MEMORANDUM DECISION

APPELLANT PRO SE

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IN THE COURT OF APPEALS OF INDIANA

Allen D. Montgomery,
Appellant-Defendant,

v.

United Church Residences of Indianapolis, IN, Inc. dba Capitol Station,
Appellee-Plaintiff.

May 23, 2023

Court of Appeals Case No. 22A-EV-2136

Appeal from the Perry Township Small Claims Court, Marion County

The Honorable Cheryl Rivera

Trial Court Cause No. 49K04-2208-EV-2462

Memorandum Decision by Judge Bailey
Judges Brown and Weissmann concur.

Bailey, Judge.

Case Summary

[1] Allen Montgomery ("Tenant") appeals, pro se, the trial court order granting United Church Residences' ("Landlord") petition for emergency possession of the rental premises.

[2] We affirm.

Issues

[3] We first address the issue of whether Tenant has waived his claims on appeal for failure to comply with the Appellate Rules regarding briefing.

[4] Waiver notwithstanding, we address the following two restated issues raised by Tenant:

I. Whether the small claims court had jurisdiction over the petition for emergency possession of the premises.

II. Whether there was insufficient evidence that Tenant committed or threatened to commit waste to his rental unit.

Facts[1] and Procedural History

[5] Landlord owns Capital Station, an apartment complex for individuals aged sixty-two or older. On May 6, 2022, Tenant entered into a Section 202 lease agreement with Landlord for unit number 303 in Capital Station. The Lease was for one year, with automatic renewal unless terminated or modified.

[6] On June 13, 2022, Tenant sent a letter to Karl Ulrich, a member of the board of directors of Capital Station. That letter accused Victoria Hightower, the property manager for Capital Station, of fraudulent activity. On July 6, 2022, Landlord provided Tenant with a notice of the termination of the lease effective August 5, 2022, based on alleged lease violations, including "criminal activity" such as "threatening or intimidating behavior" and "harassment and bullying." Ex. v. III at 41-42. The July 6 notice of termination referenced Tenant's June 13 letter and another letter allegedly sent to the Mayor of Indianapolis,[2] "which cast aspersions of the reputation and dignity of Ms. Hightower." *Id*. at 41. In a letter dated July 13, 2022, and sent to Landlord's legal counsel, Tenant called Hightower a "liar" and "psychopath" and alleged Hightower steals money from "HUD" (i.e. the federal Department of Housing and Urban Development). *Id*. at 48-51.

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[1] Tenant's "Statement of Facts" section contains only the following sentence: "The defendant does not deny having written the referenced letters, but does deny that they were threatening, or in any way illegal." Appellant's Br. at 6.

[2] There is no evidence that Landlord or its employees ever saw such a letter to the Mayor, and no such letter was presented at the eviction hearing.

[7] Tenant also wrote a letter dated August 1, 2022, to Fred Coraz, the head of Coraz Security, which is the company hired to provide security to Capital Station. The following are relevant excerpts from the eleven-page letter:

> Sure, I could kill [Hightower] with a gun. If she is murdered, I'm going to have cops all over me like flies on sh-t even if I had absolutely nothing to do with it. I'd have to be suicidal before I could even consider such a thing.
>
> After making that last point, I wonder if maybe I shouldn't have. How does this man know I'm not suicidal? Anyone who spends even a few minutes with me can see that I am not depressed, and therefore not suicidal. But wait, the 9/11 terrorists were suicidal, but they were not depressed. Did I just tell that cop that I'm planning a terrorist attack?"

Id. at 218.

[8] The August 1 letter also discusses Tenant's visit to the Office of the Attorney General to report Hightower's alleged drug activity, such as "cook[ing] some meth." *Id*. at 223. Tenant states: "The receptionist was giving me the spiel about the role of the attorney general, and I said, 'Hey, this is like a bomb.'" *Id*. This letter also discusses a hypothetical "scheme" for an "undercover" operation between Tenant and law enforcement. Tenant states:

> I have some smoke grenades I purchased from a local fireworks store. They give off an orange smoke that might be mistaken for nitric oxide. I could get real cute with those things. Again, I am weird. I would be nice and at least forego the security bar on the door. We don't need CNN here covering an armed standoff with a terrorist.

