



Roman Warner, *pro se*, appeals the trial court's order in favor of Alan Finnan and the Department of Correction (collectively, the "D.O.C."). We find one issue dispositive, which is whether Warner waived his claims for failure to develop the record on appeal. We affirm.

The relevant facts follow.<sup>1</sup> On July 7, 2008, Warner, an inmate housed at Wabash Valley Correctional Facility,<sup>2</sup> filed a notice of claim in the Sullivan County Superior Court related to property Warner allegedly lost when he was transferred from Indiana State Prison to Wabash Valley Correctional Facility, thus commencing a small claims action.<sup>3</sup> On February 18, 2009, a hearing was held, and both Warner and the D.O.C. appeared via video-conferencing.<sup>4</sup> The court advised the parties that "this case will proceed only as to property lost at WVCF." Appellant's Appendix at 3. The court took the matter under advisement, and on February 25, 2009 it ruled in favor of the D.O.C., finding that Warner "ha[d] failed to designate a disposition within 60 days of confiscation notice" and that Warner was to "take nothing by way of his complaint." *Id.* On March

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<sup>1</sup> Warner does not cite to the record in his Statement of Case. We direct Warner's attention to Ind. Appellate Rule 46(A)(5) which addresses the Statement of Case and provides that "[p]age references to the Record on Appeal or Appendix are required in accordance with Rule 22(C)."

<sup>2</sup> Warner indicates in his brief, without citation to the record, that he was transferred from the Indiana State Prison to the Wabash Valley Correctional Facility on March 23, 2007. The record reveals that he was transferred from the Wabash Valley Correctional Facility to the New Castle Correctional Facility on March 10, 2009. The record also reveals that on December 15, 2009, Warner was transferred from New Castle to the Pendleton Correctional Facility.

<sup>3</sup> A copy of this notice of claim is not contained in the record on appeal.

<sup>4</sup> A copy of the transcript is not contained in the record on appeal.

27, 2009, Warner filed a notice of appeal, a motion for copy of clerk's record, and a motion for copy of transcripts.

On March 30, 2009, the trial court granted Warner's notice of appeal. In its order, the court advised Warner that he "is responsible for paying for [the] transcript," and that "[i]f [Warner] can't pay for [the] transcript he can utilize Appellate Rule 31 & prepare a statement of evidence." Id. On April 21, 2009, this court made the following entry in its docket: "NOTICE OF COMPLETION OF CLERK'S RECORD (1) \*\*AMENDED\*\* \*NO TRANSCRIPT – CERTIFIED STATEMENT TO BE FILED\*." Id. at 5. Then, on May 18, 2009, the court entered the following order:

[Warner], having filed an Affidavit of Indigency, an Amended Inmate Affidavit of Indigent Concerning Certification of Inmate Trust Account, Certification of Inmate Trust Account, and Offender Trust System Transaction History, the Court now denies said motion and Orders [Warner] to pay a partial filing fee of \$50.00 within forty-five (45) days.

Id. at 35.

On June 1, 2009, Warner filed a request for remittance at his facility and requested that \$50 be paid to the trial court "to pay filing fee." Id. at 21. On June 22, 2009, the trial court sent Warner a check for \$50 along with a letter advising him that "this must be filed with the court of appeals clerk and not with us." Id. at 22. The letter also contained the address for the clerk of the court of appeals. On June 24, 2009, Warner filed a Motion to Compel Completion of Transcripts with the trial court.<sup>5</sup> On June 26, 2009, the

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<sup>5</sup> A copy of this motion does not appear in the record on appeal.

court denied Warner's motion, and in its order it advised Warner that "transcripts will not be prepared until payment is made pursuant to order dated March 30, 2009." Id. at 36.

On June 26, 2009, the court of appeals clerk received a check for \$50, but, as noted on the appellate docket, the check was not accompanied by a cover letter "or information indicating what payment is for." Id. at 5. On July 14, 2009, this court's clerk sent Warner a letter which stated:

Dear Mr. Warner,

On June 30, 2009 our office received a check in the amount of \$50.00 from your Offender Trust Account. The check was sent by itself without a cover letter or any information indicating what the payment is for.

