

## MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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## IN THE COURT OF APPEALS OF INDIANA

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Donald A. Harty,  
*Appellant-Defendant,*

v.

Barbara Williams and Sarah  
Knowlton,  
*Appellees-Plaintiffs*

April 12, 2022

Court of Appeals Case No.  
21A-SC-2176

Appeal from the St. Joseph  
Superior Court, South Bend Small  
Claims Division

The Honorable Julie P. Verheye,  
Magistrate

Trial Court Cause No.  
71D07-2009-SC-5083

**Crone, Judge.**

## Case Summary

- [1] Donald A. Harty was sued in small claims court and asserted counterclaims exceeding the court's jurisdictional maximum. Harty filed a motion to transfer the cause to the plenary docket, which was denied, and he now appeals that ruling. We dismiss Harty's appeal as moot.

## Facts and Procedural History

- [2] In September 2020, Barbara Williams and Sarah Knowlton (the Plaintiffs) filed a notice of claim in St. Joseph Superior Court's South Bend Small Claims Division alleging that Harty intentionally scratched each of their vehicles with a sign as they turned into the driveway of a women's health clinic on separate occasions in 2019 and 2020. In December 2020, Harty filed an answer and asserted counterclaims exceeding the court's jurisdictional amount, and he filed a motion to transfer the cause to the plenary docket. The court summarily denied his motion. Harty voluntarily withdrew his counterclaims and filed a complaint against the Plaintiffs in St. Joseph Superior Court's Plenary Division in January 2021. The small claims court held a trial on the Plaintiffs' claims in May 2021. In June 2021, the court issued an order finding each of the Plaintiffs 25% at fault and Harty 75% at fault in their respective incidents. The court entered judgment against Harty and in favor of Williams for \$1,605.12 plus interest and entered judgment against Harty and in favor of Knowlton for \$765.96 plus interest. Harty filed a motion to correct error, which was deemed denied. His case against the Plaintiffs currently remains pending.

## Discussion and Decision

[3] Harty now appeals, arguing that the small claims court erred in denying his motion to transfer.<sup>1</sup> He first directs us to Indiana Small Claims Rule 5, which governs counterclaims and reads in relevant part as follows:

**(A) Time and Manner of Filing.** If the defendant has any claim against the plaintiff, the defendant may bring or mail a statement of such claim to the small claims court within such time as will allow the court to mail a copy to the plaintiff and be received by the plaintiff at least seven (7) calendar days prior to the trial....

**(B) Counterclaim in Excess of Jurisdiction.** Any defendant pursuing a counterclaim to decision waives the excess of the defendant's claim over the jurisdictional maximum of the small claims docket and may not later bring a separate action for the remainder of such claim.

He also directs us to St. Joseph Small Claims Rule 507.1, which provides, "Cases pending in Small Claims--South Bend and on which transfer to the plenary calendar of the St. Joseph Superior Court has been sought and granted shall be re-assigned by the Clerk pursuant to the Clerk's random case assignment." According to Harty, these rules "provide a mechanism for transferring a cause from small claims division to the plenary division of the Superior Court when a counterclaim seeking damages in excess of the

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<sup>1</sup> The Plaintiffs argue that Harty's appeal should be "denied" because he failed to file a timely interlocutory appeal from the small claims court's order denying his motion to transfer. Appellees' Br. at 12. We disagree because no such appeal was required. See *Georgos v. Jackson*, 790 N.E.2d 448, 452 (Ind. 2003) ("[T]here is no requirement that an interlocutory appeal be taken, and [a party] may elect to wait until the end of litigation to raise the issue on appeal from a final judgment.")

jurisdiction of the small claims court is filed[,]” and he “followed the proper procedure in filing his ... counterclaim in small claims court and immediately seeking transfer to the plenary division of the Superior Court.” Appellant’s Br. at 12. He asserts that the “small claims court erred in denying the motion to transfer[,]” which “forced [him] to withdraw his counterclaims” from that court and “file them in the plenary division[,]” thus “creat[ing] a possibility of inconsistent judgments.” *Id.*

[4] To the extent Harty argues that these rules absolutely required the small claims court to transfer the cause to the plenary docket, we disagree. In construing a court’s procedural rule, “it is just as important to recognize what it does not say as it is to recognize what it does say.” *Lutheran Health Network of Ind., LLC v. Bauer*, 139 N.E.3d 269, 281 (Ind. Ct. App. 2019) (quoting *Carter-McMahon v. McMahon*, 815 N.E.2d 170, 175 (Ind. Ct. App. 2004)) (referring to Indiana Rules of Trial Procedure). Neither rule says that a small claims court absolutely must transfer a cause to the plenary docket if the defendant seeks such a transfer based on his assertion of counterclaims over the jurisdictional maximum.<sup>2</sup> Thus, a small claims court may grant or deny a motion to transfer at its discretion. *See Lewandowski v. Beverly*, 420 N.E.2d 1278, 1280 (Ind. Ct. App. 1981) (“Judicial discretion is the option which the judge may exercise between the doing and the not doing of a thing, the doing of which cannot be demanded

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<sup>2</sup> Indeed, the local rule does not even apply unless a motion to transfer is granted.

as an absolute right of the party asking it to be done.”) (quoting *McFarlan v. Fowler Bank City Tr. Co.*, 214 Ind. 10, 14, 12 N.E.2d 752, 754 (1938)).

[5] Just as the small claims court in this case had options under Indiana Small Claims Rule 5, so too did Harty. In *Buckmaster v. Platter*, 426 N.E.2d 148 (Ind. Ct. App. 1981), which is not cited in the parties’ briefs, Judge Hoffman observed that a litigant

may assert his counterclaim in the small claims division if it is within the jurisdiction of that court. He may also choose to file his counterclaim in the small claims division although the amount claimed is in excess of the jurisdictional amount on the condition that he waives the excess. Finally, the non-mandatory language of [Small Claims Rule] 5(A) indicates that a person need not file a counterclaim but may file a separate cause of action either in the small claims division or in the regular civil docket of the superior court.

*Id.* at 150.

[6] After the small claims court denied his motion to transfer, Harty voluntarily withdrew his counterclaims and filed a separate cause of action in the superior court’s regular civil docket. As a result, both sides got what they wanted: the Plaintiffs got to have their claims against Harty evaluated under the less formal rules of the small claims court<sup>3</sup> and valued within the jurisdictional limits, and

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<sup>3</sup> See Ind. Small Claims Rule 8(A) (“The trial shall be informal, with the sole objective of dispensing speedy justice between the parties according to the rules of substantive law, and shall not be bound by the statutory provisions or rules of practice, procedure, pleadings or evidence except provisions relating to privileged communications and offers of compromise.”).

Harty gets to have his claims against the Plaintiffs evaluated under the more formal rules of the plenary court and valued with no limits on damages. Harty's concerns about "inconsistent judgments" are misplaced, as we are simply dealing with two separate sets of claims being evaluated in two separate forums.

[7] Based on the foregoing, we agree with the Plaintiffs that Harty's appeal is moot, in that giving him the relief he seeks will put him in exactly the same position he is now: litigating his claims against the Plaintiffs in the plenary court. "A case should be dismissed as moot when no effective relief can be rendered to the parties before the court." *DeCola v. Starke Cnty. Election Bd.*, 146 N.E.3d 1084, 1085 (Ind. Ct. App. 2020) (quoting *J.B. v. State*, 55 N.E.3d 831, 833 (Ind. Ct. App. 2016)). Accordingly, we dismiss Harty's appeal.

[8] Dismissed.

Vaidik, J., and Altice, J., concur.