Id. at 224-25.

[9] Tenant wrote to Coraz a second time in a letter dated August 6. This letter discusses another scheme for an "undercover" operation to expose Hightower's alleged criminal activity by making Hightower believe law enforcement is after Tenant. The letter then states:

> Why are they after Allen Montgomery? The truth is, I do have sort of a mad bomber mindset. My weapon of choice just happens to be a word processor. Unlike Ted Kaczynski, I don't have to worry about getting caught. I can go around blowing things up with impunity.

Id. at 231. Under this scheme, the "federal agents" would say Tenant wanted "to kill [the Mayor] and "blow his f-cking house up." *Id*. In the last paragraph, Tenant indicates he has been talking about a screen play and tells Coraz that, if he's "in," he should tell "General Miley, so he can speak to the [P]resident." *Id*. at 232.

[10] On August 9, 2022, Landlord filed a petition seeking emergency relief pursuant to Indiana Code Section 32-31-6-3, which authorizes a court to issue an emergency possessory order when a "tenant has committed or threatens to commit waste to the rental unit." The small claims court held a hearing on August 11 at which Hightower, a Coraz Security officer, and Tenant testified. In an order of the same date, the small claims court found that Landlord had "met [its] burden for an emergency order of possession," and granted

possession on August 12 at 5:00 p.m. Appealed Order. On August 12, Tenant vacated the premises. This appeal ensued.

Discussion and Decision

[11] Tenant brings this appeal pro se.

> It is well settled that pro se litigants are held to the same legal standards as licensed attorneys. *Twin Lakes Reg'l Sewer Dist. v. Teumer*, 992 N.E.2d 744, 747 (Ind. Ct. App. 2013). 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. *Shepherd v. Truex*, 819 N.E.2d 457, 463 (Ind. Ct. App. 2004).

Lowrance v. State, 64 N.E.3d 935, 938 (Ind. Ct. App. 2016), *trans. denied*.

[12] The Indiana Appellate Rules contain the requirements for appellate briefs. Appellate Rule 46(A)(6)(a) requires that the Statement of Facts in the appellant's brief must "be supported by page references to the Record on Appeal or Appendix." When a party refers to facts without citation to the record in support, "we need not consider those facts." *Reed v. City of Evansville*, 956 N.E.2d 684, 688 n.1 (Ind. Ct. App. 2011), *trans. denied*. Appellate Rule 46(A)(8)(a) requires that each contention must be "supported by cogent reasoning [and] … citations to the authorities, statutes, and the Appendix or parts of the Record on Appeal relied on." When an appellant provides no cogent argument for a contention, that contention is waived. *See, e.g.*, *Burnell v. State*, 110 N.E.3d 1167, 1171 (Ind. Ct. App. 2018) (noting the presentation of

the appellant's contentions must contain a clear showing of how the issues and contentions relate to the particular facts of the case under review, and we will not review undeveloped arguments). Similarly, when an appellant provides no citation to legal authority supporting his contentions, those contentions are waived. *E.g.*, *Shields v. Town of Perrysville*, 136 N.E.3d 309, 312 n.2 (Ind. Ct. App. 2019). Thus, under our Appellate Rules, "[i]t is not sufficient for the argument section that an appellant simply recites facts and makes conclusory statements without analysis or authoritative support." *Kishpaugh v. Odegard*, 17 N.E.3d 363, 373 n.3 (Ind. Ct. App. 2014). This rule "prevents the court from becoming an advocate when it is forced to search the entire record for evidence in support of [a party's] broad statements." *Lane Alan Schrader Trust v. Gilbert*, 974 N.E.2d 516, 521 (Ind. Ct. App. 2012) (citing *Keller v. State*, 549 N.E.2d 372, 373 (Ind. 1990)).