Our records indicate that you have a current appeal under cause number 77A05-0905-CV-251, Warner v. State of Indiana, et al. Our records further indicate that this is a civil matter and that a filing fee has not been paid. The filing fee for a case in the Court of Appeals is \$250.00. Is the check for a partial filing fee? Do you have any type of order from the Court indicating you may pay a reduced filing fee?

Id. at 38.

On July 13, 2009, Warner filed in this court a Motion to Court of Appeals to Compel the Trial Court Clerk or Administrative Agency to Issue, File and Serve the Notice of Completion of Transcript Required by Rule 10(D).<sup>6</sup> In his motion, Warner stated:

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<sup>6</sup> Ind. Appellate Rule 10(D) states:

**Notice of Completion of Transcript.** If the Transcript has been requested but has not been filed when the trial court clerk or Administrative Agency issues its Notice of Completion of the Clerk's Record, the trial court clerk or Administrative Agency shall issue and file a Notice of Completion of Transcript with the Clerk and shall serve a copy

Plaintiff, Roman Warner, pro-se, was ordered by the Trial Court . . . to pay [a] partial filing fee of \$50.00 . . . .

On June 01, 2009, plaintiff sent the court a check for \$50.00 as requested.

On June 22, 2009, the court clerk . . . returned the check . . . .

On June 24, 2009, received notice that check #10061 was returned to plaintiff and was mailed to Appeals Court . . . .

On June 24, 2009, plaintiff mailed his motion to compel completion of transcripts to the trial court, complying to Rule 10(D).

On June 26, 2009, the trial court filed an order denying plaintiff's motion . . . .

In conclusion, it is very clear . . . that plaintiff complied to court order dated 18<sup>th</sup> day of May 2009, by sending the trial court as requested the \$50.00 partial payment.

It is clear that to deny transcripts as requested by Rule 10(G) govern the clerks' duty to complete the transcripts, is a violation of Appellate Rule 10(G),<sup>[7]</sup> and a violation of plaintiff's fundamental due process rights to the court.

Because the transcripts is [sic] needed for plaintiff to prepare his brief.

WHEREFORE

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on the parties within five (5) days after the court reporter files the Transcript.

<sup>7</sup> Ind. Appellate Rule 10(G) states:

**Failure to File Notice of Completion of Transcript.** If the trial court clerk or Administrative Agency fails to issue, file, and serve a timely Notice of Completion of Transcript required by Rule 10(D), the appellant shall seek an order from the Court on Appeal compelling the trial court clerk or Administrative Agency to issue, file and serve the Notice of Completion of Transcript. Failure of appellant to seek such an order not later than fifteen (15) days after the Notice of Completion of Transcript was due to have been issued, filed, and served shall subject the appeal to dismissal.

Plaintiff pray[s] this honorable court will issue an order to compelling [sic] the tria[l] court clerk to comply with Appellate Rule 10(D), and prepare transcripts.

Id. at 25-26.

On October 27, 2009, this court entered the following order:

2. The trial court chronological case summary (CCS) indicates that upon filing his notice of appeal, the trial court notified [Warner] that he was responsible for paying for the transcript and that if he could not pay for the transcript, he could prepare a certified statement of the evidence pursuant to Indiana Appellate Rule 31. The CCS also indicates that the trial court denied [Warner's] motion to proceed in forma pauperis and ordered him to pay a "partial filing fee" of \$50.00[.] [Warner] sent the trial court clerk a \$50.00 check, but the trial court clerk returned the check to [him], indicating that it should be sent to this court. The \$50.00 check was forwarded to this court on June 26, 2009.

3. The clerk of this court is directed to return the check to [Warner] by certified mail.

4. [Warner's] motion to compel completion of the transcript is denied. [He] is ordered to either pay the trial court reporter for the transcript or prepare a certified statement of the evidence under Appellate Rule 31 within twenty (20) days of the date of this order.

5. If [Warner] pays for the transcript, [his] brief and appendix shall be due within thirty (30) days from the date the notice of completion of transcript is filed with this court.

