MEMORANDUM DECISION

APPELLANT PRO SE

James Wilder
Calumet City, Illinois

ATTORNEYS FOR APPELLEE

David W. Stone IV
Stone Law Office & Legal Research
Anderson, Indiana

Jonathan Petersen
Munster, Indiana

IN THE COURT OF APPEALS OF INDIANA

James Wilder,
Appellant-Defendant,

v.

Fran Hohenberger,
Appellee-Plaintiff

April 20, 2023

Court of Appeals Case No. 22A-EV-2142

Appeal from the Lake Superior Court

The Honorable David W. Urbanski, Magistrate

Trial Court Cause No. 45D12-2207-EV-2150

Memorandum Decision by Judge Crone
Judges Robb and Kenworthy concur.

Crone, Judge.

Case Summary

[1] James Wilder, pro se, appeals the judgment of the small claims court in favor of Fran Hohenberger on her action for back rent, eviction, and damages. We affirm.

Facts and Procedural History

[2] The evidence most favorable to the judgment shows that Wilder had a one-year lease to rent a house from Hohenberger that expired on September 30, 2021. He remained in the house and continued to pay rent through May 2022, but he did not pay the rent for June 2022. On June 17, 2022, Hohenberger provided Wilder with an eviction notice informing him that his month-to-month tenancy was terminated and that he was to vacate the house within one month.

[3] On July 18, 2022, Hohenberger filed an eviction claim against Wilder alleging that he had breached the terms of his lease agreement by failing to pay rent for June and July 2022. Hohenberger attached copies of the one-year lease, the June 17 eviction notice, and a ledger of Wilder's payment history for 2022. The trial court held a hearing on July 28, after which it issued an order granting Hohenberger possession of the property, staying the order of possession, and setting a status hearing for August 4 at which Wilder was expected to pay the rent due for June, July, and August.[1] On August 1, 2022, Hohenberger filed an

[1] Although the trial court held three hearings on this matter, the record on appeal contains only the transcript for the August 4, 2022 status hearing.

amended eviction claim, adding an allegation that Wilder had breached the terms of the lease by failing to mow the lawn and attaching a copy of a bill for lawn mowing, photographs of the lawn, and a photograph of a text message from Wilder thanking Hohenberger for having the lawn mowed.

[4] The status hearing was held as scheduled on August 4, 2022. Wilder admitted that he had not paid any amount of rent for June, July, and August. He produced what the trial court referred to as "counter checks" that Wilder claimed were for the June and July rents, but the court rejected the counter checks because they did not have a bank account number on them. Tr. at 10, 13. Hohenberger testified that Wilder had failed to mow the lawn and that she had had the lawn mowed at a cost of $50.00 on July 28, 2022. Wilder submitted exhibits including Defendant's Exhibit E, a copy of an unsigned month-to-month rental agreement for the house. *Id*. at 42; Ex. at 6. Wilder claimed that Hohenberger had raised his rent in May without his agreement and that "stopped the process." *Id*. at 28. Apparently, Wilder believed that Hohenberger's alleged attempt to raise the rent relieved him of his obligation to pay *any* rent despite the fact that he continued to occupy the house. The court rejected that proposition. The court affirmed its previous order and set a hearing for October 27, 2022, to determine the amount of back rent and damages. Following that hearing, the court issued its judgment in favor of Hohenberger in the amount of $1,979.98. Wilder appeals.

Discussion and Decision

[5] Our standard of review in small claims cases is well settled. Small claims judgments are "subject to review as prescribed by relevant Indiana rules and statutes." Ind. Small Claims Rule 11(A). "We review facts from a bench trial under a clearly erroneous standard with due deference paid to the trial court's opportunity to assess witness credibility." *Branham v. Varble*, 952 N.E.2d 744, 746 (Ind. 2011). We consider evidence in the light most favorable to the judgment, together with all reasonable inferences to be drawn therefrom. *Hastetter v. Fetter Prop., LLC*, 873 N.E.2d 679, 682 (Ind. Ct. App. 2007). This deferential standard of review is particularly important in small claims actions, where trials are designed to speedily dispense justice by applying substantive law between the parties in an informal setting. *Berryhill v. Parkview Hosp.*, 962 N.E.2d 685, 689 (Ind. Ct. App. 2012). However, this deferential standard does not apply to the substantive rules of law, which we review de novo. *Vance v. Lozano*, 981 N.E.2d 554, 557–58 (Ind. Ct. App. 2012).

