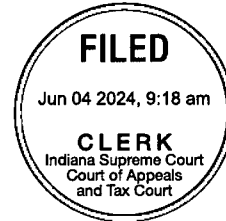


MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.



IN THE Court of Appeals of Indiana

Steven Rosenbaum and Megan Rosenbaum,
Appellants

v.

Gregory A. Thompson, Sr.,
Appellee

June 4, 2024

Court of Appeals Case No.
23A-EV-1846

Appeal from the Hendricks Superior Court
The Honorable Joshua D. Adair, Magistrate
Trial Court Cause Nos.
32C01-2307-PL-75
32D05-2306-EV-671

Memorandum Decision by Judge Brown
Judges Riley and Foley concur.

Brown, Judge.

- [1] Steven Rosenbaum (“Steve”) and Megan Rosenbaum (“Megan”) appeal the small claims court’s order for possession of a house after a contested hearing. We affirm.

Facts and Procedural History

- [2] On June 21, 2023, Gregory A. Thompson, Sr., filed a claim against Steve and his daughter Megan (“Defendants”) requesting an order for possession of his house in Lizton, Indiana.¹ He also filed a “Landlord’s Affidavit for Possession Due to Nonpayment of Rent” stating that Defendants “came onto the property some time in or after November of 2021,” “[t]he Terms of said agreement were they could stay for two (2) weeks,” “[a]fter two (2) weeks had passed, they have been asked several times to leave by vacating the property to no avail,” Defendants “were friends, so they were not asked to pay rent,” Megan “has medical/mental issues and has had law enforcement called on her several times by local residents and businesses due to being disruptive,” and “a 10-Day Notice to Pay or Vacate Letter(s) was/were sent to [Defendants] and a copy is attached.” Appellants’ Appendix Volume II at 16. The court scheduled a

¹ The chronological case summary (“CCS”) for cause number 32D05-2306-EV-671 (“Cause No. 671”) indicates “Location: Hendricks Superior Court 5” and “Case Type: EV – Evictions (Small Claims Docket).” Appellants’ Appendix Volume II at 2. Also, the appellants’ appendix contains a “10 Day Notice to Vacate” signed by Thompson and dated June 2, 2023, which stated Defendants owed \$1,000, “you were given permission to stay at my residence for a period of two weeks, every day since that time you’ve been asked to leave and you’ve ignored those requests,” “[y]ou’ve never had a lease or any right to stay at my home beyond those two weeks,” and “I served this notice [] by: . . . Delivering it personally to the above person listed squatting on the premises.” *Id.* at 14.

hearing on the request for an order for possession for July 19, 2023, and set a bench trial on the issue of damages for September 21, 2023.

[3] On July 5, 2023, Thompson filed a Motion for Emergency Hearing on Immediate Possession of Building. On July 6th, the court scheduled an eviction hearing for July 10, 2023. On July 7th, Defendants filed a motion for trial by jury stating that they “were to pay [Thompson] \$100.00 per week in rent in cash,” “[t]his would include any cost for the increase in electric cost he may incur,” “[t]o date, the Defendants have paid [Thompson] a total of \$7,700 in rent since that date,” and “[t]his pays the rent through July 20th, 2023.” *Id.* at 17. An entry in the CCS states: “Court receives Defendant[s]’ request for a Jury Trial and will address Motion at the 7/10/23 hearing.” *Id.* at 4. On July 10th, prior to the scheduled hearing, Steve filed a motion for a continuance stating “[t]here is no crisis in this matter requiring immediate adjudication,” Megan was “in Community Fairbanks Hospital,” “[t]his matter has become much more complicated,” and “[r]ather than simply disputing [Thompson’s] false allegation that no rent has ever been paid . . . [n]ow, it is a question of who caused a physical altercation between the parties.” *Id.* at 23.

[4] At the July 10th hearing, Steve stated that Megan was in the hospital. The court stated “the possession hearing is no[t] the trial” and “I am gonna grant your request to move it to the jury trial date, but [] that’s only gonna be for the damages hearing,” and Steve replied “[y]es, I understand.” Transcript Volume II at 4-5. The court stated: “The possession hearing today is still gonna continue on, and if you want to contest the damages amount, that’s the

purpose[] of the jury trial. So [Steve], I am gonna grant your request to [] transfer this case to the PL docket. You have to pay a seventy dollar (\$70.00) fee.” *Id.* at 5. The court later stated, “at the end of the day, [] if you don’t seek damages in this matter, [] then there wouldn’t be an issue for a jury trial at all,” “I’m gonna hold that issue till the end,” and “I’m gonna deal with the possession and then [] I’ll issue a ruling dispositively one way or another on this motion.” *Id.* at 11. The court denied the motion to continue, stating “I do understand [Megan] is not able to be here today . . . [] but I do believe that you’ll be able to testify” *Id.*

