

**SUPERIOR COURT OF THE VIRGIN ISLANDS
APPELLATE DIVISION OF ST. CROIX**

JANET JULIEN,	)	CASE NO. SX-12-SM-300
	)	
Plaintiff / Petitioner on	)	ON PETITION FOR REVIEW FROM THE
Review,	)	MAGISTRATE DIVISION
	)	
v.	)	ACTION FOR DAMAGES
	)	
MARITZA RIOS MIMS and ROBERT	)	
MIMS,	)	
	)	
Defendants / Respondents on	)	
Review.	)	
	)	

MEMORANDUM OPINION AND ORDER

THIS MATTER is in the Appellate Division of the Superior Court based on a petition for review Janet Julien filed to appeal an order issued by the Magistrate Court, dismissing her complaint with prejudice following a bench trial. For the reasons given below, the Court will affirm the result reached by the Magistrate Court, namely that Ms. Julien failed to prove her claims by a preponderance of the evidence, but will reverse the dismissal and remand for the sole purpose of directing that judgment be entered for the defendants, Maritza Rios-Mims and Robert Mims.

FACTUAL AND PROCEDURAL BACKGROUND

On July 6, 2012, Janet Julien filed a complaint in the Small Claims Division of the Superior Court, alleging that her white BMW was damaged on the morning of April 20, 2012 when a white Jeep Wrangler driven by Robert Mims and owned by his mother, Maritza Rios Mims, backed into it outside the post office in downtown Christiansted. Maritza Rios-Mims and Robert Mims filed an answer on July 16, 2012, denying liability. The Magistrate Court held a bench trial on July 25, 2012, which was continued to August 8, 2012, from which the testimony and evidence showed the following.

Janet Julien owns a white BMW that sustained damaged to the front passenger side, near the top of the hood. According to Julien, the damage occurred when a white Jeep Wrangler driven by Robert Mims and owned by his mother, Maritza Rios-Mims, backed into her car out outside the post office in downtown Christiansted. The post office shares a parking lot with the Christian “Shan” Hendricks Market. Julien had driven to the post office on the morning of April 20, 2012 and parked behind a jeep that was parked in one of the lined parking spaces facing the market. The stairs leading up into the market were on the right side of the jeep and a handicapped parking space on its left. Julien testified that she did not want to risk a fine by parking in the handicapped parking spot, so she instead parked directly behind and perpendicular to the jeep, partially blocking the jeep. Where she parked was also not a lined parking space.

The record does not indicate how long Julien was inside the post office, but upon exiting she noticed the white jeep reversing and attempting to maneuver itself out of the parking space. Julien called out to the driver to stop, waiving her hand and attempting to signal that she would move her car so he could “proceed with clearance.” (Trial Tr. 5:21, July 25, 2012.) The driver did not stop. Instead, he drove out of the parking lot, paused just outside on Company Street to allow a woman to get into the passenger side, and then drove away. Julien too drove away sometime thereafter.

After returning home, Julien went to wash her car and noticed two dents in the vehicle on the front passenger side. Photographs admitted into evidence show that both dents were near the top of the passenger-side, with one dent higher up by the windshield and the other dent lower down near the hood. Believing that the driver of the jeep, who was “fighting with the car to get out” of the parking spot, had caused the damage, (Trial. Tr. 6:3), Julien drove to the police station to report the incident. Although Julien believed she had recognized the woman who got into the passenger-side of the jeep because their daughters were together in St. Croix majorettes “about 25 years ago,” (Trial Tr. 4:20), Julien could not recall the woman’s name. So she called her daughter who told her that the woman’s name was Maritza

Rios. Julien gave that information to the police. She also explained that she did not have the license plate number for the jeep because she did not know her car was damaged until after returning home.

