

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

Curt Pearman, d/b/a Forest
Park-Pearman,
Appellant-Plaintiff,

v.

Rande L. Martin and R.L.
Martin Associates, Inc., d/b/a
Management Recruiters of
Richmond,
Appellee-Defendant.

September 21, 2022

Court of Appeals Case No.
21A-CC-759

Appeal from the Wayne Superior
Court

The Honorable Gregory A. Horn,
Judge

Trial Court Cause No.
89D02-1508-CC-524

Pyle, Judge.

Statement of the Case

[1] This case returns after a previous panel of this Court reversed a summary judgment entered in favor of Rande L. Martin and R. L. Martin Associates, Inc. d/b/a Management Recruiters of Richmond (collectively, “Martin”) and against Curt Pearman d/b/a Forest Park-Pearman (“Pearman”). This Court reversed the trial court’s summary judgment order that had found that Martin’s lease with Pearman was a month-to-month holdover. This Court held that the lease agreement between the two parties was a one-year tenancy created by Martin’s holdover and remanded the case back to the trial court to determine damages. The trial court, after receiving briefs from the parties and holding multiple hearings, ordered Martin to pay Pearman damages. Pearman, pro se, now appeals, arguing that the trial court erred by not allowing the parties to submit additional evidence related to the amount of damages. Concluding that the trial court did not err when it refused to allow the parties to submit additional evidence to determine damages, we affirm the trial court’s summary judgment order.

[2] We affirm.

Issue

Whether the trial court abused its discretion when it refused to allow the parties to submit additional evidence to determine damages.

Facts¹

- [3] The relevant facts of this case, as stated by our Court in an unpublished memorandum decision, are as follows:

In April of 2006 Martin was a commercial tenant in the Forest Park building when it was purchased by Pearman. In January 2008, the parties entered into a written lease agreement (the Lease) whereby Martin leased office space located in the Forest Park building from Pearman. The lease was for a period of thirty-eight months, running from February 1, 2008 through March 31, 2011.

Pearman v. Martin, 18A-CC-239 at *1 (Ind. Ct. App. Nov. 7 2018), *trans. denied*.

The Lease contained a provision that allowed for Martin to extend the lease for a five-year period so long as Martin gave Pearman notice of Martin's intent to renew 180 days before the Lease ended.

- [4] Throughout 2011 and 2012, Martin and Pearman corresponded through email regarding the terms of the Lease. These facts are the core of the previous appeal. Ultimately, Martin vacated the property in May 2013.

¹ Pearman's statement of facts consists of a list and is not in narrative form as required by Indiana Appellate Rule 46(A)(6)(c). Additionally, Pearman failed to include a standard of review in his brief as required by Indiana Appellate Rule 46(8)(b). Finally, Pearman did not include the parties' competing motions for summary judgment and their respective responses, their designations of evidence, or any briefs in support of their positions in his appendix as required by Indiana Appellate Rule 50(A)(2)(f). Pearman made these same mistakes in his previous appeal in this case, and we remind Pearman that pro se litigants are held to the same legal standards as licensed attorneys and are bound to follow the established rules of procedure. *See Evans v. State*, 809 N.E.2d 338, 344 (Ind. Ct. App. 2004), *trans. denied*.

[5] The relevant facts of the underlying litigation are as follows:

On August 12, 2015, Pearman filed suit against Martin. Both sides moved for summary judgment. The trial court held a hearing on the cross-motions for summary judgment on August 4, 2016. In an order dated November 14, 2016, the trial court granted partial summary judgment in favor of Martin, noting that there really is no dispute between the parties as to the relevant facts, and that Martin did not exercise the option to renew the lease. Pearman filed a motion to correct error. After a hearing, the trial court issued an order in which it rejected Pearman's argument that Martin [had] exercised the option to extend the lease by paying the annual increased rent.

The parties then filed cross-motions for summary judgment on the nature of Martin's holdover tenancy. The trial court held a hearing to consider these motions on December 7, 2017. In an order dated December 21, 2017, the trial court granted Martin's motion for summary judgment and denied Pearman's motion for summary judgment. Specifically, the trial court determined that where a tenant holds over following a multi-year lease, the result is a fixed one-year tenancy. Further, the court determined that any subsequent holdover after the one-year term creates a general, month-to-month tenancy that can be terminated with thirty days' notice. The court therefore concluded that Martin gave adequate notice and that thereafter, no further lease term existed and no further rent was due and owing from Martin to Pearman. The court entered final judgment in favor of Martin.

