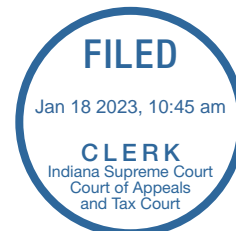


MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as binding precedent, but it may be cited for persuasive value or to establish res judicata, collateral estoppel, or law of the case.



ATTORNEYS FOR APPELLANTS

Garrett M. Lewis
James R. Browne
Goodin Abernathy, LLP
Indianapolis, Indiana

ATTORNEY FOR APPELLEE

Justin L. Froedge
Crawfordsville, Indiana

IN THE COURT OF APPEALS OF INDIANA

Erick Ayala and Diana
Gutierrez,
Appellants-Defendants,

v.

JJD Rental Group, LLC,
Appellee-Plaintiff.

January 18, 2023

Court of Appeals Case No.
22A-EV-1626

Appeal from the Montgomery
Superior Court

The Honorable Daniel G. Petrie,
Judge

Trial Court Cause No. 54D02-
2201-EV-24

Riley, Judge.

STATEMENT OF THE CASE

[1] Appellants-Defendants, Erick Ayala (Erick) and Diana Gutierrez (Diana) (collectively, Defendants), appeal the trial court’s denial of their motion to correct error in favor of Appellee-Plaintiff, JJD Rental Group, LLC (JJD).

[2] We affirm.

ISSUE

[3] Defendants present this court with two issues, which we consolidate and restate as: Whether the trial court abused its discretion when it denied their motion to correct error following the court’s earlier denial of their motion to dismiss JJD’s eviction action.

FACTS AND PROCEDURAL HISTORY

[4] On February 16, 2022, JJD filed its Notice of Claim in the Montgomery Superior Court, Small Claims Division, seeking to evict Defendants from real property located at 1800 Freemont Street in Crawfordsville, Indiana (Property). JJD also claimed \$1,615 in damages for unpaid rent, late fees, and court costs. In support of its Notice of Claim, JJD filed the verified affidavit of its representative, James Deer (James), who averred that JJD owned the Property, the Property was subject to a “written lease/month to month lease[,]” Defendants were in breach of that lease as described in the Notice of Claim, and that JJD had demanded possession of the Property. (Appellants’ App. Vol. II, p. 12).

[5] On February 28, 2022, the trial court held an evidentiary hearing on JJD’s Notice of Claim.¹ The chronological case summary entry for the hearing indicates that “Plaintiff appears in person. Defendant appears in person, Gutierrez. Ayala does not appear. . . Testimony given.” (Appellants’ App. Vol. II, p. 5). On March 1, 2022, the trial court issued an order evicting Defendants on or before March 28, 2022, and setting a hearing on May 23, 2022 on back rent and damages. On March 10, 2022, Defendants filed their Motion for Relief from Eviction, Request to Stay Proceedings, and Motion to Dismiss (Motions). Although the Motions were submitted by Defendants, its verification was signed only by non-party Selene Gutierrez (Selene). Defendants filed Selene’s verified affidavit in support of the Motions. Selene averred that she is the sister of Diana and that she had occupied the Property since August 2018 “under a contract she entered into with [JJD]” that Erick “might have signed” as well, but that Defendants did not live at the Property. (Appellants’ App. Vol. II, p. 15). Selene further averred that she agreed to purchase the Property from JJD under a land contract for \$74,000, she had made a \$5,000 down payment to JJD, and that pursuant to the terms of the purchase agreement for the Property, she had incurred “major cost for repair and replacement of its electrical wiring system” in an unspecified amount. (Appellants’ App. Vol. II, p. 20). Selene claimed that she did not have a copy of the Property’s purchase agreement, but she stated she had signed

¹ Defendants did not request that this hearing be transcribed for this appeal.

“documents for the purchase” at an unnamed law firm in Crawfordsville. (Appellants’ App. Vol. II, p. 20). Defendants sought dismissal of JJD’s eviction action, arguing that the small claims court did not have jurisdiction due to the fact that the Property was subject to a land contract, not a lease agreement, and the amount in controversy exceeded \$10,000. Defendants also claimed that Selene was a necessary party and that JJD had failed to name her in the eviction proceeding. On March 10, 2022, the trial court granted Defendants’ Motion for Relief from Judgment only, set aside the eviction order “on the grounds that it is void[,]” and set the matter for a hearing on April 6, 2022. (Appellants’ App. Vol. II, p. 22).

