

MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.



APPELLANT PRO SE

Gary A. Goldman
Conyers, Georgia

ATTORNEY FOR APPELLEE

Lemuel Stigler
Rodriguez Chargualaf &
Associates
Merrillville, Indiana

IN THE COURT OF APPEALS OF INDIANA

Gary A. Goldman,
*Appellant-Plaintiff/Counterclaimant-
Defendant,*

v.

Ralph Courtney Goldman,
*Appellee-Defendant/Counterclaimant-
Plaintiff.*

July 14, 2023

Court of Appeals Case No.
23A-SC-69

Appeal from the Lake Superior
Court

The Honorable Julie Cantrell,
Judge

Trial Court Cause No.
45D09-2110-SC-5045

Memorandum Decision by Judge Riley.
Judges Bradford and Weissmann concur.

Riley, Judge.

STATEMENT OF THE CASE

[1] Appellant-Plaintiff/Counterclaim-Defendant, Gary Goldman (Gary), appeals the trial court's Order dismissing his Notice of Claim and awarding damages and attorney's fees on the counterclaims of Appellee-Defendant/Counterclaim-Plaintiff, Ralph Goldman (Ralph).

[2] We affirm.

ISSUES

[3] Gary presents this court with five issues, which we restate as:

- (1) Whether Gary may properly challenge his attorney's performance as a basis for reversal in this small claims court civil matter;
- (2) Whether the evidence supported the trial court's award of travel expenses and attorney's fees to Ralph;
- (3) Whether the trial court displayed bias or prejudice against Gary;
- (4) Whether the trial court abused its discretion when it denied Gary's oral motion for a continuance at the beginning of trial; and
- (5) Whether the trial court followed the correct procedure in dismissing Gary's Notice of Claim with prejudice.

FACTS AND PROCEDURAL HISTORY

[4] Gary, Ralph, and Ricky Goldman (Ricky) are the sons of Helen Goldman (Helen). In May 2019, Gary filed a petition for an emergency/temporary guardianship over Helen in cause number 45D02-1905-GU-146 (Cause GU-

146) that resulted in Gary being appointed as Helen’s temporary guardian on June 7, 2019.¹ On July 5, 2019, Ricky was appointed as a co-guardian for Helen. Thereafter, Gary and Ricky both filed motions seeking to remove the other as a co-guardian. On September 11, 2019, a guardian ad litem was appointed for Helen. On November 16, 2020, due to the intense animosity between Gary and Ricky, after a hearing and consideration of the guardian ad litem’s report, the guardianship court removed Gary as a co-guardian and appointed Ricky as the sole permanent guardian for Helen.

[5] On October 27, 2021, Gary initiated the instant matter by filing his pro se Notice of Claim against Ralph, Ricky, both as an individual and in his capacity as Helen’s guardian, and Natysha Goldman-Smith (Natysha), who is Ricky’s daughter, (collectively, Defendants).² As to Ralph, Gary alleged that, between June 26, 2019, and August 31, 2019, Ralph and Ricky had worked in concert to destroy keepsakes, heirlooms, and personal property belonging to Helen by smashing the items and throwing them in a dumpster in front of Helen’s home. A bench trial was originally scheduled for December 10, 2021, but at Ricky’s request, on November 12, 2021, the trial court reset the trial for January 20, 2022. On January 4, 2022, attorney Amishi Sanghvi (Attorney Sanghvi) filed

¹ At the December 1, 2022, hearing in this matter, Ricky’s attorney requested that the trial court take judicial notice of the guardianship proceedings. The trial court did not take formal notice of those matters but stated on the record that it was “aware” of the proceedings and certain filings therein. (Transcript Vol. II, p. 26). Pursuant to Indiana Evidence Rule 201(b)(5), we take judicial notice of the records of Cause GU-146.