To get further information, Julien conducted her own investigation. After finding out where she believed Rios worked, a lab in Sunny Isle, Julien called the lab and asked to speak with Maritza Rios. When an employee told her no one by that name worked there, Julien decided to visit the lab in person. After describing who she knew as Maritza Rios, an employee told her that the person sounded like someone named Maritza Mims, who used to work there but now works at the hospital. Realizing that Rios must have gotten married, Julien returned to the police station and “gave the police the information on where [Rios-Mims] works, her place of employment.” (Trial Tr. 11:14-15.)

After nearly a month passed without the police following up despite Julien’s daily calls, Julien “decided to take a drive out to the hospital” where she saw “the Jeep” parked behind a fenced area. (Trial Tr. 11:21-22). She took down the license plate number and then called a friend at the “licensing bureau” and gave “them the license plate number” and, after learning who owned the jeep, gave that information to the police. (Trial. Tr. 11:24-12:15.) Eventually Julien received a police report, including supplemental reports, that concluded that Rios-Mims was not at fault and that Julien should consider taking the matter to civil court.

After Julien concluded her testimony, Rios-Mims testified next. According to Rios-Mims, she admitted that she owns a white Jeep Wrangler, but denied that she was anywhere near the post office in Christiansted on April 20, 2012. Rios-Mims testified that she was out on sick leave from her job from April 17, 2012 through May 6, 2012. In support, she provided a doctor’s note as well as copies of emails she sent to her supervisor informing her that she would be out on sick leave. The documents were admitted into evidence. She further testified that her cousin, Clarissa Cotto, who rode to work with her around that

time, had borrowed her jeep and drove it to work on the morning of April 20, 2012 since she was out sick. According to Rios-Mims, Julien simply had the wrong person.

Rios-Mims then called Cotto who corroborated that Rios-Mims was home sick from work on April 20, 2012 and further that she had borrowed Rios-Mims' jeep that morning. Cotto drove the jeep to work "from about 7:00, a little bit before 7:30, and it was parked at work until [she] left after 5:00." (Trial Tr. 37: 6-7.) She also testified that she did not loan the jeep to anyone else, nor did she drive to the post office on the morning of April 20, 2012.

Robert Mims was the last witness to testify during the July 25, 2012 bench trial. In his testimony, Mims admitted that he had driven his mother's jeep in the past and that he had gotten into an accident with his mother's jeep, but that he did not drive her jeep on the morning of April 20, 2012. Instead, he went that morning with friends to head to "multiple beaches" to "party hard" over the upcoming weekend. (Trial Tr. 46:6, 13.) April 20th was a Friday in 2012. The court adjourned trial to August 8, 2012 to allow Julien time to call her mechanic as a witness.

At the August 8, 2012 trial, Clyve Latty testified on Julien's behalf. In his testimony, he explained that he initially told Julien—when he first saw the damage to her car—that it was caused by a jeep. When the court inquired further whether Latty could say "beyond a reasonable doubt that the damage caused . . . was caused by a Jeep," Latty stated that "because [he] wasn't there" it was his opinion that a Jeep caused the damage. (Trial Tr., Aug. 8, 2012, 9:25-10-7.) Based on his experience doing autobody work, Latty explained that only a Jeep, or another car that had "a tire on the trunk," could cause the damage to Julien's car because of where the car was damaged. *Id.* at 9:19-20. Because the dents were on the passenger side, near the top of the door and the hood, Latty explained that they had to be caused by "something that extended out" since nothing else could "reach the hood." (Trial Tr. 10:20-24.)

Following Latty's testimony, the Magistrate Court took the matter under advisement. In an order entered on September 14, 2012, the court concluded that Julien had failed to show "by a preponderance of the evidence" that Rios-Mims and Mims were negligent. (Order 3, entered Sept. 14, 2012.) The court further concluded that Julien "could easily [have] be[en] mistaken" about her "identification of a person after twenty-five years," particularly in "a heightened state of stress," and that the damage to her car "could have been caused by another car when she was in the [p]ost [o]ffice since she did not immediately realize that her car had been hit." *Id.* at 3-4. The court then dismissed with prejudice her claims against Rios-Mims and Mims.