[6] After a series of continuances, the hearing on Defendants’ Motions was held on July 6, 2022. Selene appeared in person for the hearing, but the Defendants did not. No testimony or exhibits were admitted at the hearing. Neither party had a written, executed land contract for the Property to offer into evidence. Although no formal offers of proof were made, JJD’s counsel represented that evidence had been heard at the February 28, 2022, hearing that, although the parties had at one time operated under a land contract for the Property, the land contract had been terminated by the agreement of the parties in 2020 and that the parties had a landlord/tenant arrangement since then. JJD’s representative at the hearing, Christine Deer, was prepared to offer similar testimony in court that day. Counsel for Defendants represented to the trial court that Selene would dispute that the land contract had been terminated. At the conclusion of the argument, the trial court observed that no motion had been filed to join

Selene as a party and that the party who had requested relief, Defendants, had failed to appear. The trial court found that no executed land contract for the Property existed. The trial court reinstated its March 1, 2022, eviction order and denied Defendants' motion to dismiss. Defendants did not request an opportunity to make an offer of proof prior to the conclusion of the hearing. On July 7, 2022, the trial court issued a written order reflecting its judgment.

[7] On July 7, 2022, Defendants filed an unverified motion to correct error in which they argued, among other things, that the trial court had erred in denying their Motion to Dismiss because the court lacked jurisdiction and JJD had failed to name Selene as a necessary party. In their motion to correct error, Defendants referenced certain documents which were appended as exhibits. Exhibit D to the motion to correct error was a document entitled "Land Contract" which listed Erik's and Selene's names as purchasers but did not have a signature page showing that the document had been executed. (Appellants' App. Vol. II, p. 48).² Defendants requested that the trial court vacate its order reinstating the March 1, 2022, eviction order and that it set a new hearing on their dismissal motion. In the alternative, Defendants sought a hearing in order to make an offer of proof. On July 8, 2022, the trial court denied Defendants' motion to correct error.

² A copy of a document entitled "Memorandum of Contract" which bears the same date as the "Land Contract" was also appended to the motion to correct error. (Appellants' App. Vol. II, p. 55). However, the Memorandum of Contract lists Erick and "Kimberly DeLeon" as purchasers. (Appellants' App. Vol. II, p. 55). Defendants' motion to correct error did not reference the Memorandum of Contract.

[8] Defendants pursued this interlocutory appeal. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

A. *Standard of Review*

[9] Defendants appeal the small claims court's denial of their motion to correct error following that court's denial of their Motion to Dismiss. As a general matter, we review a trial court's ruling on a motion to correct error for an abuse of discretion. *Bruder v. Seneca Mortg. Servs., LLC*, 188 N.E.3d 469, 471 (Ind. 2022). An abuse of discretion occurs where the trial court's decision is clearly against the logic and effect of the facts and circumstances before the court or where the court has misinterpreted the law. *Id.*

B. *Subject Matter Jurisdiction*

[10] Defendants claim that JJD's eviction proceeding was subject to dismissal because the small claims court did not have subject matter jurisdiction. "Subject matter jurisdiction refers to a court's constitutional or statutory power to hear and adjudicate a certain type of case." *D.P. v. State*, 151 N.E.3d 1210, 1213 (Ind. 2020). If a court lacks subject matter jurisdiction, any judgment it enters is void. *Id.* If a trial court resolves factual matters in ruling on a motion to dismiss for lack of subject matter jurisdiction, but does so purely on a paper record, we review the trial court's decision de novo as to the facts and the law. *Johnson v. Patriotic Fireworks, Inc.*, 871 N.E.2d 989, 992 (Ind. Ct. App. 2007). Here, the small claims court did not admit any testimony or evidence at the hearing on Defendants' Motion to Dismiss and ruled based on the paper record

of JJD's Notice of Claim, James' affidavit, Defendants' verified dismissal motion, and Selene's accompanying affidavit. Therefore, our review of this issue is de novo.

[11] Pursuant to Indiana Code section 33-29-2-4(b), a small claims court has jurisdiction over (1) civil actions wherein the amount in controversy does not exceed \$10,000; (2) landlord/tenant possessory actions in which the rent due at the time the action is filed does not exceed \$10,000; and (3) emergency landlord/tenant actions. Defendants argue that the small claims court lacked jurisdiction because the instant matter arose from a \$75,000 written land contract, not from a lease. However, JJD supported its Notice of Claim with James' verified affidavit stating that the Property was subject to a written or month-to-month lease. Defendants did not present an executed land contract for the Property to the small claims court, and they provide us with no legal authority holding that, for purposes of our review, we must accept as true the averments of Selene's affidavit asserting that she was a party to a land contract for the Property. We find it significant that, in her affidavit, Selene did not aver that she was in compliance with the purported land contract or that the land contract was still in effect at the time JJD brought its eviction action. In addition, Defendants did not present the partial "Land Contract" appended to their motion to correct error as Exhibit D to the small claims court before it ruled on their motion to dismiss, and Exhibit D did not comport with Indiana Trial Rule 59(H)(1), which provides that a motion to correct error based on evidence outside the record "shall be supported by affidavits showing the truth

of the grounds set out in the motion and the affidavits shall be served with the motion.” Even if Exhibit D to Defendants’ motion to correct error were properly before us, it is not an executed land contract, and, thus, it does not conclusively prove Defendants’ assertions.

