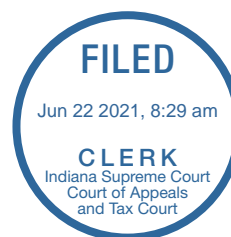


MEMORANDUM DECISION

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.



APPELLANT PRO SE

Michael W. Wise Sr.
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ATTORNEY FOR APPELLEES

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IN THE COURT OF APPEALS OF INDIANA

Michael W. Wise Sr.,

Appellant-Plaintiff,

v.

The GEO Group, Inc.,
Lt. Dunn, Mark Sevier,
N. Ong, Neal Fetz, and
S. Longnecker,

Appellees-Defendants

June 22, 2021

Court of Appeals Case No.
20A-SC-1462

Appeal from the
Henry Circuit Court

The Honorable
David L. McCord, Judge

Trial Court Cause No.
33C03-2003-SC-250

Crone, Judge.

Case Summary

- [1] While an inmate in prison, Michael W. Wise Sr. had the prison mail a package for him. When the package failed to arrive, he filed a small-claims action against the prison alleging it was lost in the mail and requesting \$1,500 in damages. The small-claims court entered judgment for the prison. We affirm.

Facts and Procedural History

- [2] In 2019, Wise was incarcerated at the New Castle Correctional Facility, which is run by a private company called The GEO Group, Inc. In December, Wise gave a package containing “15 Personal/Christian Books,” “1 Life Recovery Study Bible,” “3 Study Notes from Secret[s] Unsealed,” personal letters, and legal papers to his case manager, Junior Dunn, to mail to his daughter. Appellant’s App. Vol. II p. 29.¹ Dunn had Wise “fill out a form indicating the address to where he wanted the [package] sent.” *Id.* at 71. Dunn “personally delivered [the package] to the mail room and provided mail room staff with the address written by” Wise. *Id.* The following day, mail-room staff mailed Wise’s package. *Id.*

¹ The handwritten page numbers in Wise’s appendix do not match the PDF page numbers. For ease of reference, we use the handwritten page numbers.

[3] In January 2020, Wise filed a “Notice of Loss of Property—Tort Claim” with the prison alleging his daughter had never received the package. *Id.* at 33. The prison denied Wise’s claim:

There is no property of yours in the mail room and, in fact it has been verified by several mail room staff that your property was dropped off by Case Manager Dunn in December 2019 and was mailed out at facility expense. If, as you state, the property didn’t make it to [its] intended destination I would encourage you to check with USPS as we have no liability for property being mailed out once it has left the facility.

Id. at 35.

[4] On May 6, 2020, Wise filed a small-claims action against The GEO Group, Inc. and several of its employees (collectively, “the prison”) in Henry Circuit Court, alleging:

On/about Dec. 19, 2019 property that was mailed home by the facility without insurance or verified signature or tracking number was lost. Property was not in mailroom nor can it be verified through USPS without tracking number that it was received at destination.

Id. at 24. Wise requested \$1,500 plus interest in damages.

[5] Due to Wise’s incarceration, the small-claims court ordered the parties “to submit their evidence by affidavit” “along with all supporting exhibits.” *Id.* at 17. Wise submitted affidavits from himself and his daughter and several exhibits, and the prison submitted two affidavits (one from Dunn and the other

from Neal Fetz, a human-resources employee at the prison) and several exhibits. Dunn’s and Fetz’s affidavits contain the following “Oath”:

I affirm, under the penalties of perjury, that the foregoing statements are based on my own personal knowledge and are true and accurate.

Id. at 72, 75.

[6] Wise also requested discovery from the prison. *See id.* at 76, 79. The prison’s attorney sent Wise a letter stating the prison was not answering his discovery requests until he complied with Indiana Small Claims Rule 6, which provides:

Discovery may be had in a manner generally pursuant to the rules governing any other civil action, but only upon the approval of the court and under such limitations as may be specified. The court should grant discovery only upon notice and good cause shown and should limit such action to the necessities of the case.

Wise filed a motion to compel, which the small-claims court denied. In July 2020, the court found Wise had failed to meet his burden of proof and entered judgment for the prison.

[7] Wise, pro se, now appeals.

Discussion and Decision

I. Affidavits

[8] Wise contends the small-claims court erred in considering Dunn’s and Fetz’s affidavits because they are not “sworn” or “notarized.” Appellant’s Br. p. 8. In support, Wise cites the Indiana Office of Court Services Small Claims Manual, which defines “affidavit” as:

A written statement made upon affirmation that the statement is true under the penalty of perjury or under oath before a notary public or other person authorized to administer oaths.

Indiana Courts, *Small Claims Manual* (2020),

<https://www.in.gov/courts/files/small-claims-manual.pdf>; *see also* Ind. Small Claims Rule 13 (“An informative small claims manual shall be formulated by the Judicial Conference of Indiana for distribution to the small claims courts.”).

According to the Small Claims Manual, there are two ways to prepare an affidavit in a small-claims case: (1) a written statement made upon affirmation that the statement is true under the penalty of perjury or (2) a written statement made under oath before a notary public or other person authorized to administer oaths. Here, Dunn’s and Fetz’s affidavits follow the first route, as

their affidavits provide that they affirm under the penalty of perjury their statements are true. The court properly considered their affidavits.²

II. Discovery

[9] Wise next contends the small-claims court erred in denying his motion to compel discovery. In support, he cites Indiana Trial Rule 37 and cases relying on Trial Rule 37. *See* Appellant’s Br. p. 11. However, Wise does not acknowledge Small Claims Rule 6, which, unlike the trial rules, requires a party to show good cause and obtain approval from the court before any discovery is allowed. *See Wynne v. Burris*, 105 N.E.3d 188, 191-92 (Ind. Ct. App. 2018) (explaining discovery is not “automatic” in small-claims cases). Wise did not follow this procedure and therefore the court did not err in denying his motion to compel.

III. Merits

[10] Finally, Wise contends the small-claims court erred in entering judgment for the prison. Generally, on appellate review of claims tried by the bench without a jury, we will not set aside the court’s judgment unless it is clearly erroneous. *See* S.C.R. 11(A); Ind. Trial Rule 52(A). However, where a small-claims case turns solely on documentary evidence, we review the judgment de novo, just as we review summary-judgment rulings and other paper records. *Trinity Homes*,

² Wise also appears to argue the small-claims court erred in considering the prison’s exhibits because they contain “no affirmation of truth” and are “not notarized.” Appellant’s Br. p. 9. Wise, however, cites no authority that these requirements apply to the exhibits.

LLC v. Fang, 848 N.E.2d 1065, 1069 (Ind. 2006). Because the court relied solely on the parties' written submissions, we review its judgment de novo.

[11] Wise argues the small-claims court should have entered judgment in his favor because the prison took “soul [sic] responsibility to insure the property would be properly mailed home.” Appellant’s Br. p. 13. But Wise cites no authority that the prison was responsible for ensuring the package arrived at its destination. Indeed, Dunn’s and Fetz’s affidavits provide the opposite: once the prison places the property with a mail carrier, it is no longer responsible for the property. Appellant’s App. Vol. II pp. 72, 74. Although Wise claims the prison “mis-plac[ed]” his package, *see* Appellant’s Br. p. 13, he presented no evidence to rebut the prison’s evidence that it placed the package in the mail. We therefore affirm the court’s judgment in favor of the prison.

[12] Affirmed.

Bradford, C.J., and Brown, J., concur.