On September 20, 2012, Julien filed a document captioned "Motion for Internal Review" to have the Magistrate Court's conclusions reviewed. Also on September 20, 2012 Julien requested transcripts of the two days of trial before the Magistrate Court. Transcripts for the July 25, 2012 and August 8, 2012 hearings were submitted to the Court on January 16, 2013. On January 24, 2013, Julien filed a letter requesting that the Court waive the briefing requirement, which was granted in an order entered on March 18, 2014. Nothing further has come before the Court.

DISCUSSION

Judges sitting in the Appellate Division of the Superior Court function like an appellate court with the Magistrate Division functioning as the trial court. *See, e.g., Moore v. Walters*, SX-09-SM-203, 2013 V.I. LEXIS 73, *6-7 (Super. Ct. App. Div. Sept. 25, 2013) (unpublished), *aff'd*, 61 V.I. 502 (V.I. 2014). *Accord Ascencio v. Caribe Home Ctr., Inc.*, SX-12-SM-459, 2013 V.I. LEXIS 74, *4-5 (Super. Ct. App. Div. Oct. 29, 2013) (unpublished). Like an appellate court, the judge reviews the facts found by the magistrate court for clear error and must accept those unless they are "devoid of minimum evidentiary support or bear[] no rational relationship to the supportive evidentiary data." *In re Estate of Small*, 57 V.I.

416, 430 (V.I. 2011) (internal quotation marks, citations, and ellipses omitted). The law applied by the magistrate court is reviewed under a plenary standard, however.

In her September 20, 2012 Motion—which the Clerk’s Office construed as a petition for review, *see* Super. Ct. R. 322.1(b)(1)(B), and which the Court construes as a brief on appeal in light of Julien’s January 24, 2013 Letter requesting to waive the briefing requirement and for the court to “rely on the petition that [she] previously filed” instead, (Pet’r Letter 1, filed Jan. 24, 2013)¹—Julien raises four arguments, each of which challenges the Magistrate Court’s findings. In its September 14, 2012 Order, the Magistrate Court first explained that in a civil case the plaintiff must prove her case “by a