² On March 6, 2023, this court granted Gary’s motion to remove Ricky and Natysha from this appeal. Therefore, Gary proceeds only against Ralph.

her appearance in this matter and requested a continuance of the trial date on Gary's behalf. The trial court rescheduled the trial for March 10, 2022. On March 8, 2022, Ricky requested a continuance, and the trial was reset for May 5, 2022. On May 3, 2022, Gary filed a request seeking to appear telephonically for trial. The trial court denied Gary's request to appear by telephone and continued the matter to June 30, 2022. The trial court noted in the chronological case summary (CCS) that "[p]arties [are] to appear in person for bench trials." (Appellee's App. Vol. II, p. 6). On May 4, 2022, Ricky filed a motion to dismiss, arguing that Gary's claims had already been litigated in Cause GU-146, Gary's claims were time-barred, and that the guardianship court had jurisdiction over any viable claims. Ricky additionally argued that Gary's Notice of Claim was an abuse of process meant to harass Defendants. On June 23, 2022, Ricky filed a continuance motion, and the trial court reset the matter for September 29, 2022, when it would also hold a hearing on Ricky's dismissal motion. On September 22, 2022, the trial court granted Ralph's request for a continuance and reset the matter for December 1, 2022. The trial court further advised the parties that no additional continuances would be granted in the matter.³ On October 19, 2022, Ralph filed his Notice of Counterclaim against Gary alleging malicious prosecution and abuse of process. Ralph claimed that Gary had filed his suit out of anger at being removed as Helen's guardian, that Gary's claims were time-barred, and that

³ Neither party has included a copy of this order in its appendix. We take judicial notice of this order. Ind. Evidence Rule 201(b)(5).

Gary's claims were frivolous and being litigated in bad faith. Ralph sought to recover his costs, any statutory interest allowed, travel reimbursement, and "Indiana Code [section] 34-52-1-1(b) attorney[']s fees[.]" (Appellee's App. Vol. II, p. 227).

[6] On December 1, 2022, the trial court convened a hearing on all pending matters. Gary did not appear in person. At the beginning of the hearing, Attorney Sanghvi made an oral request for a continuance based on Gary's unavailability for trial due to illness and possible contraction of Covid-19, and she offered to show the trial court a "medical doctor's notice" that she informed the trial court that she had just received that morning from Gary by email. (Tr. Vol. II, p. 5). Attorney Sanghvi represented to the trial court that the letter advised that Gary should not "be anywhere" until his Covid-19 test results came back. (Tr. Vol. II, p. 7). Attorney Sanghvi confirmed for the trial court that there was nothing documenting that Gary had an active Covid-19 infection. Defendants objected to a continuance and to the admission of the unauthenticated doctor's notice. Ralph's attorney represented to the trial court that on November 28, 2022, three days before trial, Attorney Sanghvi's office had contacted him requesting a continuance and that he had advised that Ralph would not agree to one. Ralph's attorney also related that on November 30, 2022, Attorney Sanghvi had arranged a conference call among the litigants. Ralph's attorney advised the court that in neither of these pre-trial contacts had Attorney Sanghvi mentioned that Gary was ill. In response, Attorney Sanghvi stated that "[o]ne of the reasons that we had asked for a continuance early on is

that my client had symptoms of the flu[,]” but Attorney Sanghvi agreed with Ralph’s attorney that she had not mentioned Gary’s illness to Defendants prior to the morning of trial. (Tr. Vol. II, p. 6). Attorney Sanghvi had no objection to proceeding on Ricky’s motion to dismiss, and the trial court proceeded to hear argument on that matter. At the conclusion of the argument on the motion to dismiss, the trial court ruled that Gary’s Notice of Claim was an impermissible attempt to litigate matters which properly belonged in the guardianship court and dismissed Gary’s claims for lack of jurisdiction.

[7] The hearing then turned to Ralph’s counterclaims against Gary. The trial court denied Gary’s continuance motion as to Ralph’s counterclaims because it had alerted the parties there would be no more continuances granted and because, due to the number of litigants claiming Covid-19 infection as a basis for not appearing, it would not credit Gary’s excuse without documentation of a Covid-19 diagnosis. After hearing the parties’ arguments regarding whether Gary’s Notice of Claim was frivolous and/or had been litigated by Attorney Sanghvi in bad faith, the trial court took those issues under advisement and heard sworn testimony from Ralph concerning his alleged damages. Ralph testified that, in litigating Gary’s claims and advancing his own counterclaims, he had traveled between Seattle, Washington, where he was living, and Indiana on either four or five occasions, costing him \$2,000. Ralph also testified that he had incurred \$2,000 in attorney’s fees. The trial court took Ralph’s claim for damages and attorney’s fees under advisement.