- [5] Thompson testified that he had been friends with Steve for a long time, that Megan previously lived in a rough neighborhood in Indianapolis, that she came to live with him in “November of ‘21 . . . [w]ell no, that would have been September of ‘21 originally,” and about a month later he allowed Steve to move in with him because he had no place to go. *Id.* at 12. He testified that Megan and Steve were “[s]upposed to be there two (2) weeks and that was it” and “I just kinda let it go.” *Id.* at 13. He indicated that, after about eight months, he saw that his costs for utilities had increased and asked Defendants for money for utilities. He testified:

I don’t think there’s been a day gone by in the last year that I haven’t asked them, please move out, I want my house back, I want my property back. I’ve got [Megan] getting up in the middle of the night, all hours of the night, literally, I can’t sleep in my bed . . . so I’ve been sleeping on the couch in the front room. She’s in and out of the house all hours of the day and night; in and out, in and out, never stops. She goes outside and she yells . . . and screams at the

stars and the moon, she threatens the neighbors . . . I can't hardly stand it anymore. It's just gotten worse. In the last year, it's just progressively getting worse and worse and worse, to last week I got attacked.

Id. at 14. He testified that Megan placed a cigarette in a flower and "it caught on fire and it burnt the porch down" and Steve rebuilt the porch. *Id.*

[6] When asked about an incident on July 4th, Thompson testified:

I'm sitting on the couch, Steve is sitting on the other end of the couch, and we're watching television. The house is totally silent, it's totally quiet, and the next thing I know, she's standing behind me yelling and screaming. And, I told him, what I typically do, is say Megan take it outside, yell out, yell at the clouds or whatever, go outside we're watching tv, and instead of doing that, she comes up over, I'm looking at the tv this way, she's behind me, I'm on the couch with the recliner up, and it ain't easy to get out of anyway, but I was in a bad motorcycle accident . . . and I can't hardly move, and [] I could not get away from her, and . . . she was over the top of me, I went like this, I did, I admit right here in the Court, that yes I struck her first, but she was, I thought she was coming to beat me, and she did, she beat and beat and beat on my. [Sic] I was just trying to get her to get away. I couldn't move, I was trapped in the . . . chair and she's there beating on me and Steve got up, came around the couch to get [her] off of me and she started hitting him, and that's when we called the Sheriff. I call the Sheriff and he called the Sheriff, and . . . they brought out paramedics, and they took her to Eskenazi and Eskenazi couldn't handle her, they had to send her up to Community North So, this is a situation that ove[r] a period of time, she's getting worse, and I'm scared to death in my own . . . home.

Id. at 15-16. He testified “the police have been out multiple times,” “these people I thought were my good friends, and I though[t] I was doing something to try to help,” and “now [] I’m fearful in my own home.” *Id.* at 16-17.

[7] Steve testified:

[T]here’s no question that my daughter has serious mental issues. She’s been diagnosed with paranoid schizophrenia and schizoaffective disorder . . . and we’ve tried various medications and the ones we are doing now . . . seem to help quite a bit, and calmed her down . . . where she doesn’t seem as . . . delusional On July Fourth, she was great in the morning, in the afternoon, she started, she was convinced that she had bought four (4) tickets for me and my daughter, my granddaughter to go to see my sister (inaudible), airplane tickets. She doesn’t have any money, it’s all delusional, and she started to yell at me at the house, that I should get ready and we’re ready to go. I said I’m not going, there’s nothing real. And, she started yelling at me and she was standing . . . by [Thompson], and [Thompson] instead of just getting up, he got up, he hit her in the face and (inaudible) overreacting.

* * * * *

I was the one that called the 911 to get the Sheriff to come pick her up and take her to a hospital. They took her to Eskenazi Hospital. [I]t isn’t that they couldn’t handle her . . . they cannot treat anybody that’s outside of Marion County, so they transferred her to Community North. And, since she’s been there . . . she’s got significantly better. They’ve added another [] medication . . . which has helped significantly and made the [] voices that she hears all the time go away, so we’re making progress, significant progress.