¹ Although the Appellate Division granted Julien’s request to waive briefing, it did so only because her petition for review sufficiently detailed “the issues [she] presented for review.” Super. Ct. R. 322.1(b)(1)(A). The Court must note a concern with Julien’s request to waive the briefing requirement, however, because unlike the requirement of obtaining a transcript, which can be waived on motion, *see* Super. Ct. R. 322.1(h)(2)(C), the rules governing the Appellate Division do not expressly provide litigants with the option to request to have the brief requirement waived. *Cf.* Super. Ct. R. 322.1(i)(A) (“The parties’ brief[s] shall outline the issues being submitted for review and arguments in support.” (emphasis added)). *But cf.* Super. Ct. R. 322.1(i)(G)(i) (explaining that a petition for review may be dismissed if the petitioner fails to file a brief “[u]nless waiver has been obtained.” (emphasis added)). Instead, the appellate court “may, by order, waive the need for briefs . . . if the issue presented for review is an issue of law which has previously been determined by controlling law and for which there is no reasonable dispute, and the issues may be determined based on the case record.” Super. Ct. R. 322.1(i)(B). Not expressly giving litigants the option to be relieved of the need to file a brief on appeal may have been deliberate since it is a general rule of appellate procedure that arguments not raised in an appeal are deemed waived. *See, e.g., Bernhardt v. Bernhardt*, 51 V.I. 341, 346 (2009) (per curiam) (“issues raised in a notice of appeal which are not argued in the appellant’s brief are waived.”). While the Supreme Court of the Virgin Islands has yet to consider the issue of waiver in relation to the arguments made or not made in Appellate Division specifically, it has made clear in general that arguments not raised in the Superior Court—which includes both the Magistrate Division and the Appellate Division, *see* 4 V.I.C. § 120; Super. Ct. R. 322(c)(1)—are deemed waived on appeal to that Court. *See* V.I. S. CT. R. 4(h) (“Only issues and arguments fairly presented to the Superior Court may be presented for review on appeal”). Here, Julien’s request to waive the briefing requirement could affect her right to raise arguments in any subsequent appeal to a higher court. She also could not have waived the rights of Rios-Mims and Mims to raise arguments on appeal. But in this instance any concern as to the effect of waiver should be minimal since Julien certainly implied in her January 24, 2013 Letter that only her obligation to file a brief on appeal be waived, not that the respondents’ obligation be waived as well since she asked that the Court “rely on the petition that [she] previously filed” in lieu of requiring her to file a brief. (Pet’r Letter 1, filed Jan. 24, 2013). Furthermore, any concern over waiving the briefing requirement is also lessened because Rios-Mims and Mims neither opposed Julien’s January 24, 2013 Letter nor filed a brief in response to the arguments Julien raised in her September 20, 2012 petition. However, if Julien’s petition had not detailed what errors she was raising on appeal, her request to waive the requirement to file a brief might have been denied since Appellate Division judges cannot search trial court records looking for errors the Magistrate Division may or may not have committed, not even when the parties are proceeding without an attorney. *Accord Franklin v. Woodmere at the Lake*, 89 So. 3d 144, 150 (Ala. Ct. App. 2011) (“It is not this court’s obligation to create arguments for an appellant. Instead, the appellant is obligated to provide arguments demonstrating that the trial court committed error requiring reversal.”); *Helman v. EPL Prolong, Inc.*, 743 N.E.2d 484, 491 (Ohio Ct. App. 2000) (“This court cannot and will not search the record in order to make arguments on appellant’s behalf.” (internal alteration omitted)). Therefore, since Julien’s petition for review sufficiently detailed the errors she wants reviewed in the Appellate Division, the Court will consider them as her arguments on appeal.

preponderance of the evidence.” (Sept. 14, 2012 Order at 3 (citing *Armstrong Ford, Inc. v. Campbell*, 14 V.I. 337 (D.V.I. 1977)).) Citing *Morton v. Latimer*, 1 V.I. 96 (D.V.I. 1925), the court further explained that the plaintiff has the burden to show that her damages were caused by the negligence of the defendants. The court then questioned Julien’s recognition of Rios-Mims, noting that she “could easily be mistaken” and remarking that “the identification of a person after twenty-five years is difficult for anyone to make” and “made more difficult in a heightened state of stress.” (Sept. 14, 2012 Order at 3.) After finding that Julien’s “only proof was her contention that she saw Mrs. Mims in the passenger [side]” of the Jeep and her assumption—when she saw the damage to her car—that it had to have been caused by “the Jeep maneuvering out of the parking space,” the court concluded that Julien had failed to carry her burden of proof. *Id.* at 3-4. The court further observed that because Julien “did not personally see the accident,” she could not be certain that “her car was even damaged” by the jeep and further observed that “[t]he damage could have been caused by another car when she was in the [p]ost [o]ffice.” *Id.* at 3-4. The court then dismissed Julien’s case with prejudice.

On appeal, Julien’s first argument concerns the Magistrate Court’s finding that “the damages” to her car “could have been done by another vehicle” during the time she was in the post office. (Pet’r Mot. for Int. Review 1, filed Sept. 20, 2012 (hereinafter “Pet.”).) Julien argues that this finding is “inconceivable” because her car had “blocked the [respondents’] Jeep Wrangler at the Christian Hendricks market.” (Pet. 1.) Instead, “the damages,” she argues, “*could only have been caused by the Jeep Wrangler trying to maneuver out of its position.*” *Id.* (emphasis added). This argument suffers from two flaws. First, Julien focuses on what the Magistrate Court suggested could have happened, rather than on what the evidence actually showed. Notably, the Magistrate Court did not find that the damage to Julien’s car was not caused by Rios-Mims’ Jeep Wrangler. Instead, what the trial court found—and what this appellate court reviews for clear error against the testimony in the record—is that Julien did not provide sufficient

evidence to show that it was Mims driving his mother's car, who caused the damage to her BMW. That finding is not clearly erroneous.