[8] On December 12, 2022, the trial court entered its written order dismissing Gary's Notice of Claim with prejudice and awarding Ralph \$2,000 for travel expenses and \$2,000 in attorney's fees, plus post-judgment interest on those amounts. The trial court ruled that "[a]t this time, the [c]ourt declines to make a finding that plaintiff's counsel acted in bad faith. Any further action to prosecute this case by said attorney may result in such a finding." (Appellee's App. Vol. II, p. 14). On January 5, 2023, Attorney Sanghvi filed a motion to withdraw, which the trial court noted in the CCS could not be granted under local rules until January 14, 2023. On January 10, 2023, Gary filed a notice with the trial court that he would be proceeding pro se. Also on January 10, 2023, the trial court denied Gary's pro se motion to enlarge the time for him to file a notice of appeal, observing that it was without authority to do so. The trial court treated Gary's motion as a motion to reconsider or to correct error as to both his claims and Ralph's counterclaims and denied that motion. In addition, the trial court reinstated Gary's Notice of Claim and transferred the cause to the guardianship court for consolidation with Cause GU-146.

[9] Gary now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

[10] In this pro se appeal, Gary presents this court with at least five issues. Pro se appellants are expected to adhere to the rules of appellate procedure. *See Shawa v. Gillette*, 209 N.E.3d 1196, 1199 (Ind. Ct. App. 2023) (quoting *Basic v. Amouri*, 58 N.E.3d 980, 983 (Ind. Ct. App. 2016), and observing that "[i]t is well settled that pro se litigants are held to the same legal standards as licensed attorneys").

We note that, in contravention of Indiana Appellate Rule 27, Gary has filed appendices which do not contain copies of any documents filed in this matter as part of the Clerk's Record. Rather, Gary has submitted an appendix and a supplemental appendix consisting entirely of documents that were neither filed in the small claims court nor presented as evidence at a trial or hearing in this matter. "A trial court can decide the issues based only upon that evidence which is properly before the court and in the record, and we are bound by that record on appeal." *Bernel v. Bernel*, 930 N.E.2d 673, 676 n.2 (Ind. Ct. App. 2010), *trans. denied*. Therefore, in conducting our analysis, except where otherwise noted, we consider only the pleadings that were filed in the small claims court and the evidence presented at the hearing in this matter.

I. *Attorney Performance*

[11] Gary argues that the trial court's judgment should be reversed because his attorney allegedly performed poorly and did not follow his instructions regarding the litigation. We cannot credit this argument for at least three reasons. First, in support of this argument, Gary relies on matters which are extraneous to the trial court's record which we cannot consider. *Id.* In addition, Gary's citation to *Strickland v. Washington*, 466 U.S. 668 (1984), and its standards for assessing the ineffectiveness of counsel is misplaced, as *Strickland* applies only to criminal proceedings wherein the right to counsel is guaranteed by the Sixth Amendment. *See Bobadilla v. State*, 117 N.E.3d 1272, 1280 (Ind. 2019) (observing that the *Strickland* standard applies to the trial and appellate phases of criminal proceedings, including guilty plea proceedings).

Lastly, this court has recognized that attorney negligence, be it action or inaction, does not provide grounds for setting aside a judgment. *See McKinley, Inc. v. Skyllas*, 77 N.E.3d 818, 821-23 (Ind. Ct. App. 2017) (holding that the negligence of Skyllas’ attorney in failing to communicate with her and to respond to a request for admission which led to entry of summary judgment against her was not a proper basis for granting relief from judgment), *trans. denied*. The *McKinley* court distinguished a case cited by Gary, *Rose v. Rose*, 390 N.E.2d 1056, 1058 (1979), wherein this court relieved Rose from an adverse dissolution decree due to extreme attorney negligence, and observed that *Rose* “stands in contrast to the many Indiana cases which do not relieve the client from the consequences of the attorney’s action or inaction.” *Id.* at 821-22. We conclude that Gary’s claim of attorney negligence is not a valid basis for reversal of the trial court’s judgment.