6. If [Warner] prepares a certified statement of evidence under Appellate Rule 31, [his] brief and appendix shall be due thirty (30) days from the date the trial court clerk files an amended notice of completion of clerk's record with this court.

7. [Warner] has neither paid this court's filing fee nor filed a motion to proceed in forma pauperis with this court. Accordingly, [he] is required to pay this court's \$250 filing fee.

Id. at 6-7.

On November 13, 2009, Warner filed a verified motion for extension of time in which to file his brief in this court. On November 23, 2009, Warner filed an Affidavit in Support of Motion to Proceed on Appeal In Forma Paurperis. On December 14, 2009, this court issued an order stating:

1. [Warner's] motion for enlargement of time is granted.

2. [Warner] is directed to file a statement of the evidence with the trial court pursuant to Appellate Rule 31(A) within twenty (20) days of the date of this order. [The D.O.C.] shall file any response within fifteen (15) days of service of [Warner's] statement, pursuant to Appellate Rule 31(B). *[Warner's] failure to timely comply may result in the dismissal of this appeal.*

3. Within twenty (20) days of [Warner] filing a statement of evidence and [the D.O.C.'s] filing of any response, the Sullivan Superior Court is directed to either certify the statement of evidence pursuant to Appellate Rule 31(C) or file with the Sullivan Circuit and Superior Courts Clerk an affidavit pursuant to Appellate Rule 31(D).

4. Within five (5) days of the trial court's filing of the certified statement or trial court's affidavit, the Sullivan Circuit and Superior Courts Clerk is directed to file with this court an amended notice of completion of clerk's record including the certified statement of the evidence or trial court's affidavit.

5. Appellant's brief and appendix shall be due thirty (30) days from [when] the amended notice of completion of clerk's record is filed.

Id. at 7-8 (emphasis added). Also, on December 17, 2009, this court issued another order granting Warner's motion to proceed on appeal in forma pauperis, relieving him of the obligation to pay a filing fee in this court.

On January 6, 2010, this court's clerk received a motion for extension of time filed by Warner, but it noted that the amended notice of completion of clerk's record had not

yet been filed and that therefore a briefing date had not yet been set. On January 25, 2010, this court's clerk received a Verified Motion with Statement of the Evidence and for Order Instructing Clerk to Complete Transcripts of Trial Court for Use in Civil Appeal Proceedings Below, which was a copy of that motion which Warner filed in the trial court on January 26, 2010. On January 26, 2010, the trial court issued an order which stated:

1. On March 27, 2009, [Warner] filed a MOTION FOR COPY OF TRANSCRIPTS.

2. On March 30, 2009, [Warner's motion] was denied, and [he] was advised he would either have to pay for the transcript or utilize Appellate Rule 31 and prepare a statement of evidence.

3. On June 26, 2009, [Warner] filed a MOTION TO COMPEL COMPLETION OF TRANSCRIPTS. The motion was again denied for failure to make payment arrangements.

4. On October 27, 2009, the Court of Appeals denied [Warner's] MOTION TO COMPEL COMPLETION OF TRANSCRIPT and ordered [Warner] to either pay the trial court report[er] for the Transcript or prepare a certified statement of the evidence under Appellare [sic] Rule 31 within twenty (20) days of the date of the Order (October 27, 2009).

5. On December 14, 2009, the Court of Appeals granted the Appellant's MOTION FOR ENLARGEMENT OF TIME and directed him to file a statement of the evidence with the trial court pursuant to Appellate Rule 31(A) within twenty (20) days of the date of the Order (December 14, 2009).

6. On January 26, 2010, [Warner] has again requested an order instructing the Clerk to complete the transcripts of the trial court for use in his appeal which has already been denied twice at the trial court level and once at the appellate court level. The Court is again denying his request for the completion of the transcript without payment.



7. Further, the trial court finds that [Warner] has failed to comply with the Court of Appeals['] Order dated December 14, 2009, in that he has never filed his statement of the evidence with the trial court which was supposed to be completed by January 3, 2010. Although [Warner's] pleading filed January 26, 2010 is entitled "VERIFIED MOTION WITH STATEMENT OF THE EVIDENCE . . .", his pleading does not contain a statement of the evidence.