The testimony shows that Julien parked her car behind a Jeep Wrangler, partially blocking it. The testimony also shows that Julien did not see any car, including the jeep, make contact with her car. This testimony simply does not establish what Julien assumes—and what she wanted the trial court to assume—that “the damages” to her car “could only have been caused by the Jeep.” *Id.* For this to be true, the testimony before the trial court had to show, for example, that the damage to Julien's car was not there before she drove to the post office, that she completely blocked the jeep in its parking space, and that she was only inside the post office for a short period of time. But here, Julien's own testimony shows that she did not completely block the Jeep. Otherwise, it would not have been able to maneuver out of its parking space. It is possible that the Jeep Wrangler did dent her BMW. But courts cannot fill in the gaps left by evidence. Here, because Julien did not prove that only Rios-Mims's Jeep caused the damage to her car, the Court must reject her first claim of error.

In her second argument, Julien disputes the Magistrate Court's conclusion that she could have been mistaken in recognizing Rios-Mims after twenty-five years and further that her identification “was made during a ‘heightened state of stress.’” *Id.* Julien is correct. This finding was clearly erroneous. As she correctly points out, “there is nothing in the record supporting the Magistrate's conclusion.” *Id.* Neither Rios-Mims nor Mims challenged or contradicted Julien's identification of Rios-Mims. The Magistrate Court also did not question Julien about the accuracy of her identification, about how well she knew Rios-Mims, or even whether the last time she saw Rios-Mims was in fact twenty-five years ago. There simply is no testimony on which the court could have concluded that Julien's identification was flawed. Similarly, there is no basis for the court to have concluded that Julien was in a heightened state of stress. In fact, Julien did not testify that she was “stressed” when she saw jeep drive off. She did not follow the jeep or

proceed to the police station. Instead, she drove home. After she returned home and discovered the damage, then her testimony could support a finding of being stressed. But the court's finding that Julien's was under stress when she recognized Rios-Mims, and further that her identification of Rios-Mims was flawed because of such stress, are both clearly erroneous because they are "devoid of minimum evidentiary support [and] bear[] no rational relationship to the supportive evidentiary data." *Estate of Small*, 57 V.I. at 430 (emphasis added) (internal quotation marks, citation, and ellipses omitted).

Nonetheless, the court's errors do not help Julien here because its overall finding was that Julien had not "presented enough evidence to show that the persons who damaged her vehicle were in fact" Rios-Mims and Mims. (Sept. 14, 2012 Order at 4.) While Julien did identify an error, what she does not understand is that the Magistrate Court concluded overall that the testimony and evidence of Rios-Mims, Mims, and Cotto was more credible than the evidence and testimony Julien presented. Since the magistrate court is the fact finder in small claims cases, "the [appellate] court must defer to the credibility decision made by th[at] factfinder." *Moore v. Walters*, 61 V.I. 502, 508 (V.I. 2014). "[I]f a rational person could agree with the assessment of the [magistrate] court," then the "determination of credibility by the magistrate [court] cannot be overturned" on appeal. *Id.* Here, the testimony was certainly conflicting. Mims and Rios-Mims could not be in two places at the same time. Julien's testimony placed them in a white Jeep Wrangler outside the post office. Their testimonies, as well as Cotto's testimony, placed Rios-Mims at home, Mims on his way to the beach, and the jeep in another parking lot across town where Cotto parked it. Both cannot be right and the magistrate court, as the factfinder, made a determination as to which testimony to believe. While Julien takes issue with the Magistrate Court's remarks about her state of mind and her ability to identify Rios-Mims—remarks which have no support in the record—those remarks did not form the basis of the court's "[u]ltimate[]. . . find[ing]" that Julien failed to prove her

case. (Sept. 14, 2012 Order at 4.) Because the court's ultimate finding was that the testimony and evidence of the defendants was more credible, that finding cannot be disturbed on appeal.