[12] Defendants draw our attention to our decision in *Vic’s Antiques and Uniques, Inc., v. J. Elra Holdingz, LLC*, 143 N.E.3d 300 (Ind. Ct. App. 2020), *trans. denied*.

However, that case is not analogous to the present matter, as in *Vic’s Antiques*, there was no question regarding the existence of a valid, executed contract; rather, the only question before us was whether that valid contract was a lease or a land contract. *See id.* at 302-04. Neither can we credit Defendants’ cursory assertion in the summary of their argument that the small claims court’s statement in its March 10, 2022, order granting Defendants’ Motion for Relief from Judgment and setting aside the eviction order “on the grounds that it is void” established that this matter arose from a land contract. (Appellants’ App. Vol. II, p. 22). Even if this statement constituted a formal finding or conclusion on the part of the small claims court, a trial court is at liberty to reconsider its previous rulings at any time while the matter is still in fieri. *Yeager v. McManama*, 874 N.E.2d 629, 639 (Ind. Ct. App. 2007). Therefore, the court below was not bound by that determination, and Defendants do not present us with any authority suggesting that this statement has a preclusive effect for purposes of our review.

[13] Defendants had the burden of proof on their dismissal motion. *See Brenner v. All Steel Carports, Inc.*, 122 N.E.3d 872, 878 (Ind. Ct. App. 2019) (holding that

“[t]he challenger of subject matter jurisdiction has the burden of establishing lack of jurisdiction”). Defendants have not presented us with any legal authority supporting their contention that they proved the existence of a valid land contract worth in excess of \$10,000. We conclude that, on the paper record before us, Defendants did not establish that the Property was subject to a valid land contract that took this matter out of the small claims court’s jurisdiction, and, therefore, we find no abuse of the trial court’s discretion in denying their motion to correct error.

C. *Selene as Necessary Party*

[14] Defendants also argue that the trial court should have granted their dismissal motion because JJD failed to join Selene as a necessary party to its eviction action. Indiana Trial Rule 19(A) provides in relevant part that

[a] person who is subject to service of process shall be joined as a party in the action if: . . . in his absence complete relief cannot be accorded among those already parties [or if] he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may . . . as a practical matter impair or impede his ability to protect that interest[.]

The Trial Rules also provide that a litigant may move to dismiss for failure to join a party needed for a just adjudication under Rule 19. *See* Ind. Trial Rule 12(B)(7). However, “[a]n action need not be dismissed merely because an indispensable party was not named.” *ResCare Health Servs., Inc. v. Ind. Family & Soc. Servs. Admin.*, 184 N.E.3d 1147, 1156 n.2 (Ind. 2022) (quotation omitted). Rather, the “correct procedure calls for an order in the court’s discretion that he

be made a party to the action or that the action should continue without him.”
Id.

[15] The sole basis for Defendants’ contention that Selene was a necessary party to JJD’s eviction action is that she was a party to the purported land contract for the Property. “The burden of proving that joinder is necessary rests with the party asserting it.” *Ball State Univ. v. Irons*, 27 N.E.3d 717, 722 (Ind. 2015) (quotation omitted). As we have already concluded, Defendants did not show that Selene was a party to a valid land contract. Defendants do not claim that, as a sublessee, Selene was a necessary party. However, even if Selene had been a necessary party as a sublessee, the small claims court was not required to dismiss JJD’s eviction proceeding based on JJD’s failure to name her as a defendant. *See ResCare Health Servs., Inc.*, 184 N.E.3d at 1156 n.2. Accordingly, we find no abuse of the small claims court’s discretion in denying Defendant’s motion to correct error based on this issue.

CONCLUSION

[16] Based on the foregoing, we hold that the small claims court did not abuse its discretion in denying Defendants’ motion to correct error where they had not shown that the dismissal of JJD’s eviction action was required.

[17] Affirmed.

[18] Bailey, J. and Vaidik, J. concur