

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

Tracey Wheeler,
Appellant,

v.

Wendy Knight and Jay Hall,
Appellees.

September 15, 2022

Court of Appeals Case No.
21A-SC-2211

Appeal from the Madison Circuit
Court

The Honorable Scott A. Norrick,
Judge

The Honorable Stephen D. Clase,
Senior Judge

Trial Court Cause No.
48C05-2005-SC-851

Brown, Judge.

- [1] Tracey Wheeler appeals the small claims court’s judgment in favor of Wendy Knight and Jay Hall. We affirm.

Facts and Procedural History

- [2] On May 27, 2020, Wheeler filed a Notice of Small Claim against Knight and Hall alleging that he lost twenty-five days of wages and was entitled to reimbursement of his lost wages with interest.¹ On June 7, 2021, Wheeler filed an Amended Small Claims Complaint stating he was adding claims for pain and suffering due to the termination of his employment, the loss of his job and

¹ The Notice of Small Claim was not included in the appellant’s appendix but is available through Indiana’s Odyssey Case Management System.

class training hours toward a time cut, and the loss of the benefit of his lost wages including hygiene, food products, stamps, and envelopes.²

[3] On July 29, 2021, the court held a bench trial at which Wheeler appeared by telephone. Wheeler stated that, on the previous day, he learned of the trial date. The court asked Wheeler if he wanted a continuance, and Wheeler replied: “Nah . . . I guess since we already here, . . . I can go, but I mean I was wondering – cause I never got a chance to gather all the evidence that I needed but I’m pretty sure I got what I need” Transcript Volume II at 6. Wheeler testified that he worked for Meritor in the prison. He stated that, in 2019, he started to take materials to the library, an officer told him the library was closed, he informed the officer that he was supposed to be at work, the officer called his employer and was advised that he was not needed at work, and later another officer informed him that he was being written up on a conduct report for not returning to work. He testified that he was never in the wrong, there was a miscommunication, and the write-up was later dismissed. He testified that he was “out of work for 25 days” and the policy of the Indiana Department of Correction (“DOC”) “states that whenever a person gets wrote up and removed from they job that [] they’re supposed to be reimbursed for the time that they was . . . wrongly removed from they job.” *Id.* at 8. He testified: “I was earning 70 cents an hour in which I was working approximately 10 hours a day. We was working [] 40-hour weeks.” *Id.* at 9. He stated “what happened

² The caption of the Amended Small Claims Complaint includes the State of Indiana as the defendant.

they came to the conclusion to pay me \$12.50 . . . in back pay for the 25 days that I was out,” “I didn’t agree with that,” “that was only reimbursement for 2 days’ worth of wages,” and “I was entitled to . . . roughly . . . \$180.00 to . . . \$175.00 dollars, I believe.” *Id.*

[4] Wheeler testified “[t]he lost wages come from ‘cause . . . when you received a conduct report, you are removed from your job, until that conduct report is resolved.” *Id.* at 11. He indicated that his conduct report had been overturned following a hearing. On cross-examination by the deputy attorney general, Wheeler stated “I’m suing . . . the warden, [] Wendy Knight, and . . . my . . . job employer, uh, – Jay Hall” and “[t]hose are the people that I was informed that are supposed to pay me my money.” *Id.* at 14. He stated, “when I filed my grievance, Wendy Knight was the person who said that I was supposed to only get twelve dollars and fifty-cent.” *Id.* On cross-examination by Hall’s counsel, Wheeler stated a grievance specialist told him that he “needed to contact Jay Hall about getting [his] back pay.” *Id.* at 15.

[5] Hall testified: “I work for Meritor, I’m a contract employee for the state. I am not a state employee.” *Id.* at 17. He indicated he did not control how much inmates were paid and that he and Meritor did not directly pay inmates. He also testified “[t]he only thing we did was report he was out of place ‘cause he – he went to the um, – law library, two offenders left to go to the law library, and they didn’t come back.” *Id.* He indicated that he had nothing to do with what happened to the offenders after that.