Julien's third argument concerns her "expert's testimony" that her "car was damaged by a large vehicle, similar to the Defendant's vehicle." (Pet. 1.) She claims the Magistrate Court "failed to consider circumstantial and direct evidence" regarding what type of vehicle could have caused the damage to her car and that it was "more reasonable for [the] finder of fact to accept that [Rios-Mims'] vehicle caused the damages to [Julien's] car." *Id.* In so far as this argument raises another challenge to the Magistrate Court's credibility determination, the Court rejects it for the same reasons stated above. But the Court does have a concern with Julien's argument regarding the testimony Latty provided and specifically her characterization of his testimony as "expert testimony."

"While lay testimony," or the testimony given by persons who witnessed or heard what the parties are disputing in court, "has to be rationally based on the witness's perception, expert testimony does not, and instead is rooted in the expert's scientific, technical, or other specialized knowledge that will help the trier of fact to understand the evidence or to determine a fact in issue." *Malloy v. Reyes*, 61 V.I. 163, 182 (V.I. 2014) (internal quotation marks, citations, and alterations omitted). Ordinarily, whether a person provides lay testimony or expert testimony is a question of fact reviewed for clear error on appeal. *Id.* But here the Magistrate Court never characterized Latty's testimony as lay or expert. Julien referred to him as expert. And his testimony does show that he did give expert testimony, but without being admitted or qualified as an expert first.

Latty began his testimony as a lay witness, detailing what he told Julien when she showed him the damage to her car. Specifically, he testified that he told her he believed that the damage was caused by a Jeep Wrangler. When he was speaking about his own perceptions, meaning what he heard, said, and saw, he was providing lay testimony. But midway through his testimony, the Magistrate Court switched from

asking Latty² about what he told Julien to asking him whether “no other car,” besides a Jeep, “could do th[e] damage” seen on Julien’s car. (Trial Tr. 9:4-5, Aug. 8, 2012.) Specifically, the court asked if Latty could tell him “beyond a reasonable doubt that the damage caused to [Julien’s] vehicle was caused by a Jeep.”³ *Id.* at 9:25-10:2. At that point, Latty’s testimony segued from his own perceptions to “opinions or inferences based on . . . technical, or other specialized knowledge . . . drawn from facts outside the witness’s first-hand knowledge of the case.” *Malloy*, 61 V.I. at 182 (internal quotation marks, citations, and alterations omitted). He clearly gave expert testimony. Latty’s testimony about what could have caused the damage to Julien’s car was not based on his first-hand knowledge because he was not there when Julien’s car was damaged. Once his testimony segued from his own perceptions into his technical or specialized knowledge in doing autobody work, he provided expert testimony, which was inadmissible since he was not qualified as an expert first. However, the trial court in the Small Claims Division is not “bound by . . . rules of practice, procedure, pleading, or evidence.” Super. Ct. R. 64. While the Court does not address whether Rule 64 should be construed so as to allow expert testimony, but just not “bound by” the rules of evidence, or whether since the rules of evidence do not apply, expert testimony is also not permitted. Nonetheless, the trial court should still identify what type of testimony is being given, if only

² While Julien did not argue that her ability to prove her case was hampered at trial, the Court does note that nearly all of the questioning during both days of trial came from the Magistrate Court, not the plaintiff—who like any plaintiff in a civil case has the *burden* of proof—or even the defendants. While the trial court in small claims cases must “conduct the trial in such manner as to do substantial justice . . . and shall not be bound by . . . rules of practice, procedure, pleadings, or evidence,” Super. Ct. R. 64, the court must also avoid going beyond its position as neutral factfinder and taking on the burden of proving (or disproving) a party’s allegations. *Cf. Moore*, 61 V.I. at 508-09 (affirming that it is “not the magistrate’s obligation to obtain evidence and make [a litigant]’s case for him.”)