[6] Wilder has chosen to proceed pro se. A pro se litigant is "held to the same established rules of procedure that a trained legal counsel is bound to follow and, therefore, must be prepared to accept the consequences of his or her action." *Thacker v. Wentzel*, 797 N.E.2d 342, 345 (Ind. Ct. App. 2003) (quoting *Ramsey v. Review Bd. of Ind. Dep't of Workforce Dev.*, 789 N.E.2d 486, 487 (Ind. Ct. App. 2003)). This Court will not become an "advocate for a party, or address arguments that are inappropriate or too poorly developed or expressed

to be understood." *Perry v. Anonymous Physician 1*, 25 N.E.3d 103, 105 n.1 (Ind. Ct. App. 2014), *trans. denied* (2015), *cert. denied* (2015).

[7] As an initial matter, we note that Hohenberger has filed a motion to dismiss Wilder's appeal. Although we deny this motion by separate order, we agree with Hohenberger's assertion that Wilder's brief contains numerous vituperative comments about the trial court and opposing trial counsel. "We have the plenary power to order a brief stricken from our files for the use of impertinent, intemperate, scandalous, or vituperative language on appeal impugning or disparaging this court, the trial court, or opposing counsel." *Hite v. Haase*, 729 N.E.2d 170, 175-76 (Ind. Ct. App. 2000) (quoting *Pitman v. Pitman*, 717 N.E.2d 627, 634 (Ind. Ct. App. 1999). While we choose not to strike Wilder's entire brief, we strike the vituperative language from it.[2] *See Boczar v. Meridian St. Found.*, 749 N.E.2d 87, 93 (Ind. Ct. App. 2001) (striking impertinent materials from appellants' brief and addressing merits of appeal).

[8] We also note that Wilder's brief contains numerous violations of Indiana Appellate Rule 46(A) that have hindered our review. Appellate Rule 46(A) sets forth the required contents of an appellant's brief. Of particular relevance to this appeal, paragraph 5 of Rule 46(A) requires that the statement of case describe

---

[2] In his reply brief, Wilder requests that we strike Hohenberger's appellee's brief. Wilder asserts that he filed his notice of appeal on September 19, 2022, and Hohenberger's counsel failed to file an appearance within the time required under Indiana Appellate Rule 16. Wilder fails to recognize that the small claims court did not issue its final appealable order until November 3, 2022, and therefore his initial notice of appeal was premature. Moreover, Wilder failed to comply with Indiana Appellate Rule 34(A),which requires a request for an order or for other relief to be made by filing a motion.

the nature of the case and the course of proceedings with page references to the record on appeal; paragraph (6) requires that the statement of facts include the facts necessary for review and be supported by page references to the record on appeal; and paragraph (8) requires that the argument be supported by cogent reasoning and citations to the authorities, statutes, and record on appeal and contain the applicable standard of review. Wilder's statement of the case is not supported by page references to the record on appeal. His statement of facts is void of *any* underlying facts and contains only allegations of error. His argument section does not provide the standard of review for an appeal of a small claims judgment. Many of his arguments are unsupported by cogent reasoning, and are therefore waived. *See Schwartz v. Schwartz*, 773 N.E.2d 348, 353 n.5 (Ind. Ct. App. 2002) (failure to make a cogent argument as required by Rule 46(A)(8)(a) results in waiver of issue on appeal). Nevertheless, because of our preference to address the merits of an appeal, we address his arguments where possible.

[9] First, Wilder argues that the trial court erred by failing to recognize that Hohenberger's eviction notice violated Indiana Code Section 32-31-1-3, which provides that "[a] tenancy from year to year may be determined by a notice given to the tenant not less than three (3) months before the expiration of the year." Wilder contends that at the onset of the July 28 hearing, the court stated that his tenancy would be treated as a "Rollover Lease." Appellant's Br. at 12. However, the transcript of the July 28 hearing is not in the record before us, and thus we have no basis from which to evaluate what the trial court did or its

reasons for doing so. "The appellant bears the burden of presenting a record that is complete with respect to the issues raised on appeal." *Graddick v. Graddick*, 779 N.E.2d 1209, 1210 (Ind. Ct. App. 2002). Accordingly, Wilder has waived this issue.

