

## 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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### APPELLANT PRO SE

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### ATTORNEYS FOR APPELLEE

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## IN THE COURT OF APPEALS OF INDIANA

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Marsha Rush,

*Appellant,*

v.

New Albany Housing Authority,

*Appellee.*

June 21, 2022

Court of Appeals Case No.  
22A-SC-42

Appeal from the Floyd Superior  
Court

The Honorable Julie Fessel  
Flanigan, Magistrate

Trial Court Cause No.  
22D02-2107-SC-468

**Brown, Judge.**

- [1] Marsha Rush, *pro se*, appeals the small claims court’s judgment in favor of the Housing Authority of New Albany (the “Housing Authority”). We affirm.

### *Facts and Procedural History*

- [2] On July 26, 2021, Rush filed a Notice of Claim against the Housing Authority in the Floyd Superior Court Small Claims Division. She alleged that her roof had a hole in it, rain came into her bedroom, the Housing Authority did not dry the area, and mold set into her wall and spread. She asserted that she had been diagnosed with COPD, asthma, sleep apnea, and mold in her blood.
- [3] On October 29, 2021, the court held a bench trial. On November 2, 2021, the court entered judgment in favor of the Housing Authority. Its order states:

This cause having been set for Trial, and the parties present having presented their evidence to the Court:

And after having heard the evidence and being duly advised in the premises, the Court now finds Judgment granted for the Defendant and that the Plaintiff(s) take nothing by way of the complaint.

The Court further finds that the Plaintiff(s) shall pay the costs of this action.

IT IS, THEREFORE, ORDERED that Judgment is granted for the Defendant.

Appellant’s Appendix Volume II at 2.

## *Discussion*

[4] We note that Rush is proceeding *pro se*. Such litigants are held to the same standard as trained counsel and are required to follow procedural rules. *Martin v. Hunt*, 130 N.E.3d 135, 136 (Ind. Ct. App. 2019) (citing *Evans v. State*, 809 N.E.2d 338, 344 (Ind. Ct. App. 2004), *trans. denied*). This Court will not “indulge in any benevolent presumptions on [their] behalf, or waive any rule for the orderly and proper conduct of [their] appeal.” *Ankeny v. Governor of State of Ind.*, 916 N.E.2d 678, 679 n.1. (Ind. Ct. App. 2009) (citation omitted), *reh’g denied, trans. denied*.

[5] Rush does not include a standard of review or cite to any authorities or to the record in the argument section of her brief. *See* Ind. Appellate Rule 46(A)(8) (providing that “[t]he argument must contain the contentions of the appellant on the issues presented, supported by cogent reasoning,” “[e]ach contention must be supported by citations to the authorities, statutes, and the Appendix or parts of the Record on Appeal relied on, in accordance with Rule 22,” and “[t]he argument must include for each issue a concise statement of the applicable standard of review”); Ind. Appellate Rule 22(C) (providing that “[a]ny factual statement shall be supported by a citation to the volume and page where it appears in an Appendix, and if not contained in an Appendix, to the volume and page it appears in the Transcript or exhibits”).

[6] We also note that the small claims court’s judgment states that it entered judgment following an evidentiary hearing at which the parties each presented evidence. However, there is no transcript of that hearing in the record as Rush

did not request the small claims court to produce a transcript in her notice of appeal.<sup>1</sup> Ind. Appellate Rule 9(F)(5) provides that the notice of appeal “shall” include the following:

A designation of all portions of the Transcript necessary to present fairly and decide the issues on appeal. If the appellant intends to urge on appeal that a finding of fact or conclusion thereon is unsupported by the evidence or is contrary to the evidence, the Notice of Appeal shall request a Transcript of all the evidence.

It is well-settled that the “failure to include a transcript works a waiver of any specifications of error which depend upon the evidence.” *Campbell v. Criterion Grp.*, 605 N.E.2d 150, 160 (Ind. 1992). Rush’s entire argument on appeal is that the small claims court’s judgment is not supported by the evidence. Specifically, she contends that the Housing Authority had not provided “any compelling evidence to dispute the existence of the mold infestation nor dispute the known side effects mold infestations can have on human health.” Appellant’s Brief at 6. However, due to Rush’s failure to submit a proper

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<sup>1</sup> In her initial notice of appeal filed January 14, 2022, Rush stated:

Pursuant to Appellate Rule 10 or 14.1(C), the clerk of Floyd County Superior Court II is requested to assemble the Clerk’s Record, as defined in Appellate Rule 2(E). Pursuant to Appellate Rule 11 or 14.1(C), the Court Reporter of the Floyd County Superior Court II is requested to transcribe, certify, and file with the clerk of the Floyd County Superior Court II the following hearings of record, including exhibits: Plaintiff’s Exhibits A - Exhibit X.

January 14, 2022 Notice of Appeal. In her amended notice of appeal filed on January 20, 2022, Rush did not request the transcript or exhibits. We further note that Rush did not pursue the option available in Ind. Appellate Rule 31(A), which provides in part that, “[i]f no Transcript of all or part of the evidence is available, a party or the party’s attorney may prepare a verified statement of the evidence from the best available sources, which may include the party’s or the attorney’s recollection.”

record on appeal, we cannot evaluate the merits of her arguments.

Accordingly, we affirm the small claims court's judgment.

[7] For the foregoing reasons, we affirm.

[8] Affirmed.

Mathias, J., and Molter, J., concur.