January 26, 2010 Order at 2. A copy of this order was received by this court's clerk on January 27, 2010.

On March 1, 2010, this court received a Motion for Extension of Time from Warner, and the docket notes that it was "sent to court for review." Appellant's Appendix at 8. On March 18, 2010, this court received a copy of Warner's Verified Statement of Evidence, which the docket notes "is a copy of the one filed in the Sullivan Superior Court."<sup>8</sup> Id. On March 24, 2010, this court issued the following order:

1. On December 14, 2009 this court ordered [Warner] to prepare a statement of evidence pursuant to Indiana Appellate Rule 31(A). Appellant is now relieved of his duty to prepare a statement of evidence.
2. The clerk of this court is directed to file [Warner's] motion for extension of time as of the date of this order.
3. [Warner's] motion for extension of time is granted.
4. [Warner] shall file his appellant's brief and appendix within thirty (30) days of the date of this order. Thereafter, this appeal shall proceed in accordance with the rules of appellate procedure.

Id. at 9.

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<sup>8</sup> We note that this document was not certified by the trial court pursuant to Ind. Appellate Rule 31(C).

On April 6, 2010, Warner filed a Motion to Compel Completion of Transcripts, in which Warner noted that “[t]he Trial Court has continued to deny [him] a copy of his Trial Transcript, even after [he] complied to Trial Court orders of March 30, 2009,” and that “[his] motion for copy of transcript was denied, [he] was advised he would have to either pay \$50.00 partial fee, or utilize Appellate Rule 31, and prepare a statement of evidence.” April 6, 2010 Motion at 2. Warner stated:

Jan. 26, 2010, Trial Court Order denied his Verified Motion, stating it did not contain a statement of evidence and made allegations that [he] did not comply to trial court orders of Mar. 30, 2009, and June 26, 2009, where this court is aware that a check for \$50.00 was sent to Trial Court on two (2) separate [sic] occasions and once to Appeals Court and was returned to [him] each time. See: C.C.S. Clearly showing a conspiracy between the Trial Court and the defendants, to deny him his constitutional rights, First, Fifth, and Fourteenth Amendment to the United States Constitution, as well as Article One, Section 12 and 23 of the Constitution of Indiana, mandate that he be provided access to the Transcripts for use in the preparation of his brief.

*Appellant, [sic] has continued diligently to comply to all the Trial Court orders to send the \$50.00 partial fee requested before Transcripts would be prepared.* The Trial Court continued to ignore their own orders, conspiring with the defendant, Alan Finnan, Supt. [t]o deny [Warner] his constitutional right to his Transcript’s [sic] that is required to perfect his brief and Appendix in his appeal.

Id. at 4 (emphasis added). Also, on April 20, 2010, Warner filed a Verified Motion for Extension of Time in which to File Brief. On April 29, 2010, this court issued the following order:

1. [Warner’s] motion to compel completion of transcripts is denied.
2. [Warner’s] motion for extension of time is granted, to and including May 25, 2010, as a final extension.

Appellant's Appendix at 9.

On May 24, 2010, Warner filed his appellant's brief.<sup>9</sup> Then, on June 2, 2010, and as amended on June 10, 2010, Warner filed with the trial court a Motion in Response to State Defendants Motion to Strike Statement of Evidence, in which Warner stated that "[the D.O.C.] have now filed a motion to strike statement of evidence, stating the order of March 16, 2010 Plaintiff Filed his statement of evidence with Trial Court seventy (70) days past the original deadline set by the Indiana Court of Appeals."<sup>10</sup> June 10, 2010 Motion at 5. Also, on June 4, 2010, Warner filed a motion in this court titled Appellant's Response to Unethical and Unconstitutional Communication with Defendants' and Filing Court Orders Without Sending Copies to Appellant. On July 6, 2010, this court issued an order stating:

On March 24, 2010, this Court issued an order informing [Warner] that he was relieved of his duty to prepare a Statement of Evidence. On May 24, 2010, [Warner] filed his Appellant's Brief. Appellee's Brief is due to be filed by July 7, 2010.

