

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 Appellate Rule 65(D), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.



APPELLANT – PRO SE

Jatasia Turner
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Jatasia Turner,
Appellant-Defendant,

v.

New Bridge Apartments,
Appellee-Plaintiff.

December 29, 2023

Court of Appeals Case No.
23A-EV-1128

Appeal from the Marion County
Small Claims Court

The Honorable Brenda A. Roper,
Judge

Trial Court Cause No.
49K01-2304-EV-1599

Memorandum Decision by Judge Tavitias
Judges Pyle and Foley concur.

Tavitias, Judge.

Case Summary

- [1] The trial court found in favor of New Bridge Apartments (“New Bridge”) on its claim for eviction and damages against Jatasia Turner. Turner appeals and argues: (1) New Bridge levied unauthorized charges against her in violation of her Fourth Amendment rights; and (2) the trial court deprived Turner of an opportunity to present a defense in violation of her due process rights. We find both arguments waived and, accordingly, affirm.

Issue

- [2] Turner raises two issues on appeal. We find dispositive, however, the following issue: Whether Turner’s arguments are both waived.

Facts

- [3] The facts are not entirely clear; however, we glean the following from the record before us. On November 2, 2022, Turner and New Bridge entered into an agreement for the lease of an apartment in Indianapolis. Turner’s monthly rent was \$751, and she was working on securing rent assistance from the Indianapolis Housing Agency (“IHA”).
- [4] Turner was not required to make a rent payment in November. She paid \$400 in December 2022 and did not make a rent payment in January 2023. On January 18, 2023, New Bridge filed for eviction and alleged that Turner owed a balance of \$1,350.

- [5] The Chronological Case Summary shows that, on February 28, 2023, the parties were “working towards settlement.” Appellant’s App. Vol. II p. 6. According to Turner, the parties agreed to a settlement in the amount of \$1,415.46, and there was “no stipulation on when this amount should be paid in full.” Appellant’s Br. p. 8. On March 14, 2023, the case was dismissed without prejudice.
- [6] On January 28, 2023, the parties entered into a new lease agreement under which the monthly rent was \$705. IHA would contribute monthly rent assistance payments of \$687. According to Turner, she was responsible for the balance of the rent and water utilities and not responsible for other utilities.¹
- [7] On January 30, 2023, New Bridge sent a text message to Turner that reads: “IHA is stating you passed on IHA on 1/27 so they won’t be making any payments prior to that date. You need to pay \$1,415.46 before you can sign with IHA. You are currently under eviction. You must have this paid asap.” Appellant’s App. Vol. II p. 9.
- [8] Transactions from February 1, 2023, through April 19, 2023, show that New Bridge charged Turner for rent, as well as water, trash, and sewer utilities. On April 19, 2023, New Bridge filed a second eviction suit against Turner and alleged that she had an unpaid balance of \$457.13. That same day, New Bridge charged Turner a \$300 administrative fee, which brought the unpaid balance to

¹ The record does not contain the full terms of this lease agreement.

\$757.13. Also that day, according to Turner, Turner made a \$300 money order payment “to pay the remaining settlement balance” on the previous lease; however, New Bridge did not apply the payment to the settlement and “held” the payment instead. Appellant’s Br. p. 11.

[9] On April 21, 2023, Turner filed a counterclaim, which she amended on May 11, 2023. The amended counterclaim alleged: unlawful eviction, discrimination, perjury, two counts of breach of contract, “deceitful manipulation into signing a water contract,” and “[f]raudulent [t]rash charges.” Appellant’s App. Vol. II p. 23.

[10] The trial court held the eviction hearing on May 15, 2023. The record does not include a transcript of the eviction hearing;² however, according to Turner, the trial court rejected her proffered exhibits. The trial court ultimately determined that, after accounting for the \$300 money order, Turner had an unpaid balance of \$111. The trial court ordered Turner to pay the remaining balance by June 1, 2023, or, in the alternative, surrender possession of the apartment on June 2, 2023. The trial court also dismissed Turner’s counterclaim with prejudice. Turner now appeals.

² In her Notice of Appeal, Turner sought this transcript; however, on June 7, 2023, Turner filed a motion to rescind her request for the transcript, which we granted.

Discussion and Decision

[11] Turner argues that New Bridge levied unauthorized charges “under color of law” and therefore violated Turner’s Fourth Amendment rights against “unreasonable seizure.” Appellant’s Br. pp. 15, 19. Turner further alleges that, by refusing her proffered exhibits, the trial court deprived her of an opportunity to present a defense and, therefore, violated her due process rights. We find that both arguments are waived.³

I. Fourth Amendment—Seizure

[12] The Fourth Amendment to the United States Constitution provides, in relevant part, that “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated.” “A ‘seizure’ of property occurs when there is some meaningful interference with an individual’s possessory interests in that property.” *Tuggle v.*

³ Turner proceeds in this matter pro se. We “reiterate that ‘a pro se litigant is held to the same standards as a trained attorney and is afforded no inherent leniency simply by virtue of being self-represented.’” *Stark v. State*, 204 N.E.3d 957, 963 (Ind. Ct. App. 2023) (quoting *Zavodnik v. Harper*, 17 N.E.3d 259, 266 (Ind. 2014)). “This means that pro se litigants are bound to follow the established rules of procedure and must be prepared to accept the consequences of their failure to do so.” *Id.* (quoting *Picket Fence Prop. Co. v. Davis*, 109 N.E.3d 1021, 1029 (Ind. Ct. App. 2018)). “Although we prefer to decide cases on their merits, arguments are waived where an appellant’s noncompliance with the rules of appellate procedure is so substantial it impedes our appellate consideration of the errors.” *Id.* (citing *Picket Fence Prop. Co.*, 109 N.E.3d at 1029).