[13] Tenant's briefs are deficient in many ways. His Statement of Facts is one sentence long and does not contain any citations to the record. The Argument portion of his initial brief is a total of six short paragraphs, none of which contain a standard of review as required under Appellate Rule 46(A)(8)(b). Most significantly, his opening brief lacks logical, cogent reasoning, and he fails to cite and/or provide analysis of relevant legal authority for his arguments. While Tenant's reply brief provides lengthier argument than his initial brief, the reply brief fails to cite a single legal authority and contains much speculation

and statements about facts not in evidence.[3] Thus, Tenant has waived his claims on appeal.

[14] Waiver notwithstanding, Tenant's assertions on appeal are without merit.[4] We will uphold a judgment rendered by a small claims court unless it is clearly erroneous. *Vic's Antiques and Uniques, Inc. v. J. Elra Holdingz, LLC*, 143 N.E.3d 300, 303 (Ind. Ct. App. 2020), *trans. denied*. "We consider the evidence most favorable to the judgment and all reasonable inferences to be drawn from that evidence." *Id*. In doing so, we will not reweigh the evidence or assess witness credibility. *Nick's Packing Serv., Inc. v. Chaney*, 181 N.E.3d 1025, 1028 (Ind. Ct. App. 2021). We review issues of substantive law de novo. *Id*.

[15] First, it is clear that small claims courts have jurisdiction over eviction actions such as the one here. Indiana Code Section 33-29-2-4 states, in relevant part: "(b) The small claims docket has jurisdiction over the following: … (3) Emergency possessory actions between a landlord and tenant under IC 32-31-6." Thus, there is no merit to Tenant's purported jurisdictional challenge.

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[3] Examples of the latter include Tenant's statements that he has "acquired rights to ValenciaHightower.com" and that an attorney "warned him against walking into that courtroom" for the eviction hearing. Reply Br. at 7.

[4] Landlord asserts that this appeal is moot because Tenant would have been removed from his unit as of August 5, 2022, pursuant to the Landlord's notice of termination of the lease. However, there was never any eviction order related to the claims made in the Landlord's termination notice. Moreover, even though Tenant admits on appeal that he does not wish to move back into his unit, this matter is not moot because court records exist showing Tenant's eviction, and those records could affect his ability to find housing in the future.

[16] Second, there was sufficient evidence supporting the trial court's judgment ordering emergency possession of the premises under Indiana Code Section 32-31-6-7. That statute provides, in relevant part:

> (b) … if the court finds:
>
> > (1) probable cause[5] 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).
>
> (c) If the court makes a finding under subsection (b), the court shall order the tenant to do either or both of the following:
>
> > (1) Return possession of the dwelling unit to the landlord.

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[5] This Court has defined "probable cause" within the context of a civil suit to mean "the apparent state of facts found to exist upon reasonable inquiry which would induce a reasonable, intelligent, and prudent [person] to bring action." *Display Fixtures Co. v. R.L. Hatcher, Inc.*, 438 N.E.2d 26, 30 (Ind. Ct. App. 1982) (citation omitted).

(2) Refrain from committing waste to the dwelling unit.

"Waste" is not defined by statute, other than to provide that waste "does not include failure to pay rent." I.C. § 32-31-6-7(a).

[17] Tenant made several references to bombs or bombing in his August 1 and August 6 letters. Even assuming the majority of those references were not real threats and/or were made in reference to someone else, as Tenant suggests, Tenant's statement that he was in possession of "smoke grenades" purchased from a fireworks store and his insinuation that he would set off those grenades in his unit was sufficient to show probable cause to believe Tenant had threatened to commit waste to the rental unit that would cause Landlord to suffer immediate and serious injury, loss, or damage. I.C. § 32-31-6-7(b), (c). The small claims court did not clearly err in its judgment.

Conclusion

[18] Tenant has waived his claims on appeal by failing to comply with the briefing requirements of the Appellate Rules. Waiver notwithstanding, there is no merit to his assertions that the small claims court lacked jurisdiction and clearly erred when it granted Landlord's request for emergency possession of the premises pursuant to Indiana Code Section 32-31-6-1, et seq.

[19] Affirmed.

Brown, J., and Weissmann, J., concur.