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**IN THE
COURT OF APPEALS OF INDIANA**

BOBBIE SELLERS,)

Appellant,)

vs.)

HOUSE DOCTORS HANDYMAN SERVICES)
AND PAUL O'SHAUGHNESSY, ET AL,)

Appellees.)

No. 02A05-0705-CV-256

APPEAL FROM THE ALLEN SUPERIOR COURT
The Honorable Brian D. Cook, Magistrate
Cause No. 02D01-0611-SC-20881

December 11, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARNES, Judge

Case Summary

Bobbie Sellers appeals the small claims court's judgment in favor of defendants, House Doctors Handyman Services and Paul O'Shaughnessy ("Defendants"). We affirm.

Issue

Sellers raises numerous issues, many of which are not appropriate for appellate review.¹ The dispositive issue for our consideration is whether the small claims court properly entered judgment against Sellers.

Facts

No transcript of the small claims proceeding is available, and neither party submitted a certified verified statement of the evidence. We will consider the parties' briefs, the appendices, the chronological case summary ("CCS"), and the one-volume binder of exhibits submitted from the Allen County Clerk to discern the proceedings at trial.²

¹ Sellers alleges that Defendants and the small claims court discriminated against him on the basis of race and violated his constitutional rights in the course of deciding his case. He also claims that the Defendants' attorney presented fraudulent documents and made misleading statements. These issues are waived for a failure to present cogent argument. See Ind. Appellate Rule 46(A)(8)(a). Also, Sellers did not present these arguments or claims to the trial court; therefore appellate review of these issues is waived. Grathwohl v. Garrity, 871 N.E.2d 297, 302 (Ind. Ct. App. 2007).

² When no transcript is available, a party shall prepare a verified statement of the evidence from "the best available sources." App. R. 31(A). That statement must then be submitted to the trial court for certification. Id. Sellers filed a motion with the small claims court requesting that the magistrate certify a statement of the record, but the small claims court noted that Sellers failed to attach any statement to his motion. "This magistrate cannot make any sense of the plaintiff's pleadings." CCS p. 3. On July 11, 2007, Sellers submitted a motion to this court requesting the magistrate certify "its accurate and adequate for resolution of the issues." No. 02A05-705-CV-256, docket entry July 11, 2007. Defendants moved to strike this motion, and on July 31, 2007, this court granted Defendants' motion to strike the purported agreed statement.

Sellers filed a claim in the small claims division of the Allen County Superior Court on November 9, 2006. He claimed approximately \$6,000 in damages resulting from the home repair services of Defendants. This work was done in conjunction with a home loan to Sellers by Wells Fargo Bank. A September 1, 2005 work proposal shows an agreement between Defendants and Wells Fargo for \$830.00 of drywall and kitchen work. Sellers claimed that Defendants did not complete the work and left the property in an unclean manner. The small claims court entered judgment for Defendants. This appeal followed.

Analysis

Our standard of review is particularly deferential 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.” Ind. Small Claims Rule 8(A); Trinity Homes, LLC v. Fang, 848 N.E.2d 1065, 1067-68 (Ind. 2006) (internal quotations omitted). Although the method of proof may be informal, the parties in a small claims court bear the same burdens of proof as they would in a regular civil action on the same issues. LTL Truck Serv. LLC v. Safeguard, Inc., 817 N.E.2d 664, 668 (Ind. Ct. App. 2004). The party who bears the burden of proof must demonstrate that he or she is entitled to the recovery sought. Id.

Judgments in small claims actions are “subject to review as prescribed by relevant Indiana rules and statutes.” Ind. S.C.R. 11(A). The clearly erroneous standard applies to appellate review of facts determined in bench trials, and we give due regard to the

opportunity of the trial court to assess witness credibility. Ind. Trial Rule 52(A); Trinity Homes, 848 N.E.2d at 1067-68.

Sellers alleged at trial that Defendants failed to complete the repairs in a workmanlike manner, and he alleged approximately \$6,000 in damages. Sellers did not provide any proof or receipts of these damages expenses, other than his own estimations as taken from a Lowe's catalog. Documents submitted to the small claims court by Sellers included a narrative listing of his complaints about the Defendants, Web site printouts showing House Doctors' Better Business Bureau rating, and coupons redeemable for House Doctors' services.³ Additional evidence included photographs of the inside of the home, depicting drywall work and interior areas of the home in disarray. The photographs are not dated. Regarding the photographs, the small claims court noted that "Plaintiff asserts that it was the defendant's job to clean up the premises and move the Plaintiff's household goods and kitchen utensils." Appellant's App. p. 1.

The arguments presented by Sellers on appeal are vague and disjointed. Sellers contends the small claims court failed to "address all facts presented by the complaining party," "consider opposing facts and evidence," "apply appropriate law to the facts," "submit written findings and conclusions of law," and "bring the case to a lawful conclusion." Appellant's Br. p. 7. The litany of criticisms does not reference or include

³ In his appendix, Sellers submitted for consideration an April 11, 2007 letter from Wells Fargo refunding the cost of \$830.00 because of the dispute between Sellers and Defendants and Sellers's dissatisfaction with the service. This letter was dated after the small claims trial and clearly not considered as evidence during the trial.

the specific facts that were allegedly ignored by the small claims court or the law that was allegedly misapplied.

The findings issued by the small claims court indicate that “Mr. O’Shaughnessy stated that his company did not leave the home in the condition the pictures indicated.” Appellant’s App. p. 1. The findings also indicate that O’Shaughnessy testified that he inspected the house after the job, the constructions materials were cleaned up, and the house was back in the condition in which it was found. The small claims court found that “Plaintiff failed to carry his burden of proof in showing that the Defendant is liable for any of the damages Plaintiff has alleged.” *Id.* The small claims court was in the best position to assess the evidence and the credibility of any witnesses. We do not reweigh this evidence or judge Mr. O’Shaughnessy’s credibility; instead, we consider only the evidence favorable to the judgment and any reasonable inferences drawn therefrom. Bennett v. Broderick, 858 N.E.2d 1044, 1047-48 (Ind. Ct. App. 2006), trans. denied. Considering the evidence before the small claims court, we cannot conclude that it was clear error to find for the Defendants. On appeal, Sellers does not present any cogent argument to demonstrate why the small claims court should have decided otherwise.

Conclusion

Sellers did not demonstrate he was entitled to damages, and the small claims court properly entered judgment for Defendants. We affirm.

Affirmed.

KIRSCH, J., and ROBB, J., concur.