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Having reviewed this matter, this Court FINDS AND ORDERS AS FOLLOWS:

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<sup>9</sup> Warner also attempted to file an appellant's appendix, but it was missing a certificate of service. On June 11, 2010, this defect was cured and Warner was allowed to file his appendix.

<sup>10</sup> This court received a copy of Warner's motion. Also, we note that a copy of the State's motion does not appear in the record on appeal and that the record does not reveal whether the trial court has issued a ruling on this motion.

1. [Warner's] Response to Unethical and Unconstitutional Communication with Defendants and Filing Court Orders without Sending Copies to [him] is DENIED.
2. The Clerk of this Court is directed to note on the docket that [Warner's] Motion in Response to State Defendants' Motion to Strike Statement of Evidence is a copy of the motion filed in the Sullivan Superior Court.
3. Pursuant to this Court's March 24, 2010 order, [Warner] and the trial court are relieved of the duty to prepare a Statement of Evidence.
4. This appeal shall proceed in accordance with the Indiana Rules of Appellate Procedure. . . .

July 6, 2010 Order.

On July 6, 2010, the D.O.C. filed their appellees' brief. On July 28, 2010, this court issued an order denying Warner's motion for extension of time to file his reply brief. On August 4, 2010, this court received Warner's untimely reply brief.

The sole issue is whether Warner waived his claims for failure to develop the record on appeal. Judgments in small claims actions are "subject to review as prescribed by relevant Indiana rules and statutes." Ind. Small Claims Rule 11(A). Our standard of review is particularly deferential in small claims actions, where "the trial shall be 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); Mayflower Transit, Inc. v. Davenport, 714 N.E.2d 794, 797 (Ind. Ct. App. 1999). Nevertheless, 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. Ind. Small Claims Rule 4(A); Mayflower Transit, 714

N.E.2d at 797. While the method of proof may be informal, the relaxation of evidentiary rules is not the equivalent of relaxation of the burden of proof. Mayflower Transit, 714 N.E.2d at 797. It is incumbent upon the party who bears the burden of proof to demonstrate that it is entitled to the recovery sought. Id.

Also, pro se litigants “are held to the same standard as trained counsel and are required to follow procedural rules.” Evans v. State, 809 N.E.2d 338, 344 (Ind. Ct. App. 2004), trans. denied. “This has consistently been the standard applied to pro se litigants, and the courts of this State have never held that a trial court is required to guide pro se litigants through the judicial system.” Id. “Generally, a party waives any issue raised on appeal where the party fails to develop a cogent argument or provide adequate citation to authority and portions of the record.” Smith v. State, 822 N.E.2d 193, 202-203 (Ind. Ct. App. 2005), trans. denied; see also Ind. Appellate Rule 46(A)(8)(a) (stating that argument section of appellant’s brief must “contain the contentions of the appellant on the issues presented, supported by cogent reasoning” and that “[e]ach contention must be supported by citations to the authorities, statutes, and the appendix or parts of the Record on Appeal relied on, in accordance with Rule 22”).

In his brief, Warner appears to raise the following issues: (1) the trial court erred in dismissing his claim because “he tried in every way possible to send his property home . . . ;” (2) he was denied due process because the “sound equipment started going in and out” during the hearing which was held by video conference; (3) the trial court erred in “not allowing [him] to present letters and response from grievance office that showed

proof that [he] tried to get his address/phone books to send out his property and proof that his property was no longer in R&R (property room), before the 60 days had passed . . . ;” and (4) “[t]he Trial Court erred in refusing to prepare a transcript, even after [he] complied to court orders of March 30, 2009, May 18, 2009, and June 18, 2009,” when he sent “the check for \$50.00 as partial fee . . . to [the] Trial Court [on] two separate times and once to the Court of Appeals . . . and each time the check was returned.” Appellant’s Brief at 10-11, 13. The D.O.C. argues that “Warner has waived his claims on appeal because he has not provided a complete record with respect to the issues raised.” Appellees’ Brief at 4. The D.O.C. also argues that Warner “is not entitled to a transcript of evidence at public expense” because “he has failed to demonstrate that his appeal could not have been perfected through preparation of [a] statement of evidence.” *Id.* at 7.