Id. at 19-20. Steve stated that Thompson “mentions that he, about sixty (60) days ago, it was something like that, he got upset and asked me to move, okay,

and he got upset with me and said I can no longer stay in the bedroom and he asked me to move cause he wanted to move back in the bedroom and sleep in the bed, and he didn't want to sleep on the couch." *Id.* at 20-21. Steve also stated: "I appreciate all the help he's given me and my daughter, it's been wonderful. . . . I'm expecting a check very shortly and I'll be able to move . . . I wanna move more than he wants me to move (laughing)." *Id.* at 21-22. The court asked "if you're wanting to move out, . . . why are you filing all these motions with the Court to extend things and [] set it for jury trial [] if all you want to do is move out," and Steve replied "I need . . . probably three (3) or four (4) weeks, three (3) weeks to move out." *Id.* at 23.

[8] The court stated:

[W]e are here on the emergency basis. Again, this is not about the rent issue We're here because [Thompson] filed a motion indicating that he is essentially scared to live in his house due to the mental health issues of your daughter. We now have police activity to the point where [Megan] has now been held at a mental health facility for . . . I guess it will be a week tomorrow. . . . According to you, [Thompson] has even asked you to leave [] sixty (60) days ago. [Thompson] testified he's been asking you to go for over a year. [T]here is no lease involved. . . .

Thompson no longer feels safe in his home due to the mental health concerns, and while you have testified that Megan has gotten better, I would think that the episode that happened on the Fourth would indicate that that's not always the case and that she is still currently dealing with these issues. . . . I do believe that that is an escalation of the conduct and I will note that it did occur . . . after the filing of the eviction and service on both of you . . . it leads me to believe that it could be some sort of retaliation potentially. [B]ut I do also

understand that there is [sic] mental health issues involved. So, for purposes of the emergency possession hearing, I do find [Thompson] has met [his] burden . . . that there is a threat to the physical safety. . . . I am going to issue the Prejudgment Order for Immediate Possession of the property

* * * * *

I'm gonna give you until Thursday the 13th at noon, which would be more than seventy-two (72) hours from now to vacate the property.

* * * * *

[R]egarding the issue of the jury trial, . . . I am going to grant you[r] request to move this to the PL docket. You need to pay a seventy dollar (\$70.00) . . . fee, in order to change it to the PL docket. If you don't want to move it to the PL docket and have the damages hearing here in court with me, you don't have to go through with that.

Id. at 24-26. The court also stated "just for the record, I am going to continue the damages hearing date to figure out if you're going to pay the seventy dollar (\$70.00) fee or not. If you don't pay the fee and it comes back here, I'll reset the damages hearing date." *Id.* at 28.

[9] The court issued a written order which provided:

This matter came before the Court on July 10, 2023 for an Eviction Hearing and the issuance of a Prejudgment Order for Possession, the Court addressed Defendant[s'] Motion for Continuance and Motion for Jury Trial setting. After hearing sworn testimony, the Court Denies Defendant[s'] request for continuance. If [Thompson] is seeking damages and for purpose of damages, the Court grants Defendant[s'] request for Jury Trial. Defendant to pay the applicable fees to transfer case to the Plenary Docket within ten (10) days. Upon payment of the

appropriate fees, the Clerk is to transfer case to the Plenary Docket. If fees are not paid within ten (10) days by Defendant[s], the eviction case will revert back to the Small Claims Court and be reset for a Damage Hearing. Damage Hearing presently scheduled for September 21, 2023 [is] vacated.

Appellants' Appendix Volume II at 12.²

Discussion

[10] Defendants, *pro se*, assert that the small claims court did not have jurisdiction to issue the July 10, 2023 order for possession as they filed a demand for a jury trial on July 7th. They argue that they were current on their rent, they were tenants at will, and Thompson failed to provide proper notice. They assert an altercation occurred during which Megan “became loud,” Thompson “reached up and punched her in the face,” “[s]he reacted and hit him back,” and “[t]hey took [her] to the hospital.” Appellants’ Brief at 8.

[11] While Defendants proceed *pro se*, they are held to the same standard as trained counsel and are required to follow procedural rules. *Evans v. State*, 809 N.E.2d 338, 344 (Ind. Ct. App. 2004), *trans. denied*. Thompson has not filed an

² The CCS for cause number 32C01-2307-PL-75 (“Cause No. 75”) in the appellants’ appendix indicates “Location: Hendricks Circuit,” “Case Type: PL - Civil Plenary,” and “Date Assigned 07/12/2023.” Appellants’ Appendix Volume II at 8. An entry on July 12, 2023, states: “Case <32D05-2306-EV-671> transferred in.” *Id.* at 11. An entry on July 13th states: “This case was received from EV to PL, Hendricks County. Events dated between 6-21-23 to 7-13-23 were from original case.” *Id.* The CCS, under “Financial Information,” indicates there was a payment of \$70. *Id.* Also, the CCS for Cause No. 671 indicates that Thompson filed a Motion for Rule to Show Cause which was file-stamped on July 12, 2023, the court set a hearing for July 26th which was later reset for August 9th, Thompson filed a Motion to Dismiss Rule to Show Cause on August 8th, and the court granted the order and vacated the scheduled hearing.

appellee's brief, and thus we may reverse if Defendants establish prima facie error. *See Bixler v. Delano*, 185 N.E.3d 875, 877 (Ind. Ct. App. 2022).