II. *Evidence Supporting Damages*

[12] Next, Gary challenges the trial court’s award of \$4,000 to Ralph on his counterclaims. Gary does not contest his liability for Ralph’s counterclaims; his sole argument is that Ralph did not present sufficient evidence to support the award of travel expenses and attorney’s fees. Small claims courts judgments are “subject to review as prescribed by relevant Indiana rules and statutes.” Ind. Small Claims Rule 11(A). We apply the Indiana Trial Rule 52(A) ‘clearly erroneous’ standard of review applicable to bench trials, a standard which gives due regard to the opportunity of the small claims court to judge witness credibility. *Lae v. Householder*, 789 N.E.2d 481, 483 (Ind. 2003). This

deferential standard of review is particularly appropriate to small claims proceedings, which are informal and have as a sole objective to dispense speedy justice between parties according to the rules of substantive law. *Id.*

Accordingly, in assessing the evidence supporting the trial court's judgment, we do not reweigh the evidence or reassess the credibility of witnesses, and we will consider only the evidence that supports the trial court's judgment as well as the reasonable inferences to be drawn from that evidence. *Lile v. Kiesel*, 871 N.E.2d 995, 997 (Ind. Ct. App. 2007).

[13] On appeal, Gary does not contend that the trial court was without authority to order him to reimburse Ralph's travel expenses and attorney's fees, nor does he argue that \$2,000 in attorney's fees for this cause is unreasonable. Rather, relying on matters that are extraneous to the trial court's record and that will not be considered by us, Gary attacks Ralph's credibility and argues that Ralph's testimony regarding his travel expenses and attorney's fees should not have been believed. This argument is not persuasive because the small claims court believed Ralph, and we are not allowed to reassess witness credibility as part of our review. *Id.* As these are the only arguments offered by Gary on this issue, we do not disturb the trial court's award of travel expenses and attorney's fees.

III. *Judicial Bias*

[14] Gary contends that the trial court violated several judicial canons relating to judge impartiality, facilitating access to the courts, and affording litigants an

opportunity to be heard when, as part of its judgment, it ruled that “[a]t this time, the [c]ourt declines to make a finding that plaintiff’s counsel acted in bad faith. Any further action to prosecute this case by said attorney may result in such a finding.” (Appellee’s App. Vol. II, p. 14). Gary argues that, as a result, Attorney Sanghvi refused to litigate further on his behalf, depriving him of legal counsel, forcing him to proceed pro se, and depriving him of “any reasonable opportunity . . . to object to the granting of the default order[.]” (Appellant’s Br. p. 16). We frame this issue as alleging that the trial court displayed bias against Gary.

[15] We presume that a trial court judge is unbiased and unprejudiced. *Harvey v. State*, 751 N.E.2d 254, 259 (Ind. Ct. App. 2001). In order to rebut that presumption, “a defendant must establish from the judge’s conduct actual bias or prejudice that places the defendant in jeopardy.” *Id.* Actual bias or prejudice exists “only where there is an undisputed claim or where the judge has expressed an opinion on the merits of the pending controversy.” *Id.* Here, on Gary’s behalf, Attorney Sanghvi vigorously defended against Ralph’s claims that Gary’s Notice of Claim was frivolous or pursued in bad faith, while Ralph and his co-defendants contended the opposite, arguing that Gary’s claims were facially outside the applicable statute of limitations. Therefore, this was not an undisputed claim, and at no time did the trial court express any opinion on the matters before it. Contrary to Gary’s assertions, he was not improperly deprived of counsel or an opportunity to object to the trial court’s entry of judgment on Ralph’s counterclaims. The trial court’s order was directed at the

prosecution of Gary's claims, not the defense of Ralph's counterclaims, and the trial court treated one of Gary's pro se filings as a motion to correct error or to reconsider. We find no bias on the part of the trial court.