Id. at *3 (internal quotation marks and citations omitted).

[6] On appeal, in November 2018, our Court affirmed in part and reversed in part. Specifically, our Court held that the trial court was correct in identifying that a

year-to-year tenancy had been created after the expiration of the Lease. *Id.* at

*6. Further, our Court stated:

[T]he original lease term expired on March 31, 2011. Martin remained in possession of the premises and continued to make rent payments that Pearman accepted without reservation. This created a one-year tenancy. After the expiration of this one-year tenancy, Martin again remained in possession and paid rent that Pearman accepted without reservation, thereby creating another one-year tenancy. When Martin continued to pay the rent after this tenancy expired, a third one-year tenancy commenced. Martin terminated this tenancy and vacated the premises two months later and with ten months remaining. The trial court erred in finding that no further lease term existed and no further rent is due and owing from Martin to Pearman. The trial court's grant of summary judgment in favor of Martin on this issue is reversed. Because the trial court did not reach the issue of damages, we remand to the [trial] court to make such determination.

Id. (internal quotation marks and citations omitted).

[7] On remand, the trial court held a damages hearing in September 2019. After the hearing, the trial court issued an order dated September 30, 2019. In this order, the trial court noted that “[t]he parties agree that the remaining issue is one of damages but, at this point, do not agree on what can permissively be heard on summary judgment[.]” (September 2019 Order). The trial court further noted that “[the parties] agree that further briefing should be allowed with respect to where the matter stands procedurally and what can and cannot be alleged and argued at the summary judgment hearing[.]” (September 2019

Order). The trial court ordered Martin and Pearman to provide briefing on the issue and set a summary judgment hearing.

[8] In October 2019, Pearman filed his brief along with twenty exhibits. These exhibits included new evidence that had not been previously designated by the parties' in their underlying summary judgment motions. In response, Martin moved to strike several exhibits arguing that they were not properly designated evidence from Pearman's prior summary judgment motions.

[9] After briefs had been submitted by the parties, the trial court issued an order dated February 25, 2020. In its order, the trial court stated:

The Court will only consider that evidence which was properly presented at the time of the cross-motions for summary judgment as to damages. This, of course, may include proper Affidavits and discovery responses. Here, specifically, this includes Plaintiff's Affidavit dated June 29, 2017; Defendants' Affidavit of Rande Martin filed August 31, 2017. The Court will also consider, to the extent relevant to the issue of damages, Plaintiff's Affidavit filed with Plaintiff's first motion for summary judgment dated September 17, 2015 (and repeated by filing on April 9, 2016), and Defendants' Affidavits of March 4, 2016 and June 10, 2016 filed with their previous motion for summary judgment. No other evidence has been properly designated, and any such evidence will not be considered by the Court.

(February 2020 Order).

[10] At the July 2020 summary judgment hearing, Pearman argued that he should be allowed to present new evidence to calculate his damages. Specifically, Pearman cited to *IBM v. State*, 112 N.E.3d 1088 (Ind. Ct. App. 2018) for the

proposition that “when a case is remanded and it’s back to the summary stage that as long as [the parties] are not touching the original judgment, as long as [the parties] are only dealing with the remanded issue, new evidence is welcome[.]” (Tr. at 52).

[11] In response, Martin argued that “anything stated in other memorand[a] or other arguments from either party are not to be considered [for] a motion for summary judgment. It has to be [a] sworn affidavit[.]” (Tr. at 54). Martin stated that he believed that the parties were “limited on both sides as to what this [c]ourt c[ould] consider for today” because the designated evidence needed to be part of a “sworn affidavit[.]” (Tr. at 54). Further, Martin argued that he should only be ordered to pay: (1) ten months of rent that remained on the one-year holdover; (2) late fees based on the base rent pursuant to the lease agreement; and (3) simple interest on the amount due. Martin argued that the common area maintenance fees and utility costs that Pearman argued for were not supported by designated evidence pursuant to the trial court’s February 2020 Order.