- [12] Defendants appeal from a negative judgment. We will reverse only if the evidence leads to but one conclusion and the small claims court reached the opposite conclusion. *Kim v. Vill. at Eagle Creek Homeowners Ass'n, Inc.*, 133 N.E.3d 250, 252 (Ind. Ct. App. 2019). Judgments in small claims actions are subject to review as prescribed by relevant Indiana rules and statutes. *Eagle Aircraft, Inc. v. Trojnar*, 983 N.E.2d 648, 657 (Ind. Ct. App. 2013). We do not reweigh the evidence or determine the credibility of witnesses and consider only the evidence supporting the judgment. *Id.* We presume the court correctly applied the law. *Id.* A court's findings control only as to the issues they cover and a general judgment controls as to the issues upon which there are no findings. *Yanoff v. Muncy*, 688 N.E.2d 1259, 1262 (Ind. 1997). Findings will be set aside only if they are clearly erroneous. *Id.* In order to determine that a finding or conclusion is clearly erroneous, an appellate court's review of the evidence must leave it with the firm conviction that a mistake has been made. *Id.*

- [13] With respect to Defendants' argument regarding jurisdiction, a small claims court has jurisdiction to grant an emergency possessory order. *See* Ind. Code § 33-29-2-4 ("The small claims docket has jurisdiction over . . . [e]mergency possessory actions between a landlord and tenant under IC 32-31-6"); Ind. Code § 32-31-6-2 ("The small claims docket of a court has jurisdiction to grant an emergency possessory order under this chapter."). As for the request for a

jury trial, Ind. Code § 33-29-2-7(b) provides that “[a] defendant may, not later than ten (10) days following service of the complaint in a small claims case, demand a trial by jury by filing an affidavit” which “(1) states that there are questions of fact requiring a trial by jury; (2) specifies those questions of fact; and (3) states that the demand is in good faith.” Ind. Code § 33-29-2-7(d) provides: “Upon the deposit of seventy dollars (\$70) in the small claims docket by the defendant, the court shall transfer the claim to the plenary docket. Upon transfer, the claim then loses its status as a small claim.”

- [14] Here, near the beginning of the hearing on July 10th, the court indicated that it would hear the request for emergency possession and then address the need for a damages hearing and request for a jury trial.³ At the end of the hearing, the court indicated that it would issue an order for possession and then stated “so I am going to grant you[r] request to move this to the PL docket,” explaining “[y]ou need to pay a seventy dollar (\$70.00) . . . fee, in order to change it to the PL docket” and “[i]f you don’t want to move it to the PL docket and have the damages hearing here in court with me, you don’t have to go through with that.” Transcript Volume II at 26. The court issued its written order for possession on the same date, an entry in the CCS for Cause No. 75 on July 12th states the claim was “transferred in” from Cause No. 671, and the CCS

³ Ind. Code § 32-31-6-7(d) provides “[t]he court may make other orders that the court considers just under the circumstances, including setting a subsequent hearing at the request of a party to adjudicate related claims between the parties,” and Ind. Code § 32-31-6-9 provides that, “the court may do the following at the subsequent hearing: . . . Determine damages. . . .”

indicates a \$70 payment was made. Appellants' Appendix Volume II at 11. Because the order for possession was issued prior to the transfer, we cannot say the small claims court did not have the authority to enter the order. *See* Ind. Code § 33-29-2-7(d) (“*Upon transfer*, the claim then loses its status as a small claim.”) (emphasis added). Reversal on this basis is not warranted.

[15] Defendants claim they were tenants at will and request that we vacate the order of possession. Ind. Code § 32-31-1-1 provides a “tenancy at will may be determined by a one (1) month notice in writing, delivered to the tenant” and a “tenancy at will cannot arise or be created without an express contract.” Ind. Code § 32-31-1-2 provides a “general tenancy in which the premises are occupied by the express or constructive consent of the landlord is considered to be a tenancy from month to month.” Ind. Code § 32-31-1-4 provides “[t]his section applies to a tenancy of not more than three (3) months which, by express or implied agreement of the parties, extends from one (1) period to another” and “[n]otice to the tenant equal to the interval between the periods is sufficient to determine a tenancy described in subsection (a).”