[6] Wheeler stated: “I – mean the way he sound, I mean he – he says that he has no – no doins with it. . . . I don’t know . . . who’s supposed to pay me. . . . I only went off of what the facility staff tell me I mean if that true then its – and he has nothing to with reimbursing me for payment. It was – it was the facility staff.” *Id.* at 18. He argued “[t]hat’s the only thing . . . I’m here for, I’m here for reimbursement of the . . . wages that I would have earned . . . [p]er DOC policy.” *Id.* at 19. Hall’s counsel argued that Wheeler had filed a complaint against the same defendants in federal court. Wheeler stated that the federal suit did not raise any claim for reimbursement of lost wages. Hall’s counsel stated that the federal suit raised claims under the First Amendment, the Eighth Amendment, and the Fourteenth Amendment and there was not an Indiana state law wage claim.

[7] The deputy attorney general argued that the payment made to Wheeler was proper. He stated “the state paid Mr. Wheeler fifty cents per day for his payment um, – which under there [sic] policy is by ICI as stated in their grievance is the amount that they do pay”³ *Id.* at 23. He argued Knight “should not be subjected to liability under the Indiana Tort Claims act.” *Id.* The deputy attorney general referred to the DOC’s policy and asserted: “[T]he direct quote is such pay will be at the rate of state wages paid um, – before being removed or at the lowest rate of state wages um, – which they would be eligible

³ Knight’s brief notes that Indiana Correctional Industries (“ICI”) was formerly named PEN Products.

and the lowest page wage in brake shop would be 50 cents an hour.”⁴ *Id.* at 24. The court asked “[a]nd that directly relates to when an overturning of the misconduct happens,” and the deputy attorney general replied affirmatively. *Id.* The court asked “And the State gets the choice? His wage or the 50 cents?” and “Or either or?” *Id.* The deputy attorney general answered: “Or correct.” *Id.* Wheeler stated “the \$12.50, didn’t come to 50 cent and [sic] hour.” *Id.* at 25. The court asked the deputy attorney general for the policy and stated:

I’m reading it. Let’s see paragraph 7(d). Whose guilty finding is overturned or appealed by court shall have those state wages for which the offended [sic] is eligible, reimbursed for the period of time for the offender’s removal from the work assignment due to the alleged disciplinary violation until the date of the disciplinary hearing. Such, pay will be at the rate of state wages paid the offender prior to being removed from his or her work assignment or at the lowest rate of state wage for which the offender is eligible if previously assigned to a pin [sic] products work assignment and accordance with the offender employment operating standard. . . . Now, you read me what you have if it’s different from what I just read, Sir.

Id. at 26. Wheeler replied “what you read, is exactly what it said.” *Id.* The small claims court entered judgment in favor of the defendants.

Discussion

[8] Wheeler asserts the small claims court erred in entering judgment against him and that he is entitled to additional backpay. He argues that he presented

⁴ In her brief, Knight argues “it’s obvious that counsel misspoke, and Wheeler was entitled to—and received—only 50 cents *per day* for 25 days” Appellee Knight’s Brief at 18.

evidence that he earned 70 cents per hour, worked an average of 10 hours a day, and was out of work for 25 days. He further asserts the trial was not fair because he was not physically present and was unable to mail his evidence to the court because he learned of the trial date on the day before trial.

[9] 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) (citing Ind. Small Claims Rule 11(A)). The reviewing court does not reweigh the evidence or determine the credibility of witnesses but considers only the evidence supporting the judgment and the reasonable inferences to be drawn from that evidence. *Id.* This deferential standard of review is particularly important in small claims actions, where trials are informal, with the sole objective of dispensing speedy justice between the parties according to the rules of substantive law. *Id.* We presume the court correctly applied the law. *Id.* A general judgment may be affirmed on any theory supported by the evidence. *Coffman v. Olson & Co., P.C.*, 906 N.E.2d 201, 207 (Ind. Ct. App. 2009), *reh'g denied, trans. denied.* We will reverse only if the evidence leads to but one conclusion and the small claims court reached the opposite conclusion. *See Kim v. Vill. at Eagle Creek Homeowners Ass'n, Inc.*, 133 N.E.3d 250, 252 (Ind. Ct. App. 2019).

