

**IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT IN AND
FOR ORANGE COUNTY, FLORIDA**

LUCY BRISBANE,

Appellant,

vs.

K.N.N. CHECK CASHING,

Appellee.

CASE NO. CVA1 07-78

County Court Case No. 07-SC-8995-O

Appeal from the County Court,
for Orange County,
Antoinette Plogstedt, Judge.

Lucy Brisbane, pro se,
for Appellant.

S. Ishmail of K.N.N Check Cashing, pro se,
for Appellee.

Before POWELL, M. SMITH, and GRINCEWICZ, J.J.

PER CURIAM.

FINAL ORDER AFFIRMING LOWER COURT

Appellant/plaintiff Brisbane appeals from a final judgment entered in favor of appellee/defendant K.N.N. Check Cashing following a non-jury trial.

From a review of their pro se briefs, it can be seen that the only issue in this appeal involves the credibility (believability) of the witnesses, that is to say, who the trial judge believed– Brisbane and her three witnesses or the two witnesses representing K.N.N. Check Cashing.

“It is clear that the function of the trial court is to evaluate and weigh the testimony and evidence based upon its observation of the bearing, demeanor and credibility of the witnesses appearing in the cause. It is not the function of the appellate court to substitute its judgment for that of the trial court through re-evaluation of the testimony and evidence from the record on appeal before it.” Shaw v. Shaw, 334 So. 2d 13, 16 (Fla. 1976). The appellate court can, however, review whether there was substantial competent evidence to support the judge’s decision if the appellant has provided a transcript of the testimony presented to the trial judge. Id. But where, as in this case, an appellant has not provided such a transcript, the appellate court “must give utmost credence to his fact findings, and assume there was the best imaginable evidence available to support them.” Hudson Pest Control, Inc. v. Westford Asset Mgt. Inc., 622 So. 2d 546, 547 (Fla. 5th DCA 1993). Thus, where no transcript has been provided, the appellate court has no authority to set aside the trial judge’s decision and is required to affirm. See Applegate v. Barnett Bank of Tallahassee, 377 So. 2d 1150 (Fla. 1979); see generally 3 Fla. Jur 2d Appellate Review §§334-338.

For the foregoing reasons, it is hereby **ORDERED AND ADJUDGED** that the trial court’s Final Judgment is **AFFIRMED**.

DONE AND ORDERED at Orlando, Orange County, Florida, this __17__ day of _____ August _____, 2009.

_____/s/_____
ROM W. POWELL
Senior Judge

_____/s/_____
MAURA T. SMITH
Circuit Judge

_____/s/_____
DONALD E. GRINCEWICZ
Circuit Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via U.S. mail or hand delivery to **Lucy Brisbane**, 4233 Gaither Street, Orlando, Florida 32811 and **K.N.N Check Cashing**, 4119 South Orange Blossom Trail, Orlando, Florida 32839 on this __17__ day of _____August_____, 2009.

_____/s/_____
Judicial Assistant