Initially, regarding Warner’s argument that the trial court erred when it refused “to prepare a transcript, even after [he] complied to court orders of March 30, 2009, May 18, 2009, and June 18, 2009,” after he sent “the check for \$50.00 as partial fee,” we note that the \$50 partial payment ordered by the trial court pertained to Warner’s filing fee with this court and not for the ordering of transcripts.<sup>11</sup> Further, Warner argues in his brief that the trial court’s denial of his request for transcripts violates his constitutional rights found in the First, Fifth, and Fourteenth Amendments to the United States Constitution, “as well as Article one, Section 12 and 23 of the Constitution of Indiana . . . .” Appellant’s Brief at 14. However, because Warner fails to develop these arguments, we

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<sup>11</sup> As noted above, this filing fee was waived by this court in its December 17, 2009 order allowing Warner to proceed in forma pauperis.

therefore find waiver. See, e.g., Loomis v. Ameritech, 764 N.E.2d 658, 668 (Ind. Ct. App. 2002) (holding argument waived for failure to cite authority or provide cogent argument), reh'g denied, trans. denied; see also Campbell v. Criterion Group, 605 N.E.2d 150, 160 (Ind. 1992) (noting that “indigent civil appellants” do not possess an entitlement “to have a complete record of the proceedings, including a transcription, prepared for them at public expense”).

To the extent that Warner raises additional issues, the Indiana Supreme Court has previously addressed the situation in which an appellant fails to submit a transcript or a statement of the evidence. In Pabey v. Pastrick, 816 N.E.2d 1138, 1141-1142 (Ind. 2004), reh'g denied, the appellant failed to submit a transcript of the evidentiary hearing. The appellant argued that no transcript was necessary because he did not contend that the trial court’s findings of fact were unsupported by the evidence; in fact, he repeatedly cited the trial court’s findings of fact and did not reference facts outside those found by the trial court. 816 N.E.2d at 1142. Relying in part upon Ind. Appellate Rule 49(B), which provides that the failure to include an item in an appendix shall not waive any issue or argument, and Ind. Appellate Rule 9(G), which allows supplemental requests for transcripts to be filed, the court held that the appellants’ failure to submit a transcript was not a basis for dismissing the appellant’s appeal. Id.

The Court also relied upon its opinion in In re Walker, 665 N.E.2d 586, 588 (Ind. 1996). Id. In Walker, the appellants did not submit a transcript and argued that a transcript was unnecessary because there was no challenge to the trial court’s findings of

fact and the appellate review entailed determining only whether the findings supported the judgment and whether the conclusions of law and the judgment were clearly erroneous based upon the findings. 665 N.E.2d at 588. The Court noted that the “failure to include a transcript works a waiver of any specifications of error which depend upon the evidence.” Id. (quoting Campbell, 605 N.E.2d at 160, and discussing prior appellate rules). This court has interpreted Pabey and Walker as dictating that we “attempt to address the issues raised” on appeal, but that “any arguments that depend upon the evidence . . . will be waived.” Fields v. Conforti, 868 N.E.2d 507, 511 (Ind. Ct. App. 2007) (citing Walker, 665 N.E.2d at 588; Kocher v. Getz, 824 N.E.2d 671, 675 (Ind. 2005) (holding that, where the appellant failed to provide a transcript of the trial court’s hearing on his motion to stay execution and request for bond less than the full amount of the judgment, appellant failed to demonstrate that the trial court abused its discretion)); see also Ctr. Townhouse Corp. v. City of Mishawaka, 882 N.E.2d 762, 769 (Ind. Ct. App. 2008) (holding that “[b]ecause the City did not provide us with the transcript as required by Ind. Appellate Rule 9(F)(4), that argument is waived”), trans. denied.

