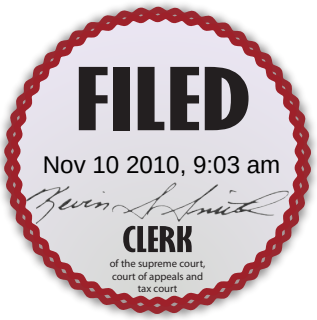

ATTORNEY FOR APPELLANT:

WILLIAM B. BRYAN
Angola, Indiana

ATTORNEY FOR APPELLEE:

LATRIEALLE WHEAT
Angola, Indiana

IN THE
COURT OF APPEALS OF INDIANA

PAUL CATTERALL,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 76A04-1004-SC-219
	)	
JAMES DONBROCK d/b/a DONBROCK ENTERPRISES & DONBROCK ENTERPRISES, LLC.,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE STEUBEN SUPERIOR COURT
The Honorable Randy L. Coffey, Judge
Cause No. 76D01-0211-SC-1465

November 10, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Judge

Case Summary and Issues

Paul Catterall appeals from a small claims court's judgment in favor of James Donbrock regarding payment of property maintenance fees arrears. On appeal, Catterall raises five issues, which we consolidate and restate as two: whether the small claims court erred by ordering Catterall to pay maintenance fees to Donbrock, and whether the small claims court erred in its calculation of maintenance fees or prejudgment interest. Concluding the small claims court properly ordered Catterall to pay maintenance fees to Donbrock but erred in its calculation of fees and prejudgment interest, we affirm in part and reverse and remand in part.

Facts and Procedural History

In May 1996, Catterall purchased from Donald and Patricia Kors lots 675, 676, 677, 678, 679, 680, 681, and 682 (collectively the "Catterall Property") in Holiday Woods subdivision, which was then owned by Sleco, Inc. In October 2000, Sleco obtained a small claims default judgment of $792.00 for payment of property maintenance fees arrears for the Catterall Property against Catterall's attorney-in-fact who managed the property. On July 12, 2002, Catterall sold the Catterall Property by deed to Lam Co. without having paid any maintenance fees for any period of his ownership.

In August 2002, Donbrock purchased from Sleco by contract (the "Donbrock-Sleco contract") numerous specified lots in Holiday Woods subdivision, but none of the Catterall Property lots. In December 2002, based on Holiday Woods covenants and notices, Donbrock was awarded a small claims default judgment against Catterall for payment of maintenance

fees arrears for the period of January 2002 to November 2002. In July 2008, Sleco and Donbrock signed an amendment (the "2008 amendment") to the Donbrock-Sleco contract, "for the purpose of clarifying . . . certain rights:"

> b. Buyer has had since January 5, 2002, and shall continue to have full right to collect maintenance fees and other fees due from owners and tenants at Holiday Woods, to the full extent such rights previously belonged to SLECO, INC. prior to the signing of the Real Estate Contract.
> c. Buyer has had since January 5, 2002, and shall continue to have full benefit of all restrictions and covenants initially written to benefit Sleco, Inc. or any predecessor of Sleco, Inc.

Plaintiff's Exhibit 2 at 1.

Because the December 2002 judgment was not satisfied, Donbrock obtained an order for a sheriff sale in mid-2006, but the small claims court entered a stay of execution in late 2006. In February 2009, the small claims court set aside the December 2002 judgment for Donbrock pursuant to a motion by Catterall.

In February 2010, the small claims court held a bench trial and entered judgment in favor of Donbrock. The small claims court found that by the terms of covenants and letters Catterall owed $53 to $63 per year for each of the eight lots in the Catterall Property, and having paid none, owed $4,234.00 in principal and $2,568.62 of pre-judgment interest calculated at eight percent per annum. Recognizing its limited authority to judgments of $6,000, the small claims court ordered that Catterall pay $6,000 plus court costs of $85. Catterall now appeals.

Discussion and Decision

I. Standard of Review

Small claims judgments are "subject to review as prescribed by relevant Indiana rules and statutes." Ind. Small Claims Rule 11(A). Upon appeal from a bench trial, the reviewing court cannot set aside the judgment "unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses." Ind. Trial Rule 52(A). "In determining whether a judgment is clearly erroneous, we do not reweigh the evidence or determine the credibility of witnesses but consider only the evidence that supports the judgment and the reasonable inferences to be drawn therefrom." Tucker v. Duke, 873 N.E.2d 664, 668 (Ind. Ct. App. 2007), trans. denied. "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.; see S.C.R. 8(A).

