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IN THE COURT OF APPEALS OF INDIANA

TERESA ECHEMENDIA,

Appellant-Defendant,

vs.

GENE B. GLICK,
MANAGEMENT CORPORATION,
d/b/a WOODBRIDGE APARTMENTS,

Appellee-Plaintiff.

No. 02A05-0605-CV-0248

APPEAL FROM THE ALLEN SUPERIOR COURT
The Honorable Brian D. Cook, Magistrate
Cause No. 02D01-0602-SC-3244

NOVEMBER 16, 2006

MEMORANDUM DECISION - NOT FOR PUBLICATION

HOFFMAN, Senior Judge

Defendant-Appellant Teresa Echemendia appeals the trial court's judgment in favor of Plaintiff-Appellee Gene B. Glick Management Corporation d/b/a Woodbridge Apartments (Woodbridge) for eviction and immediate possession of the premises.

We affirm.

Echemendia presents several issues for our review, which we restate as[1]:

I. Whether Echemendia received proper notice of the lawsuit against her.

II. Whether the trial court's decision regarding a discovery request by Echemendia was error.

III. Whether the trial court erred by determining that "the Fair Housing Act only applies to those seeking housing."

IV. Whether the trial court erred by delaying its ruling on Echemendia's demand for jury trial.

V. Whether the trial court disregarded Echemendia's evidence.

VI. Whether the trial court determined the amount of damages at the possession hearing.

VII. Whether Echemendia was provided with the proper documents.

VIII. Whether Woodbridge named the proper party in its Notice of Claim.

The facts most favorable to the judgment follow. Echemendia was a tenant of Woodbridge pursuant to a lease. The lease provided for HUD (Housing and Urban Development) assistance and outlined the rights and responsibilities of the parties pursuant to HUD regulations. Echemendia's HUD recertification deadline was

[1] Although we have formulated a statement of issues, they are merely a general guide for the reader in this particular case due to the lack of proper argument and clarity in most, if not all, of Echemendia's arguments.

December 1, 2005, but Echemendia failed to complete the recertification process. Based upon her failure to recertify and pursuant to HUD regulations, Echemendia's rent was increased to the fair market value. However, Echemendia continued to pay her subsidized rent amount rather than the increased fair market value amount. Woodbridge then instituted this small claims action to evict Echemendia and to regain immediate possession of the apartment she was occupying. Following a bench trial on the immediate possession claim, the magistrate entered judgment in favor of Woodbridge and against Echemendia for immediate possession.

Judgments from small claims court are subject to review as prescribed by relevant Indiana rules and statutes. *Hill v. Davis*, 832 N.E.2d 544, 548 (Ind. Ct. App. 2005), *on subsequent appeal*, 850 N.E.2d 993 (Ind. Ct. App. 2006); Small Claims Rule 11(A). The standard of appellate review for facts determined in a bench trial is clearly erroneous. Ind. Trial Rule 52(A). A judgment is clearly erroneous when a review of the materials on appeal leaves us firmly convinced that a mistake has been made. *Barber v. Echo Lake Mobile Home Com.*, 759 N.E.2d 253, 255 (Ind. Ct. App. 2001). We presume that the trial court correctly applied the law. *Id*. In addition, we must give due regard to the trial court's opportunity to judge the credibility of the witnesses. *Hill*, 832 N.E.2d at 548; T.R. 52(A). We may neither reweigh the evidence nor judge the credibility of the witnesses, and we may consider only the evidence and reasonable inferences therefrom that support the trial court's judgment. *Hill*, 832 N.E.2d at 548. This deferential standard of review is particularly important in small claims actions, where trials are informal, with the sole

objective of dispensing speedy justice between the parties according to the rules of substantive law. *Id*.

We must first note that Echemendia's brief fails to meet the requirements of an appellant's brief as set out in our appellate rules. As required by Ind. Appellate Rule 46(A)(1), (2), (4), (6) and (7), respectively, an appellant's brief must contain a table of contents, a table of authorities, a statement of issues, a statement of facts, and a summary of argument. Echemendia's brief contains none of these sections. Further, although her brief contains a section entitled "Statement of Case," as is required by App. R. 46(A)(5), the section wholly fails to comply with the rule's requirement of briefly describing the nature of the case and the course of the proceedings relevant to the issues presented for review. Rather, this section of Echemendia's brief is twelve pages in length, discusses numerous alleged facts of the case that are completely irrelevant to the issues at hand, and lacks clarity. Moreover, Echemendia failed to include in her brief a copy of the judgment that she is appealing as required by Appellate Rule 46(A)(10).