Here, Warner was granted numerous opportunities, and given an extraordinary amount of direction, to either order a transcript from the trial court clerk or prepare a statement of the evidence pursuant to Ind. Appellate Rule 31. In its initial order granting Warner’s notice of appeal, the trial court advised Warner that he “is responsible for paying for transcript” and that “[i]f [Warner] can’t pay for transcript he can utilize Appellate Rule 31 & prepare a statement of evidence.” Id. at 3. On June 26, 2009, the



trial court denied Warner's Motion to Compel Completion of Transcripts and advised him that "transcripts will not be prepared until payment is made pursuant to order dated March 30, 2009." Id. at 36. On October 27, 2009, this court, in response to Warner's Motion to Court of Appeals to Compel the Trial Court Clerk or Administrative Agency to Issue, File and Serve the Notice of Completion of Transcript Required by Rule 10(D), issued an order which stated that he "is ordered to either pay the trial court reporter for the transcript or prepare a certified statement of the evidence under Appellate Rule 31 within twenty (20) days of the date of this order." Id. at 7.

Then, on December 14, 2009, this court issued another order directing Warner "to file a statement of the evidence with the trial court pursuant to Appellate Rule 31(A) within twenty (20) days of the date of this order," and noting that "failure to timely comply may result in the dismissal of this appeal." Id. The order also noted that, in the event that a statement of the evidence was filed and certified by the trial court (or alternatively if the trial court filed an affidavit pursuant to Ind. Appellate Rule 31(D)) and the clerk's record completed, Warner's appellant's brief was to be due thirty days from the date of completion. Warner failed to follow this court's order of December 14, 2009 when he did not file a statement of the evidence by January 4, 2010.

Next, On January 26, 2010, the trial court, after having received that same day Warner's Verified Motion with Statement of the Evidence and for Order Instructing Clerk to Complete Transcripts of Trial Court for Use in Civil Appeal Proceedings Below, issued an order stating that "[t]he Court is again denying his request for the completion of

the transcript without payment.” January 26, 2010 Order at 2. The order also noted that Warner “has failed to comply with the Court of Appeals[’] Order dated December 14, 2009,” and that “[a]lthough [Warner’s] pleading filed January 26, 2010 is entitled ‘VERIFIED MOTION WITH STATEMENT OF THE EVIDENCE . . .’, his pleading does not contain a statement of the evidence.” Id.

This court’s order on March 24, 2010 relieving Warner of his duty to prepare a statement of the evidence did not also relieve Warner of his burden of proof. Rather, a review of the record reveals that this court relieved Warner of this duty in order to allow Warner to file an appellant’s brief. Indeed, the March 24, 2010 order also directed that “this appeal shall proceed in accordance with the rules of appellate procedure.” Appellant’s Appendix at 9. Ind. Appellate Rule 46(A)(8)(a) requires that “[e]ach contention must be supported by citations to the authorities, statutes, and the Appendix or parts of the Record on Appeal relied on, in accordance with Rule 22.” Here, the issues raised by Warner, including the due process violation based upon an alleged disruption in the video conference feed, depend upon what transpired at the hearing. Consequently, without a transcript or statement of the evidence we are unable to review the questions he presents.

In sum, Warner’s failure to provide this court with a record of the proceedings below precludes us from properly reviewing Warner’s appeal and leaves us with no choice but to find waiver. See App. R. 46(A)(8)(a); Walker, 665 N.E.2d 586, 588 (noting that the “failure to include a transcript works a waiver of any specifications of error

which depend upon the evidence”); Campbell, 605 N.E.2d at 161 (noting that because the plaintiff “failed to demonstrate that his appeal could not have been perfected through the preparation of a statement of the evidence,” the trial court did not err when it refused “to order a transcription of the evidence at public expense”); see also Stallings v. State, 508 N.E.2d 550, 552 (Ind. 1987) (noting that the defendant waived an issue because he failed to present an adequate record to clearly show alleged error where the record on appeal did not contain a transcript of a hearing).

For the foregoing reasons, we affirm the small claims court’s judgment in favor of the D.O.C.

Affirmed.

DARDEN, J., and BRADFORD, J., concur.