[12] After both parties had presented their arguments, the trial court clarified its reasoning for its February 2020 Order. Specifically, the trial court explained that “[it] thought those affidavits [listed in its order] dealt specifically with the damage issue, not so much on the issue that [the] [C]ourt of [A]ppeals ha[d] already ruled upon. (Tr. at 56). The trial court also stated that if Pearman could “show [the trial court] that there are other affidavits that specifically deal with damages, . . . [the trial court would be] willing to consider that . . . if it []

[had] been properly designated.” (Tr. at 56). Pearman responded by stating, “I will accept . . . what [the trial court’s] order from February of this year said . . . and [that he] w[ould] be fine with that.” (Tr. at 57). The trial court instructed the parties to file summaries of the proposed damages that the trial court should follow. The trial court requested that all damage calculations be supported by designated evidence pursuant to the trial court’s February 2020 Order.

[13] Pearman, in his underlying motion for summary judgment, proposed that Martin pay a higher rent amount due to a dispute between the parties regarding a rent reduction, common area maintenance fees, higher amounts of late fees, utility payments, and compound interest. However, these requests were not supported by designated evidence or sworn affidavits pursuant to the trial court’s February 2020 Order and the trial court’s instructions at the previous hearing.

[14] In January 2021, the trial court granted summary judgment in favor of Pearman but did not include Pearman’s request for the higher rent payments, common area maintenance fees, higher late fees, utility payments, or compound interest. After the trial court’s summary judgment order, both parties filed motions to correct error. In March 2021, the trial court held a hearing on both parties’ motions to correct error. As a result, the trial court adjusted the judgment amount and denied Pearman’s request to include higher rent payments, common area maintenance fees, increased late fees, utility payments, and compound interest because Pearman had failed to support his assertions with designated evidence.

[15] Pearman now appeals.

Decision

[16] At the outset, we note that Pearman has chosen to proceed pro se. It is well settled that pro se litigants are held to the same legal standards as licensed attorneys. *Evans v. State*, 809 N.E.2d 338, 344 (Ind. Ct. App. 2004), *trans. denied*. Thus, 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. *Id.*

[17] Pearman argues that the trial court abused its discretion when it refused to allow the parties to submit additional evidence to determine damages. The admission of evidence is left to the sound discretion of the trial court, and we will not reverse that decision except for an abuse of that discretion. *Fort Wayne Lodge, LLC v. EBH Corp.*, 805 N.E.2d 876, 882 (Ind. Ct. App. 2004). An abuse of discretion occurs when the trial court's decision is against the logic and effect of the facts and circumstances before it. *Id.*

[18] We review a grant of summary judgment de novo, in the same way as the trial court. *Hughley v. State*, 15 N.E.3d 1000, 1003 (Ind. 2014). We will affirm such a ruling only if, after drawing all reasonable inferences in favor of the non-moving party, the designated evidence shows that there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *Id.*

[19] Indiana Trial Rule 56(E) provides that “[t]he court *may* permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or further affidavits.” (emphasis added). The word “may” is “permissive language[.]” *Robertson v. State*, 141 N.E.3d 1224, 1228 (Ind. 2020).

[20] Here, our review of the record reveals that the trial court, after receiving this case on remand to determine damages, ordered the parties to argue damages using only properly designated evidence. Although, when Pearman attempted to introduce additional evidence as part of the remand hearing, the trial court exercised its discretion and did not allow it. Based on the permissive language of Indiana Trial Rule 56(E), we hold that the trial court did not abuse its discretion when it refused to allow Pearman to submit additional evidence to determine damages on remand and affirm the trial court’s grant of summary judgment in favor of Pearman.

[21] Affirmed.²

May, J., and Brown, J., concur.

² Pearman also argues that the trial court committed “reversible error” when it “didn’t treat the late fees as liquidated damages subject to ongoing interest[.]” (Pearman’s Br. 13-14). However, Pearman provides no cogent argument pointing to any cases or authorities that support this claim. Thus, he has waived the argument on appeal. *See* Ind. Appellate Rule 46(A)(8).