[16] Ind. Code § 32-31-1-8 provides:

Notice is not required to terminate a lease in the following situations:

- (1) The landlord agrees to rent the premises to the tenant for a specified period of time.
- (2) The time for the determination of the tenancy is specified in the contract.

- (3) A tenant at will commits waste.
- (4) The tenant is a tenant at sufferance.
- (5) The express terms of the contract require the tenant to pay the rent in advance, and the tenant refuses or neglects to pay the rent in advance.
- (6) The landlord-tenant relationship does not exist.

[17] As mentioned above, the small claims court “has jurisdiction to grant an emergency possessory order under this chapter.” Ind. Code § 32-31-6-2. If a landlord petitions the court to issue an emergency order, the court “shall immediately do the following: (1) Review the petition. (2) Schedule an emergency hearing for not later than three (3) business days after the petition is filed.” Ind. Code § 32-31-6-5. Ind. Code § 32-31-6-7(b) provides:

At the emergency hearing, if the court finds:

- (1) probable cause to believe that the tenant has committed or threatens to commit waste to the rental unit; and
- (2) that the landlord has suffered or will suffer immediate and serious:
 - (A) injury;
 - (B) loss; or
 - (C) damage;

the court shall issue an order under subsection (c).

Ind. Code § 32-31-6-7(c) allows the court to order a tenant to return possession of a dwelling unit to the landlord.

[18] Even assuming a landlord-tenant relationship existed, reversal is not required. The record reveals that Thompson initially agreed to allow Defendants to move into his home with him and that later, at his request, they gave him money toward his increased utility expenses. The parties did not enter into a written lease agreement, and the living arrangement was not intended to be permanent. Thompson and Steve testified regarding Megan's mental health and conduct, including the altercation on July 4th leading to her hospitalization, and the police reports. In addition, they testified regarding Thompson's requests for Defendants to move out and the timing of those requests. To the extent the parties presented conflicting testimony, the small claims court was able to consider the testimony and find the evidence presented by Thompson to be persuasive. Our review of the evidence does not leave us with the firm conviction that a mistake has been made, and we cannot say that the evidence leads to but one conclusion and the small claims court reached the opposite conclusion.

[19] For the foregoing reasons, we affirm.

[20] Affirmed.

Riley, J., and Foley, J., concur.

APPELLANTS PRO SE

Steven M. Rosenbaum
Megan Rosenbaum
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

Steve Rosenbaum, et al.,

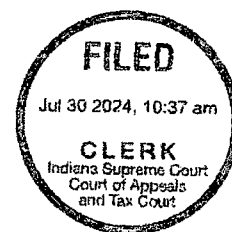
Appellants,

v.

Gregory Thompson, Sr.,

Appellee.

Court of Appeals Cause No.
23A-EV-1846



Order

- [1] Appellants have filed a Petition for Rehearing.
- [2] Having reviewed the matter, the Court finds and orders as follows:
- [3] Appellants' Petition for Rehearing is denied.

Ordered: 7/30/2024

Riley, Brown, Foley, JJ., concur.

For the Court,

A handwritten signature in black ink, appearing to read "Robert F. O'Neil", written over a horizontal line.

Chief Judge

In the
Indiana Supreme Court

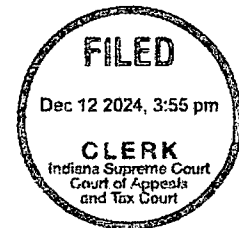
Steve Rosenbaum; Megan Rosenbaum,
Appellant(s),

v.

Gregory Thompson, Sr.,
Appellee(s).

Court of Appeals Case No.
23A-EV-01846

Trial Court Case Nos.
32D05-2306-EV-671
32C01-2307-PL-75



Order

This matter has come before the Indiana Supreme Court on a petition to transfer jurisdiction, filed pursuant to Indiana Appellate Rules 56(B) and 57, following the issuance of a decision by the Court of Appeals. The Court has reviewed the decision of the Court of Appeals, and the submitted record on appeal, all briefs filed in the Court of Appeals, and all materials filed in connection with the request to transfer jurisdiction have been made available to the Court for review. Each participating member has had the opportunity to voice that Justice's views on the case in conference with the other Justices, and each participating member of the Court has voted on the petition.

Being duly advised, the Court DENIES the petition to transfer.

Done at Indianapolis, Indiana, on 12/12/2024.

A handwritten signature in black ink, appearing to read "Loretta H. Rush", written over a horizontal line.

Loretta H. Rush
Chief Justice of Indiana

All Justices concur.

**Additional material
from this filing is
available in the
Clerk's Office.**