³ If the Magistrate Court had held Julien to the beyond a reasonable doubt standard, this matter would have been reversed and remanded as that standard of proof applies only in criminal cases, not civil cases. *Cf. In re Pet. of V.I. Bar Ass’n Comm. on Unauthorized Practice of Law*, 59 V.I. 701, 715 (2013) (noting that “the two burdens of proof applicable to civil cases” are “preponderance of the evidence, and clear and convincing evidence.”) But because the court, in its September 14, 2012 Order, cited the correct standard of proof for this case, namely preponderance of the evidence, the Court presumes that the Magistrate Court’s statement at the August 8, 2012 bench trial was simply a “slip of the tongue.”

to ensure that the appellate court can adequately review the matter on appeal. *Accord Malloy*, 61 V.I. at 182-84.

Here, any error is harmless for two reasons. First, the Magistrate Court did not have to “afford[] any greater weight” to Latty even assuming that he could give expert testimony in a small claims case and even if he had been given “expert’ status.” *Id.* at 184. In other words, the Magistrate Court as the factfinder in a bench trial was entitled to give Latty’s testimony whatever weight it thought proper and that determination cannot be disturbed on appeal. Second, and more importantly, because this was a bench trial, the appellate court must assume that the trial court did not consider any impermissible expert testimony in rendering its decision. *Cf. id.* at 182 (“if [the witness] did in fact testify only as a lay witness, any testimony given that was beyond the realm of common experience would have been inadmissible and—because this was a bench trial—we would presume the Superior Court did not consider it in rendering its judgment.” (internal quotation marks and citation omitted)). Notably, the Magistrate Court did not reject Latty’s testimony in finding for the defendants. In other words, the court did not fail to “consider circumstantial and direct evidence” as Julien argues. Instead, even with Latty testimony, the court still found that the testimony and evidence Rios-Mims and Mims gave was more credible. Therefore, the Court assumes that the Magistrate Court did not err in considering Latty’s testimony and any error was harmless.

In her last argument, Julien finds fault with the Magistrate Court “fail[ing] to address the evidence that shows that it was Mr. Robert Mims, the [c]o-defendant, who was operating the Jeep Wrangler at the Christian Hendricks [m]arket.” (Pet. 2.) This argument is simply incorrect because the court extensively questioned Mims at trial and further considered the evidence regarding whether he was driving his mother’s Jeep on the morning of April 20, 2012. (*See* Trial Tr. 43:4-49:4, July 25, 2012. *See also* Sept. 14, 2012 Order at 1 (“Plaintiff contends that she discovered the driver was Robert Mims because she

recognized the passenger in the car at the time, Defendant Maritza Mims”); *id.* at 2 (“Robert Mims testified that on April 20, 2012 he was not driving the Mims vehicle, but was out with friends.”).) The Magistrate Court clearly considered both parties’ evidence, and rejected Julien’s version of the events. What Julien truly raises in her last argument is one more request to have this Court reassess her own testimony and find it more credible than the testimony of the other witnesses, including Mims. But what Julien fails to understand is that this Court, as an appellate court, cannot reconsider what weight to give evidence. Further, a rational person could have found as the Magistrate Court did. Only Julien’s testimony placed Mims at the post office on the morning of April 20, 2012 whereas Mims, and two other witnesses, showed the opposite. A rational person could have found his testimony to be more credible than Julien’s testimony and therefore this Appellate Court cannot disturb that finding on appeal.

