL PAINTING, LLC.

Appellee.

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**ORDER AND OPINION**

Appellant challenges the Final Judgment rendered on April 12, 2018, finding in favor of Appellee in the amount of \$4,900, plus costs. For the reasons set forth below, the Final Judgment is affirmed.

**Facts and Procedural History**

In April 2017, Appellant hired Appellee to perform paint work at his residential property based on a written estimate of \$4,900. On June 15, 2017, the work was completed and Appellant paid Appellee with a credit card. The next day, Appellant contacted Appellee concerning some corrective work that needed to be done. Appellee agreed to do the corrective work but failed to show up as scheduled. On June 26, 2017, Appellant sent a text message to Appellee explaining that he was unhappy with the work and wanted a refund. Shortly thereafter, Appellant had the credit card charges reversed, causing the money to be withdrawn from Appellee's account. Appellee filed a complaint in small claims court for breach of an oral contract and unjust enrichment. After a non-jury trial, the trial court found in favor of Appellee. The instant appeal followed.

**Discussion**

Appellant asserts that the lower court denied him his right to defend himself by refusing to allow him to submit any evidence in his defense, such as photographs of the paint work, proof of Appellee's money back guarantee, and an estimate of the repair work to be done. "In appellate proceedings the decision of a trial court has the presumption of correctness and the burden is on the appellant to demonstrate error." *Applegate v. Barnett Bank of Tallahassee*, 377 So. 2d 1150, 1152 (Fla. 1979). Here, the only evidence in the record is the written estimate and the text messages between Appellant and Appellee; there is no transcript of the trial. Without knowing

what occurred during the trial, “an appellate court [cannot] reasonably conclude that the trial judge so misconceived the law as to require reversal.” *Id.* When an appellant fails to provide a transcript or an approved statement of the proceedings, this Court can only look for fundamental error on the face of the order. *See Tramontana v. Bank of New York Mellon*, 230 So. 3d 601, 602 (Fla. 2d DCA 2017) (“Without a transcript, and in the absence of fundamental error on its face, an appellate court will affirm a trial court's decision.”).

The Final Judgment indicates that Appellee presented several witnesses, the written estimate, and text messages between the parties. In discussing Appellant’s defense, the Final Judgment states only:

[Appellant] also took the stand and testified on his behalf. He complained about the quality of the paint work but did not call any expert witness even though it was suggested by the Pre-trial Conference Order of January 9, 2018 that he do so. He offered no other credible evidence or testimony that would contradict the evidence and testimony offered by [Appellee]. He also failed to timely file any counterclaim against [Appellee] regarding any alleged problem with the work.

Having found no fundamental error on the face of the Final Judgment, the trial court’s decision must be affirmed. Accordingly, it is

**ORDERED AND ADJUDGED** that the Final Judgment is **AFFIRMED**.

**DONE AND ORDERED** in Chambers at St. Petersburg, Pinellas County, Florida, on this \_\_\_\_ day of \_\_\_\_\_, 2018.

Original Order entered on December 10, 2018, by Circuit Judges Jack Day, Pamela A.M. Campbell, and Amy M. Williams.

Copies furnished to:

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