Having stated our relevant standard of review, we address the issues raised in Echemendia's brief. First, Echemendia cites a small claims court rule regarding notice to a defendant of a small claims lawsuit. However, her brief on this issue is utterly devoid of argument. It is well settled that we will not consider an appellant's assertion on appeal when she has failed to present cogent argument supported by authority and references to the record on appeal as required by the appellate rules. *Thacker v. Wentzel*, 797 N.E.2d 342, 345 (Ind. Ct. App. 2003); *see* Ind. Appellate Rule 46(A)(8)(a). "While we prefer to decide cases on their merits, we will deem alleged errors waived where an appellant's

noncompliance with the rules of appellate procedure is so substantial it impedes our appellate consideration of the errors." *Thacker*, 797 N.E.2d at 345. Moreover, we will not address arguments that are inappropriate, too poorly developed, or improperly expressed to be understood. *Id*. The purpose of the appellate rules, especially Ind. Appellate Rule 46, is to aid and expedite review, as well as to relieve the appellate court of the burden of searching the record and briefing the case. *Id*. If we were to address arguments that fail to heed these requirements, we would be forced to abdicate our role as an impartial tribunal and would instead become an advocate for one of the parties, a role we cannot accept. *See id*. Echemendia's argument on this first issue is too poorly developed to be understood and is therefore waived.

It is appropriate at this juncture to observe that Echemendia is acting as her own counsel in this appeal. As we have noted many times before, a litigant who chooses to proceed *pro se* will be held to the same rules of procedure as trained legal counsel and must be prepared to accept the consequences of her action. *Id*. Thus, Echemendia cannot take refuge in the sanctuary of her amateur status in order to avoid waiver of her issues for appeal.

Echemendia's second issue deals with the trial court's decision regarding subpoenas that she wanted the court to issue as part of the discovery process. The trial court has broad discretion in ruling on issues of discovery, and we will reverse the trial court only when that discretion has been abused. *Pfaffenberger v. Jackson County Regional Sewer Dist.*, 785 N.E.2d 1180, 1183 (Ind. Ct. App. 2003). "An abuse of discretion occurs when the trial court's decision is clearly against the logic and effect of

the facts and circumstances before the court, or when the trial court has misinterpreted the law." *Id*. Due to the fact-sensitive nature of discovery issues, a trial court's ruling is cloaked with a strong presumption of correctness on appeal. *Hill v. Fitzpatrick*, 827 N.E.2d 138, 141 (Ind. Ct. App. 2005).

In her brief, Echemendia states her complaint with no supporting argument. She presents no documentation as to what information she requested, when she requested the information, or how it would impact her case. Further, there has been no transcript, or substitution thereof, submitted in this appeal to either confirm or refute any claim of error.[2] Thus, not only has Echemendia failed to meet her burden of showing that the trial court abused its discretion in ruling on her alleged discovery request, but also she has failed to present cogent argument and has waived this issue for our review.

For her third claim of error, Echemendia addresses "[t]he trial [c]ourt ruling that the Fair Housing Act only applies to those seeking housing." Appellant's Brief at 14. Although Echemendia failed to include the trial court's order in her brief, as required by Appellate Rule 46(A)(10), Woodbridge included a copy in its brief. Nowhere in the trial court's order do we find a ruling regarding the Fair Housing Act. Echemendia has failed to show any error on the part of the trial court, much less a mistake that rises to the level of being clearly erroneous.

Echemendia next contends that the trial court erred by waiting to rule on her demand for a jury trial until after the hearing on Woodbridge's claim for eviction and

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[2] A search of the docket of this Court reveals that there was no transcript to submit.

immediate possession. Again, on appeal we have no transcript, chronological case summary or other documentation to show what Echemendia filed, if anything, when she filed it, and what the court ruled. Echemendia's murky argument and lack of submission of materials on appeal are so deficient as to impede meaningful review of her case. This issue is waived for failure to present cogent argument supported by references to the transcript or other documentation. Furthermore, there was no showing that the trial court's actions were clearly erroneous.

The fifth issue raised by Echemendia concerns the evidence she presented in her defense to the claim filed by Woodbridge. She avers that the trial court disregarded the evidence she presented, instead allowing only the evidence in support of Woodbridge's claim.