We also note that New Bridge has not filed an appellee’s brief in this matter. In such cases, the appellate court “need not develop an argument” for the appellee “but instead will ‘reverse the trial court’s judgment if the appellant’s brief presents a case of prima facie error.’” *Salyer v. Washington Regular Baptist Church Cemetery*, 141 N.E.3d 384, 386 (Ind. 2020) (quoting *Front Row Motors, LLC v. Jones*, 5 N.E.3d 753, 758 (Ind. 2014)). “Prima facie error in this context means ‘at first sight, on first appearance, or on the face of it.’” *Id.* (citation omitted). We are still obligated, however, to correctly apply the law to the facts in the record in order to determine whether reversal is required. *Id.* Here, the absence of an appellee’s brief does not affect our conclusion that Turner’s arguments are waived.

State, 9 N.E.3d 726, 733 (Ind. Ct. App. 2014) (citing *Moore v. State*, 827 N.E.2d 631, 638 (Ind. Ct. App. 2005), *trans. denied*), *trans. denied*. It is well understood, however, that a seizure “by a private party does not implicate the Fourth Amendment” unless the private party committed the seizure while “acting as an instrument or agent of the government.” *Sweet v. State*, 10 N.E.3d 10, 14 (Ind. Ct. App. 2014) (quoting *Bone v. State*, 771 N.E.2d 710, 714 (Ind. Ct. App. 2002)) (internal quotation omitted).

[13] Turner alleges that New Bridge violated her Fourth Amendment rights by levying unauthorized charges “under color of law.” Appellant’s Br. p. 19. We find this argument waived for two reasons. First, issues that are not first raised before the trial court are waived on appeal. *Means v. State*, 201 N.E.3d 1158, 1168 (Ind. 2023). Turner’s counterclaim does not assert a Fourth Amendment violation, and the record does not demonstrate that she otherwise raised this issue before the trial court.

[14] Moreover, an individual acts under color of law when there is “a concerted effort between a state actor and that individual.” *K.M.K. v. A.K.*, 908 N.E.2d 658, 662 (Ind. Ct. App. 2009) (quoting *Fries v. Helsper*, 146 F.3d 452, 457 (7th Cir. 1998)), *trans. denied*. Here, Turner does not allege any facts to demonstrate that New Bridge acted in concert with a state actor. *See* Ind. App. R. 46(A)(8)(a) (providing that an appellant’s argument “must contain the contentions of the appellant on the issues presented, supported by cogent reasoning” and that “[e]ach contention must be supported by citations to the

authorities, statutes, and the Appendix or parts of the Record on Appeal relied on . . .”). Accordingly, Turner’s Fourth Amendment argument is waived.

II. Due Process—Right to Present a Defense

- [15] In eviction cases, the Due Process clause of the Fourteenth Amendment guarantees the tenant “an opportunity to present every available defense.” *Morton v. Ivacic*, 898 N.E.2d 1196, 1199 (Ind. 2008) (quoting *Lindsey v. Normet*, 405 U.S. 56, 66, 92 S. Ct. 862, 870 (1972)). Turner argues that the trial court deprived her of an opportunity to present a defense by refusing her proffered exhibits during the eviction hearing.
- [16] Pursuant to Appellate Rule 9(F)(5), the notice of appeal “shall include . . . [a] designation of all portions of the Transcript necessary to present fairly and decide the issues on appeal. . . .” Our courts have held that, “[a]lthough not fatal to the appeal, failure to include a transcript works a waiver of any specifications of error which depend upon the evidence.” *Towne & Terrace Corp. v. City of Indianapolis*, 156 N.E.3d 703, 714 (Ind. Ct. App. 2020) (quoting *In re Walker*, 665 N.E.2d 586, 588 (Ind. 1996)), *trans. denied*. Here, the record does not include a transcript of the eviction hearing. In the absence of this transcript, it is impossible for us to determine whether the trial court deprived Turner of an opportunity to present a defense. Turner’s argument on that score, therefore, is waived.

Conclusion

[17] Turner's Fourth Amendment argument is waived because she has not demonstrated that she raised this issue before the trial court, and, moreover, she has not alleged sufficient facts for us to review her argument. Additionally, in the absence of a transcript of the eviction hearing, it is impossible for us to determine whether the trial court deprived Turner of an opportunity to present a defense. Therefore, that argument, too, is waived. Accordingly, we affirm.

[18] Affirmed.

Pyle, J., and Foley, J., concur.