IV. *Continuance*

[16] Gary's next challenge to the trial court's judgment is that the trial court erred when it denied his motion for a continuance based on illness which prevented him from being present in court for trial. The grant or denial of a motion for continuance because of a party's absence is within the sound discretion of the court. *Breezewood Mgmt. Co. v. Maltbie*, 411 N.E.2d 670, 672 (Ind. Ct. App. 1980) (analyzing the denial of a continuance in a small claims court matter). Indiana Small Claims Rule 9(A) provides that continuances may be granted "for good cause shown" and that "[e]xcept in unusual circumstances no party shall be allowed more than one (1) continuance in any case, and all continuances must have the specific approval of the court." Determining whether good cause existed to merit a continuance is a fact-specific inquiry entailing examination of the circumstances at the time of the motion and the reasons presented to the trial court. *McClendon v. Triplett*, 184 N.E.3d 1202, 1209 (Ind. Ct. App. 2022), *trans. denied*.

[17] Here, Attorney Sanghvi requested a continuance in court at the beginning of trial based on Gary's illness and possible Covid-19 infection. We have observed that "under proper circumstances, the illness of a party litigant is sufficient grounds for a continuance." *Terry v. Terry*, 313 N.E.2d 83, 91 (Ind. Ct. App.

1974). However, here, Gary had already been granted one continuance, and the matter had been continued a second time when Gary did not appear in person for trial and his request to appear by telephone had been denied. Therefore, absent any “unusual circumstances”, Gary was not entitled to an additional continuance. S.C.R. 9(A). Gary did not establish any such unusual circumstances here, where the final trial date had been set over two months in advance, the parties had been advised that no more continuances would be granted and that they must appear in person for trial, Gary’s counsel purportedly knew about his illness three days before trial but did not mention it to opposing counsel or to the trial court until the day of trial, and no evidentiary support for Gary’s claim of illness was offered apart from a document which did not confirm a Covid-19 diagnosis. The trial court was not required to credit Gary’s undocumented, late-disclosed excuse for his nonappearance. Accordingly, we find no abuse of the trial court’s discretion in denying Gary his requested continuance.

V. Entry of Judgment

[18] In his opening and reply briefs, Gary offers several challenges to the trial court’s entry of judgment which we will briefly address. Citing Rule 60 of the Federal Rules of Civil Procedure (“Relief from a Judgment or Order”), Gary argues that the trial court entered a default judgment against him without giving him any opportunity to object. However, the Federal Rules of Civil Procedure do not apply to this state small claims court matter, the trial court did not enter a

default judgment against Gary on his Notice of Claim, and the trial court treated one of Gary's pro se filings as a motion to correct error or to reconsider.

[19] In his reply brief, Gary claims that the trial court improperly dismissed his Notice of Claim with prejudice, citing Indiana Small Claims Rule 10 (“Dismissal and Default”), which provides in relevant part as follows:

If the plaintiff fails to appear at the time and place specified in the notice of claim, or for any continuance thereof, the court may dismiss the action without prejudice . . . If the claim is refiled and the plaintiff again fails to appear such claim may be dismissed with prejudice.

Gary reasons that he only failed to appear for trial once, so his Notice of Claim could only be dismissed without prejudice. Gary's argument misses the mark, as his Notice of Claim was dismissed because the trial court found it did not have jurisdiction, not because Gary failed to appear. Rule 10 does not apply in this context. Accordingly, we find no error in the trial court's entry of judgment.

CONCLUSION

[20] Based on the foregoing, we hold that Attorney Sanghvi's performance was not a valid basis for seeking reversal, the evidence supported the award of travel expenses and attorney's fees, and the trial court did not abuse its discretion in denying Gary a continuance on the day of trial. We also hold that the trial court did not display bias against Gary and that Gary has failed to demonstrate any error in the trial court's entry of judgment.

[21] Affirmed.

[22] Bradford, J. and Weissmann, J. concur