

## 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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APPELLANT PRO SE

Steven M. Rosenbaum  
Lizton, Indiana

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## IN THE COURT OF APPEALS OF INDIANA

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Steven M. Rosenbaum,  
*Appellant-Defendant,*

v.

Indiana Property  
Real Estate LLC,  
*Appellee-Plaintiff.*

May 6, 2022

Court of Appeals Case No.  
21A-PL-2543

Appeal from the Hamilton  
Superior Court

The Honorable David K. Najjar,  
Judge

Trial Court Cause No.  
29D05-2110-PL-7349

**Weissmann, Judge.**

- [1] Steven Rosenbaum appeals his eviction, alleging the small claims court violated his constitutional right to trial by jury. Because he fails to provide a trial transcript, however, his claim is waived, and the small claims court is affirmed.

## Facts

- [2] Indiana Property Real Estate LLC (Indiana Property) filed a complaint to evict Rosenbaum from his residence in Fishers. Two days before trial, Rosenbaum, acting pro se, moved for a trial by jury. One day before trial, the small claims court ruled: “Said request will be granted and the case moved to the Plenary docket upon [Rosenbaum] paying the appropriate court costs.” App. Vol. II, p. 22. Rosenbaum alleges he did not receive notice of this decision until two hours before his scheduled trial, at which he was evicted without a jury. According to a filing by Indiana Property, Rosenbaum failed to pay the transfer fee until 14 days after the eviction.
- [3] Rosenbaum moved to vacate the eviction order and then moved to correct error. The small claims court denied both motions. Rosenbaum now appeals.

## Discussion and Decision

- [4] Rosenbaum argues that the small claims court violated his right to a trial by jury, as guaranteed by Article 1, Section 20 of the Indiana Constitution, when the court granted his request for a jury trial but tried him from the bench the very next day. Unfortunately, we lack the tools to evaluate this claim. Rosenbaum has failed to provide us with a transcript or some other approximation of the record. “Although not fatal to the appeal, failure to

include a transcript works a waiver of any specifications of error which depend on the evidence.” *Campbell v. Criterion Grp.*, 605 N.E.2d 150, 160 (Ind. 1992); *see* Ind. Appellate Rule 9(F)(5) (“The Notice of Appeal shall include the following: . . . A designation of all portions of the Transcript necessary to present fairly and decide the issues on appeal.”).

[5] Under the Small Claims Rules, Rosenbaum had not waived his jury trial request by failing to pay related fees before his bench trial, which was one day after his request was granted. Ind. Small Claims Rule 2(B)(10) (stating that a jury trial request is not waived for failure to pay filing fees until 10 days after it is granted). But Rosenbaum had an affirmative duty to object at his bench trial. *Hamlin v. Sourwine*, 666 N.E.2d 404, 409 (Ind. Ct. App. 1996) (“[W]aiver of a party’s right to a jury trial requires a clear failure to object on the record to proceeding without a jury.”). We cannot say he fulfilled this duty because we have no record of the trial. Accordingly, Rosenbaum’s claim is waived. *See Campbell*, 605 N.E.2d at 160; *Meisberger v. Bishop*, 15 N.E.3d 653, 657 (Ind. Ct. App. 2014).

[6] The small claims court is affirmed.

Najam, J., and Vaidik, J., concur.