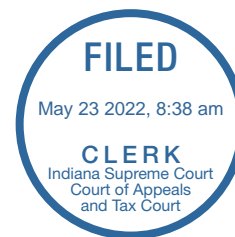


MEMORANDUM DECISION

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 PRO SE

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ATTORNEY FOR APPELLEE

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IN THE COURT OF APPEALS OF INDIANA

Darren Huggins,
Appellant-Plaintiff,

v.

Payless Liquor and Zore's
Towing, Inc.,¹
Appellees-Defendants.

May 23, 2022

Court of Appeals Case No.
21A-SC-1461

Appeal from the Marion County
Small Claims Court, Warren
Township Division

The Honorable Garland E. Graves,
Judge

Trial Court Cause No.
49K06-2104-SC-873

Baker, Senior Judge.

¹ The small claims court's judgment from which Huggins appeals was issued in favor of both Zore's Towing and Payless Liquor. Huggins has not chosen to name Zore's Towing as a party on appeal, so we do not address any argument as to them. However, a "party of record in the trial court ... shall be a party on appeal." Ind. Appellate Rule 17.

Statement of the Case

- [1] Darren Huggins appeals from the small claims court’s judgment in favor of Payless Liquor and Zore’s Towing, regarding his allegation that they participated in the illegal towing of his truck. We affirm.

Facts and Procedural History

- [2] On March 29, 2021, Huggins parked his box truck in Payless Liquor’s parking lot due to a suspected brake failure. Huggins testified that he spoke with a man named Charles, from the adjacent Motel 8, who informed him that the lot was owned by Payless Liquor. Huggins testified that Charles checked with a Payless Liquor employee, named Marlene, who said Huggins could leave his box truck in the Payless Liquor parking lot. However, Huggins did not directly obtain permission from Payless Liquor to leave his truck there, and testified that the first time he spoke with Marlene was the day after his truck was towed, around seventeen days later.
- [3] Payless Liquor employee Marlene Neal testified at the hearing that she had never given permission to Huggins to park his box truck in the Payless Liquor parking lot directly or indirectly through the Motel 8 employee named Charles. She confirmed the presence of from three to five signs posted outside the store informing the public that “authorized vehicles only” are allowed and that “violators will be towed.” Tr. Vol. 1, p. 9. The signs also gave the following information about the towing company used to remove violating vehicles and whose signs were posted: “Zores,[sic] 317-247-8484, 301 South Kitley,

Indianapolis, Indiana, 24 hours, 7 days.” *Id.* Huggins admitted that the signs were located on Payless Liquor’s property.

[4] Huggins last checked on his truck on April 15, 2021, and when he returned with his mechanic on April 16th, his truck was gone. Next, he spoke with Marlene on April 17th about his truck being towed, leading to no resolution of the matter.

[5] On April 20th, Huggins filed his notice of claim naming as defendants, Payless Liquors, and Zore’s Towing, as well as several individuals, by first name only. Those individuals were Brandon, Elizabeth, and Marlene. At the beginning of the hearing, the court established that Brandon was a Zore’s Towing manager and that Elizabeth and Marlene were Payless Liquor’s employees. Those individuals were dismissed from the action and the matter proceeded solely against Zore’s Towing and Payless Liquor.

[6] At the conclusion of the hearing, the court found in favor of Zore’s Towing and Payless Liquor. Huggins now appeals.

Discussion and Decision

[7] Our Supreme Court set out the applicable standard of review in *Trinity Homes, LLC v. Fang*, 848 N.E.2d 1065, 1067-68 (Ind. 2006):

Judgments in small claims actions are “subject to review as prescribed by relevant Indiana rules and statutes.” Ind. Small Claims Rule 11(A). Under Indiana Trial Rule 52(A), the clearly erroneous standard applies to appellate review of facts determined in a bench trial with due regard given to the

opportunity of the trial court to assess witness credibility. 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.’” *City of Dunkirk Water & Sewage Dep’t v. Hall*, 657 N.E.2d 115, 116 (Ind.1995) (quoting S.C.R. 8(A)).

[8] Huggins’ argument was that his box truck was towed “without first tagging it for twenty-four hours.” Tr. p. 5. He asked the court for an order compelling Payless Liquor and Zore’s Towing, to “work together to have [his] truck towed back” to Motel 8. *Id.* at 6. His argument appears to be based on language contained in Indiana Code section 9-22-1-15 (2009) and 16 (2013). Section 15 allows the owner of private property on which a vehicle believed to be abandoned, who chooses to personally arrange for the removal of the vehicle to first place a notice tag with certain information, including that the owner of the vehicle may avoid the costs of removal if the vehicle is removed within twenty-four hours. Huggins complains that this procedure was not followed, and thus, his vehicle was illegally towed.

[9] Zore’s Towing and Payless Liquor, on the other hand, rely on Marion County Local Ordinance 995-303(a) (2011). That ordinance provides that it is unlawful for a “tow business or tow truck operator to tow a vehicle unless the parking lot in which the vehicle is parked has signage, posted in plain view at each entrance and exit, that has been permanently installed for a minimum of twenty-four (24) hours prior to any vehicle being removed.” Zore’s Towing and Payless Liquor also cited to the Home Rule Act, Indiana Code chapter 36-1-3-2 (1980), which grants governmental “units all the powers they need for effective operation of

government as to local affairs,” asserting that the ordinance was applicable here. Additionally, Indiana Code section 9-22-1-16 (2013) provides that the owner of property upon which a vehicle believed to be abandoned may have the vehicle towed after twenty-four hours.

[10] In either event, the evidence reflects that Huggins’ box truck was left parked in Payless Liquor’s parking lot on March 29, 2021. This was done without permission from Payless Liquor. Zore’s Towing provided the three to five no-parking signs which had been posted on the Payless Liquor building, warning violators that their vehicles would be towed. The removal of Huggins’ vehicle was proper under either the local ordinance, or Indiana Code section 9-22-1-16. Testimonial and documentary evidence showed the signs were posted on the property, and Huggins’ vehicle had been left there for approximately seventeen days, well beyond the twenty-four hours provided for by statute and by ordinance. The court’s judgment was not clearly erroneous.

Conclusion

[11] In light of the foregoing, we affirm the decision of the small claims court.

[12] Affirmed.

Riley, J., Pyle, J., concur.