II. Maintenance Fees

The central issue is Donbrock's authority or the duration of his authority to collect property maintenance fees regarding the Catterall Property. Catterall argues neither the Donbrock-Sleco contract nor the 2008 amendment refer explicitly to the Catterall Property, and therefore Donbrock had no ownership rights and no authority to collect maintenance fees. We agree the Donbrock-Sleco contract did not grant Donbrock authority to collect maintenance fees for the Catterall Property because it explicitly lists lot numbers for purchase and omits the Catterall Property lots.

However, we disagree regarding the 2008 amendment. Although the 2008 amendment does not explicitly state so, it is an effective assignment of rights from Sleco to Donbrock as of January 5, 2002. "An assignment is a transfer which confers a complete and present right in a subject matter to the assignee." Brown v. Indiana Nat'l Bank, 476 N.E.2d 888, 894 (Ind. Ct. App. 1985), trans. denied. To effectively assign a right to an assignee, the question is one of "intent to transfer the subject matter clearly and unconditionally to the assignee." Id. Provisions "b" and "c" in the 2008 amendment clearly demonstrate Sleco's intention to transfer its right to collect maintenance fees to Donbrock. Consequently, per the 2008 amendment, we conclude Donbrock has authority to collect maintenance fees from Catterall for the period of January 5, 2002 to July 12, 2002, the date Catterall sold the lots.

Donbrock argues Catterall owes him maintenance fees arrears beginning in May 1996 rather than January 5, 2002. For authority to collect these fees, Donbrock points to the covenants running with the land and amending letters that include an obligation for property owners in the Holiday Woods subdivision to pay maintenance fees. We conclude, however, these documents do not give Donbrock authority to collect maintenance fees regarding the Catterall Property because Donbrock did not own the Catterall Property.

It appears Donbrock argues his authority stems from ownership of the Holiday Woods subdivision after purchasing it from Sleco. However, the small claims court record – certainly the Donbrock-Sleco contract and 2008 amendment – are unclear that Donbrock actually purchased the Holiday Woods subdivision, including the Catterall Property, from Sleco prior to January 5, 2002. The record includes letters from Donbrock to residents of

Holiday Woods, proclaiming himself as the new owner and purchaser from Sleco, but these informal letters are insufficient because proclamation of ownership alone does not qualify for ownership. If sufficient evidence existed, it would show Donbrock's authority to collect fees from Catterall; but because it is lacking, we reject Donbrock's assertion. Therefore, we affirm the small claims court's determination that Donbrock has authority to collect maintenance fees from Catterall for the period of January 5, 2002 to July 12, 2002, but reverse the judgment as to any other time period.

III. Calculation of Maintenance Fees and Prejudgment Interest

Because of our conclusion above, we remand for the small claims court's recalculation of the principal amount owed.

As to prejudgment interest, Catterall argues prejudgment interest is inappropriate because it cannot be calculated with mathematical certainty, but if it is awarded, it must be limited to forty-eight months. Specifically, Catterall maintains that various considerations for the small claims court make the mathematical computation required too complex and therefore awarding prejudgment interest at all is inappropriate. We disagree. Catterall cites Cincinnati Ins. Co. v. BACT Holdings, Inc., 723 N.E.2d 436, 441 (Ind. Ct. App. 2000), trans. denied, for the proposition that prejudgment interest is appropriate only if the mathematical computation required is simple. However, Cincinnati also concludes prejudgment interest is appropriate "where some degree of judgment must be used to measure damages." Id. Here, the small claims court admitted and considered evidence and determined the amount of maintenance fees owed for each month of Catterall's ownership of the Catterall Property.

Even if this determination included some degree of judgment, we conclude that it was not clearly erroneous. We therefore remand to the small claims court for recalculation of prejudgment interest at eight percent per annum, eliminating any prejudgment interest owed on principal other than for the period of January 5, 2002 to July 12, 2002.

As to the limited duration of prejudgment interest, Catterall conceded in his reply brief that the statutory forty-eight month limit of prejudgment interest does not apply in this case because the limit refers to tort actions only. See Ind. Code §§ 34-51-4-1 & 34-51-4-8. We agree.

Conclusion

Sleco effectively assigned to Donbrock authority to collect maintenance fees from Catterall for the Catterall Property as of January 5, 2002. As a result, the small claims court properly concluded Donbrock could collect from Catterall for the period of January 5, 2002 to July 12, 2002, but erred by ordering Donbrock to pay fees for months prior to January 5, 2002 and prejudgment interest on that amount. We therefore affirm the small claims court's decision ordering Catterall to pay maintenance fees to Donbrock for the period of January 5, 2002 to July 12, 2002, and prejudgment interest as to that amount. We also reverse the small claims court's decision regarding fees prior to January 5, 2002, and remand for an order consistent with this opinion as to the judgment and recalculation of prejudgment interest.

Affirmed in part and reversed and remanded in part.

MAY, J., and VAIDIK, J., concur.