The decision to admit or exclude evidence lies within the sound discretion of the trial court. *Strack and Van Til, Inc. v. Carter*, 803 N.E.2d 666, 670 (Ind. Ct. App. 2004). The trial court's determination is afforded great discretion on appeal. *Id*. To that end, we will not reverse the trial court's decision absent a showing of manifest abuse of discretion. *Id*.

In the present case, the only evidence Echemendia specifies as being disregarded by the court are pages from a HUD handbook. She states that the court "did not mark into evidence" the pages from the handbook. Appellant's Brief at 16. However, she does not explain whether she actually attempted to admit the pages into evidence. Additionally, assuming she attempted to admit the pages, she does not state the court's ruling. We are not provided with a transcript, or substitute thereof, to review, and

Echemendia fails to provide any proof of her allegations, or explanation of how it affected her case, beyond her self-serving argument. She has not fulfilled her burden to show a manifest abuse of discretion by the trial court. We find no error.

As her sixth issue, Echemendia claims that the trial court improperly determined the amount of damages at the possession hearing. In its order, which was not included in Echemendia's brief as required by Appellate Rule 46(A)(10), the court stated: "The evidence presented at trial shows that the Defendant currently has a rental arrearage in the amount of $1,891.00." Appellee's Brief at 15.

The court was not making a finding as to damages when it included the above-referenced statement in its order; rather, it was providing its reasons in support of its order of eviction and immediate possession in favor of Woodbridge. Taken in context, the court's statement explains that the evidence at the hearing showed that Echemendia had accrued a rent arrearage because she had failed to pay the full rent amount when her rent increased after she had failed to comply with the recertification process for HUD subsidies. The court found that by accruing a rent arrearage, Echemendia materially violated her lease with Woodbridge. Further, in that same order, the court scheduled a damages hearing in this matter. The trial court committed no error.

It appears from Echemendia's brief that, interwoven with the above issue, is an additional argument that Echemendia paid her rent (at the subsidized rate) and that action provided her a defense to the eviction action. First, her argument is so convoluted, undeveloped and unsupported as to impede any meaningful appellate review and to

render the issue waived. Second, this is a request for us to reweigh the evidence, which we cannot do. *Hill*, 832 N.E.2d at 548.

Next, Echemendia, citing the Allen County Superior Court Small Claims manual, asserts that she was to receive a copy of the lease with her Notice of Claim. She complains that she received only the first and last page of the lease.

Assuming, *arguendo*, that Echemendia did not receive a complete copy of the lease with her Notice of Claim, we find no error. Echemendia baldly states that she did not receive a complete copy of the lease agreement. She fails to provide any argument as to why she needed the complete lease and the way in which her case was impacted because she was without the complete lease agreement. In addition, she presented no supporting authority with regard to her claim. Therefore, in raising this issue, Echemendia has not met her burden to show that the trial court's judgment was clearly erroneous. Furthermore, she has failed to show, or even allege, that she raised this claim at the trial level. Generally, a party waives appellate review of an issue or argument unless that party presented that issue or argument to the trial court. *Nance v. Miami Sand & Gravel, LLC*, 825 N.E.2d 826, 834 (Ind. Ct. App. 2005), *trans. denied*, 841 N.E.2d 180.

Finally, it appears that Echemendia is seeking reversal of the court's order of eviction and immediate possession by arguing that the real party in interest was not named on the Notice of Claim. Echemendia states "Woodbridge Apartments of Fort Wayne, Phase 1 should have been the named plaintiff in the lawsuit . . . ." Appellant's Brief at 20. Although on appeal we were not provided with a copy of the Notice of

Claim, the court's order bears the caption: Gene B. Glick Management Corporation d/b/a Woodbridge Apartments v. Teresa Echemendia. Appellee's Brief at 15. The apartment complex where Echemendia lived and which is requesting immediate possession is named in the caption. Echemendia wholly fails to explain how she was harmed by this caption or why this alleged error requires reversal. She makes no showing that this purported error causes the court's order to be clearly erroneous. Moreover, again, she has failed to provide proof, or even allege, that she raised this claim in the trial court. Thus, this claim is waived. *See Nance*, 825 N.E.2d at 834.

Based upon the foregoing discussion and authorities, we conclude that the trial court properly granted the eviction and immediate possession in favor of Woodbridge.

Affirmed.

SHARPNACK, J., and MATHIAS, J., concur.