[10] “Generally stated, due process requires notice, an opportunity to be heard, and an opportunity to confront witnesses.” *Morton v. Ivacic*, 898 N.E.2d 1196, 1199 (Ind. 2008) (citation omitted). To the extent Wheeler argues that he was notified of the trial date on the day before the trial, we note the court asked him

if he wanted a continuance, and Wheeler answered in the negative. Further, Wheeler did not object to appearing by telephone and does not show that his appearance by telephone prevented him from testifying as to any matter. Moreover, the record demonstrates that the court provided adequate opportunity for Wheeler to present his testimony and argument and to respond to the defendants' arguments. Wheeler testified in detail regarding the reason that he was entitled to backpay, his hourly rate and the approximate number of hours he worked per day, and the amount of reimbursement to which he believed he was entitled. He also had the opportunity to respond to the deputy attorney general's argument regarding the language of the DOC's policy and the lowest rate of State wages. We cannot say that Wheeler is entitled to a new trial or reversal on this basis.

[11] As for the evidence, Wheeler testified that he had been earning 70 cents per hour and working approximately 10 hours per day before he received the conduct report, that he did not work for 25 days as a result of the conduct report, and the conduct report was later overturned. The deputy attorney general argued that Wheeler received the proper amount of backpay of 50 cents per day based on the DOC policy which provides for payment based on the lowest rate of State wages for which an offender was eligible. Wheeler cites "IDOC policy # 02-04-101," *see* Appellant's Brief at 12, which the small claims court referenced at trial and which provides in part:

7. Reimbursement of Lost Wages (Not including Work Release):

An offender otherwise entitled to State wages:

* * * * *

- d. Whose guilty finding is overturned on appeal or by a court shall have those State wages, for which the offender is eligible, reimbursed for the period of time from the offender's removal from the work assignment due to the alleged disciplinary violation until the date of the disciplinary hearing. Such pay will be at the rate of State wages paid to the offender prior to being removed from his/her work assignment or at the lowest rate of State wages for which the offender is eligible, if previously assigned to an ICI work assignment in accordance with the Offender Employment Operating Standard. . . .⁵

<https://www.in.gov/idoc/files/02-04-101-ADP-3-1-2020.pdf>

[<https://perma.cc/4C85-MBDD>]. The parties do not disagree that Wheeler was reimbursed \$12.50 as backpay, which is equal to 50 cents per day for 25 days. Wheeler does not cite to the record or develop a cogent argument that the rate upon which his backpay was calculated was not the lowest rate of State wages for which he was eligible. Rather, he merely asserts that the rate used “did not apply” to him. *See* Appellant’s Brief at 6 n.6; *id.* at 9 n.8. Further, he appears to agree that the lowest rate of State wages was 50 cents per day.⁶ We also note Wheeler did not allege that an act or omission of Knight was criminal, clearly outside the scope of her employment, malicious, willful or wanton, or

⁵ The policy defines “State wages” as: “Monies paid by a facility for a facility work/education assignment, not including wages paid by Indiana Correctional Industries (ICI), an ICI joint venture program or a private employer of an offender in Work Release.”

⁶ In his brief, Wheeler states: “This pay rate did not apply to the appellant, thus, 0.50 per day is for pay grade 5.” Appellant’s Brief at 6 n.6; *id.* at 9 n.8.

calculated to benefit her personally, *see* Ind. Code § 34-13-3-5 (providing that a lawsuit against an employee personally must include such allegations), and Hall testified that he did not control the amounts inmates were paid and that neither he nor Meritor paid the inmates directly. Based upon the evidence which supports the judgment, and given our deferential standard of review, we cannot say that the evidence leads to but one conclusion and the small claims court reached the opposite conclusion.

[12] For the foregoing reasons, we affirm.

[13] Affirmed.

Vaidik, J., and Mathias, J., concur.