[10] Second, Wilder claims that the trial court erred by admitting into evidence and relying on the unsigned month-to-month rental agreement. However, Wilder cannot allege error in the admission of the rental agreement because he is the party who introduced it. *See Washington Nat'l Corp. v. Sears, Roebuck & Co.*, 474 N.E.2d 116, 121 (Ind. Ct. App. 1985) (party who introduced witness testimony cannot claim on appeal that such evidence is inadmissible), *trans. denied*. As for the court's reliance on the month-to-month rental agreement, Wilder claims that the trial court quoted from it at the August 4 hearing. Our review of the record shows that the court explained, "The lease clearly states that you are responsible for the lawn care. It's in large bold black letters 'keep lawn mowed.'" Tr. at 62. Both the one-year lease and the month-to-month rental agreement required Wilder to mow the lawn, but it is the one-year lease signed by Wilder that specifically reads, "Keep Lawn Mowed" in large black letters. Appellant's App. Vol. 2 at 9. We find no error here.[3]

[11] Third, Wilder claims that there was no statutory basis for Hohenberger's eviction claim. As best we can discern, Wilder is arguing that because

[3] Given our resolution of this issue, we need not address Wilder's contention that the trial court failed to apply Indiana Code Section 26-1-2.1-201 to the month-to-month rental agreement.

Hohenberger did not raise his failure to mow the lawn in her initial eviction claim or at the July 27 hearing, his failure to mow cannot serve as a basis for his eviction. At the August 4 hearing, the trial court explained to Wilder that it was permitting Hohenberger to amend the eviction claim to add that allegation of breach. To the extent Wilder's argument could be considered a challenge to the court's ruling to allow the amendment to the eviction claim, he fails to provide cogent argument, and thus this issue is waived. *See Schwartz*, 773 N.E.2d at 353 n.5.

[12] Fourth, Wilder claims that Hohenberger's attorney acted in bad faith by filing a claim that the attorney allegedly knew was not true and by making false and fraudulent misrepresentations at the July 28 hearing. We observe that Hohenberger's amended eviction claim alleged that Wilder breached his lease by failing to pay rent and failing to mow the lawn. The trial court held an evidentiary hearing, at which Hohenberger introduced evidence to prove the allegations. Wilder was afforded the opportunity to refute the allegations and produce his own evidence. The trial court weighed the evidence and found that Wilder owed back rent and had breached the lease by failing to mow the lawn. Wilder does not challenge these findings. In addition, as noted earlier, the transcript of the July 28 hearing is not in the record. Accordingly, we find no merit to Wilder's claim that Hohenberger's attorney acted in bad faith or made fraudulent misrepresentations.

[13] Fifth, Wilder presents various challenges to the trial court's discussion of the discovery rules at the August 4 hearing. Indiana Small Claims Rule 6 provides,

> Discovery may be had in a manner generally pursuant to the rules governing any other civil action, but only upon the approval of the court and under such limitations as may be specified. The court should grant discovery only upon notice and good cause shown and should limit such action to the necessities of the case.

Wilder did not provide notice to the trial court that he sought discovery. The trial court informed Wilder generally of the content of Rule 6 and explained that neither party in this matter had sought permission to engage in discovery. We find no error here.

[14] Sixth, Wilder alleges that the photographic evidence of the lawn was inadmissible hearsay and that the trial court did not allow him to voice his objection to it. However, the transcript reveals that Wilder indeed made an objection to the photographic evidence, and the trial court overruled it. Tr. at 36-37. Further, the rule against hearsay, Indiana Evidence Rule 802, does not apply in small claims court. *See* Ind. Small Claims Rule 8(A) (stating that rules of trial shall be informal and shall not be bound by the rules of evidence). To the extent that Wilder suggests that the photographs did not accurately depict the lawn, he was free to bring this to the trial court's attention. He did not. The remainder of Wilder's argument on this issue is waived for failure to present a cogent argument. *See Schwartz*, 773 N.E.2d at 353 n.5.

[15] Last, Wilder contends that the trial court improperly answered for a witness. The transcript shows that when Wilder was cross-examining Hohenberger, he asked whether she had any documents showing that he ever violated any terms of the lease prior to that point. She answered that she did and that the court had

the exhibits. Wilder than asked her, "[S]o you have those exhibits so you'll show them to me?" Tr. at 36. The trial court said, "[W]e received evidence today relative to the lawn issue." *Id*. Assuming, without deciding, that the trial court erred in making this comment, the error was harmless. Hohenberger had already informed Wilder that the court had evidence of his breach, and the court merely confirmed it.

[16] Based on the foregoing, we affirm the small claims judgment in favor of Hohenberger.

[17] Affirmed.

Robb, J., and Kenworthy, J., concur.