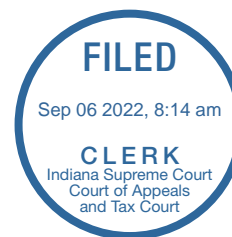


MEMORANDUM DECISION

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

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IN THE COURT OF APPEALS OF INDIANA

David Davis,
Appellant-Defendant,

v.

Darrell Ghere,
Appellee-Plaintiff.

September 6, 2022

Court of Appeals Case No.
22A-EV-634

Appeal from the
Brown Circuit Court

The Honorable
Mary Wertz, Judge

The Honorable
Frank M. Nardi, Magistrate

Trial Court Case No.
07C01-2111-EV-88

Shepard, Senior Judge.

- [1] Tenant David Davis appeals the trial court's order of eviction and money judgment against him. We affirm.

Facts and Procedural History

- [2] Landlord Darrell Ghere owns property in Nashville on which there is a mobile home and another building. In 2018, Ghere signed a lease to rent the mobile home to Davis. Under the terms of the lease, Davis agreed to pay \$700 per month plus utilities. It was a month-to-month lease terminable upon thirty days' written notice by Ghere. The parties did not have a written lease for the additional building; however, Ghere allowed Davis to operate an auto repair shop there.
- [3] In 2020, the parties made changes to their rental agreement that were never reduced to writing. The terms of the new verbal agreement included that Davis could continue to reside in the mobile home for the increased rent of \$1,000 per month, including utilities, and that he could continue to use the shop for his business. In addition, in exchange for Davis performing maintenance work on Ghere's other rental properties, vehicles, and equipment, Davis was to receive credit against his rent obligation.
- [4] Subsequently, the parties' relationship began to deteriorate, and Ghere filed a small claims action for eviction in November 2021. At the bench trial on February 24, 2022, the court heard evidence of a recent verbal agreement of the parties that Davis could remain in the mobile home until April 1 if he paid rent of \$1,000 per month for January, February, and March. The court entered judgment in favor of Ghere and ordered Davis to vacate by April 1 and to pay

rent of \$1,000 per month for January, February, and March. Davis now appeals.

Issue

- [5] The stated issue in Davis' brief is whether summary judgment was properly granted to Ghere. In fact, Davis is mistaken; summary judgment was not entered in this case. Rather, the court held a bench trial at which Davis was present. The broader issue then that we address and that will respect Davis' rights is whether the judgment of eviction is proper.

Discussion and Decision

- [6] We first note that Ghere, by counsel, filed his Notification of Intention Not to File Appellate Brief. When an appellee does not submit a brief, we will not undertake the burden of developing its arguments. *Winters v. Pike*, 171 N.E.3d 690 (Ind. Ct. App. 2021). We apply a less stringent standard of review and reverse if the appellant establishes prima facie error, which is error at first sight. *Id.*

- [7] Here, the trial court entered findings sua sponte. On review of such findings, we first determine whether the evidence supports the findings and second whether the findings support the judgment, setting them aside only if they are clearly erroneous. *Id.* For issues not covered in the findings, we apply a general judgment standard and may affirm on any legal theory supported by the evidence from trial. *Id.* In doing so, we neither reweigh evidence nor reassess witness credibility; rather, we consider only the evidence and reasonable

inferences most favorable to the judgment, and unchallenged findings stand as proven. *Id.*

[8] The gist of Davis' appeal seems to be that he did not receive adequate notice of termination of the lease.

[9] At the time of the parties' falling out, they no longer had a written lease. Instead, they were operating under their verbal agreement from 2020 that established terms different from those in the written agreement. These facts are set forth in the court's Finding #5, and Davis does not dispute this finding. *See Winters*, 171 N.E.3d 690 (unchallenged findings stand as proven).

[10] Indiana law defines general tenancies as month-to-month tenancies. *See* Ind. Code § 32-31-1-2 (2002); *see also Weiss v. City of South Bend*, 118 Ind. App. 105, 74 N.E.2d 925 (1947) (when parties enter into a general tenancy agreement, the law steps in and makes the tenancy for successive periods of one month each). By giving one month's notice to the tenant, a landlord may terminate a month-to-month tenancy. *See* Ind. Code § 32-31-1-4 (2002); *see also Fields v. Conforti*, 868 N.E.2d 507 (Ind. Ct. App. 2007) (month-to-month tenancy may be terminated by landlord giving one month notice to tenant). In addition, we note that a month-to-month lease is defined as “[a] tenancy with no written contract” in which “[r]ent is paid monthly, and usu[ally] one month's notice by the landlord or tenant is required to terminate the tenancy.” *Lease*, BLACK'S LAW DICTIONARY (11th ed. 2019).

[11] Finding #9 in the court’s judgment provides: “A verbal agreement was reached that the defendant could remain in the mobile home trailer until April 1, 2022 if he paid \$1000.00 per month rent for January, February and March, 2022.” Appellant’s App. Vol. 2, p. 6. Our review of the record reveals there is ample evidence to support this finding. At trial, both parties acknowledged the terms of the agreement as set out in Finding #9. *See* Tr. Vol. 2, pp. 81, 87. The court also heard testimony from Ghere’s daughter whom Ghere had told about the agreement, and from Davis’ girlfriend who lived in the trailer with Davis. Both women testified it was their understanding that Davis could reside in the trailer until April 1 if he paid the \$1,000 per month rent for January, February, and March. *Id.* at 70, 71, 81, 82. Thus, in his agreement to terminate the lease, Davis agreed to and received more than the month’s notice to which he was entitled.

Conclusion

[12] We conclude the court’s decision rested upon substantial evidence and therefore affirm the judgment.

[13] Affirmed.

Bailey, J., and Vaidik, J., concur.