Lastly, although not raised by Julien, the Court notes that the Magistrate Court, in its September 12, 2014 Order, rather than enter judgment for the defendants, dismissed Julien’s case with prejudice. That was incorrect. Once a party’s claims are heard and considered on the merits—whether through a motion for summary judgment, a trial by jury or by the court, or a motion for directed verdict—a judgment must be entered. Like a motion for summary judgment, which if granted concludes that no material facts are in dispute and that judgment can be entered summarily, so must a judgment be entered following a bench trial, even if the result is that the facts do not support the claims the plaintiff alleged in her complaint. *Cf.* Fed. R. Civ. P. 12(c) (governing motion for *judgment* on the pleadings (emphasis added)); Fed. R. Civ. P. 52(a)(1) (“In an action tried on the facts without a jury . . . the court must find the facts specially and state its conclusions of law separately. . . . Judgment must be entered under Rule 58.”). *Accord Pond Hollow Homeowners Ass’n v. Ryland Group, Inc.*, 779, N.W.2d 920, 924-25 (Minn. Ct. App. 2010) (“we hold that the [trial] court’s grant of summary judgment due to the lack of any genuine issues of material fact requires entry of judgment We therefore reverse the ‘without prejudice’ dismissal . . . and remand

for entry of judgment.”); *Caravantes v. Dowless*, 2012 N.C. App. LEXIS 164, *1 (N.C. App. Ct. Feb. 7, 2012) (unpublished) (remanding in part because “dismissal pursuant to Rule 12(b)(6) *following* a bench trial was not proper.” (emphasis in original)). Because the Magistrate Court held a trial on Julien’s claim, and ultimately found against her after that trial, the result should have been a judgment entered in favor of the defendants, not dismissal with prejudice. For this reason, the Court will vacate the portion of the September 14, 2012 Order that entered a dismissal with prejudice and remand solely for the limited purpose of entering judgment for the defendant.

CONCLUSION

For the reasons stated above, the Court affirms the Magistrate Court’s ultimate conclusion that Janet Julien failed to carry her burden of proving that Maritza Rios-Mims and Robert Mims were negligent and caused the damage to her vehicle. Julien certainly believes that she saw Mims driving his mother’s Jeep Wrangler on the morning of April 20, 2012 and that he must have been the one who damaged her BMW by backing into it. That may, in fact, be what happened. But because the evidence was conflicting and because the Magistrate Court, as factfinder in small claims cases, determined which witnesses were more credible, finding the evidence Julien presented less convincing than the evidence Rios-Mims and Mims presented, this Court as an appellate court cannot disturb that determination. The Magistrate Court did err in questioning Julien’s identification of Rios-Mims after twenty-five years and in finding that she was in a heightened state of stress because finding is supported by the testimony. The court may also have erred in allowing Clive Latty to give expert testimony. But these errors were harmless because they were not germane to the court’s ultimate finding, namely that Julien did carry her burden of proof. Therefore, the Court will affirm the Magistrate Court’s September 14, 2012 Order as to its finding that Julien failed to prove her claim. The Court will, however, vacate the portion of that Order that dismissed Julien’s July

6, 2012 Complaint with prejudice and remand solely for judgment to be entered in favor of Maritza Rios-Mims and Robert Mims, the defendants below and respondents on appeal.

On the basis of the foregoing, it is hereby

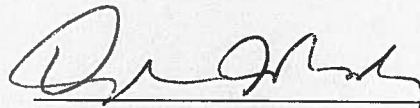
ORDERED that this matter is REMANDED to the Magistrate Division for the limited purpose of directing that judgment be entered in favor of the defendants. It is further

ORDERED that the Order, entered September 14, 2012, is otherwise AFFIRMED. It is further

ORDERED that upon entry of judgment for the defendants, the Clerk's Office shall CLOSE this matter. It is further

ORDERED that a copy of this Order be served on both parties, FORTHWITH, by Superior Court marshal or certified mail, return-receipt requested.

Dated: August 4, 2015.


DOUGLAS A. BRADY
Judge of the Superior Court

ATTEST:

ESTRELLA H. GEORGE
Acting Clerk of the Court

By: 

Court Clerk Supervisor

8/4/15