APPELLANT PRO SE:

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Carlisle, Indiana

ATTORNEYS FOR APPELLEES:

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IN THE
COURT OF APPEALS OF INDIANA

SHAVAUGHN CARLOS WILSON-EL,	)	
	)	
Appellant-Plaintiff,	)	
	)	
vs.	)	No. 77A05-0608-CV-448
	)	
STATE OF INDIANA, INDIANA DEPARTMENT OF CORRECTION,	)	
	)	
Appellees-Defendants.	)	

APPEAL FROM THE SULLIVAN SUPERIOR COURT
The Honorable Thomas E. Johnson, Judge
Cause No. 77D01-0509-SC-702

September 12, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

BRADFORD, Judge

Appellant Shavaughn Carlos Wilson-El appeals from the trial court's entry of judgment for Appellees the State and the Department of Correction ("DOC"). We affirm.

FACTS

The Certified Statement of Evidence[1] provides:

> [Wilson-El], pro se, having heretofore filed a MOTION TO CERTIFY STATEMENT OF EVIDENCE and STATEMENT OF EVIDENCE, and [Wilson-El] having filed a STATEMENT OF EVIDENCE, after reviewing the recording of the Court Trial, the Court now certifies the following summary of the Court Trial conducted on May 17, 2006.
>
> 1. [Wilson-El] claimed that he was transferred from Indiana State Prison to Wabash Valley Correctional Facility. Upon arrival, [Wilson-El]'s property [w]as inventoried and some of his property was confiscated pursuant to DOC policy. [Wilson-El] filed a grievance as to the confiscated property and completed Levels I-IV but did not complete Level V of the process. [Wilson-El] withdrew his grievance before completing all five (5) steps.
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> 2. [Wilson-El] claimed that he was going to mail his property out or gate release it but was advised that his property was destroyed during the course of the grievance process and prior to his being offered the opportunity to elect a disposition for the property. He claims his property was destroyed

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[1] Indiana Appellate Rule 31 provides:

> **A. Party's Statement of Evidence.** If no Transcript of all or part of the evidence is available, a party or the party's attorney may prepare a verified statement of the evidence from the best available sources, which may include the party's or the attorney's recollection. The party shall then file a motion to certify the statement of evidence with the trial court or Administrative Agency. The statement of evidence shall be attached to the motion.
>
> **B. Response.** Any party may file a verified response to the proposed statement of evidence within fifteen (15) days after service.
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> **C. Certification by Trial Court or Administrative Agency.** Except as provided in Section D below, the trial court or Administrative Agency shall, after a hearing, if necessary, certify a statement of the evidence, making any necessary modifications to statements proposed by the parties. The certified statement of the evidence shall become part of the Clerk's Record.
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> **D. Controversy Regarding Action of Trial Court Judge or Administrative Officer.** If the statements or conduct of the trial court judge or administrative officer are in controversy, and the trial court judge or administrative officer refuses to certify the moving party's statement of evidence, the trial court judge or administrative officer shall file an affidavit setting forth his or her recollection of the disputed statements or conduct. All verified statements of the evidence and affidavits shall become part of the Clerk's Record.

Because Wilson-El was unable (or unwilling) to pay for a transcript of his trial, he filed a "Motion to Certify Statement of Evidence" instead. (Appellant's App. iiiiiii).

[o]n October 24, 2004, according to a memo and the grievance process was still on going at this time.

3. Richard Watkins testified on behalf of the [DOC] and stated that on January 4, 2005, [Wilson-El] withdrew his grievance and requested to gate release his property. The person the property was to be gate released to was not authorized to enter the facility. [Wilson-El] was notified of this and given five (5) days to cho[o]se a different disposition or his property would be destroyed per DOC policy. He could not advise as to whether [Wilson-El] chose a new disposition within five (5) days.

4. [Wilson-El] questioned Richard Watkins regarding the date on which his property was destroyed. Richard Watkins had no documentation regarding the date of destruction and as such could not testify with certainty as to when the property was actually destroyed.

5. The Court questioned Mr. Watkins as to whether he could investigate as to whether [Wilson-El]'s property had in fact been destroyed or whether it was still in storage. The Court afforded the [DOC] thirty (30) days to determine the status of [Wilson-El]'s confiscated property. [Wilson-El] continued to insist that a response at one of the grievance levels indicated his property had already been destroyed prior to completion of the grievance process.

6. [Wilson-El] did not testify as to any proof of damages and gave no monetary value to the items he claims were improperly destroyed.

7. On June 16, 2006, the [DOC] filed a NOTICE IN REPLY TO ORDER OF THE COURT which stated that the exact date of destruction could not be determined but that the property had in fact been destroyed. It went on to note the date the grievance was withdrawn was January 4, 2005, and that on February 8, 2005, a request had been entered for Officer Brooks to check on the property, and at that time it had been destroyed. The Notice then states "Miami Correctional Facility" (which the Court assumed was a typographical error and should have read Wabash Valley Correctional Facility) [and] states the property had been destroyed sometime between January 4, 2005, and February 8, 2005.

The Court found against [Wilson-El] and in favor of the [DOC] based on the fact that [Wilson-El] did not complete the grievance process which was a requirement at the time of the loss before bringing suit (the Court also notes that this is no longer a requirement per DOC policy); [Wilson-El] failed to provide proof of damages; and neither party would provide proof by a preponderance of the evidence that the property was either (a) destroyed during the grievance process or (b) after the grievance was withdrawn. As such, Judgment was entered in favor of [DOC].

(Appellant's App. 112-13).

DISCUSSION AND DECISION

Whether the Trial Court Properly Entered Judgment in Favor of the State and DOC

We review judgments from small claims court 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). Moreover, 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*.

Wilson-El raises several claims relating to evidence he contends should have been (or should not have been) admitted and considered by the trial court in reaching its judgment. To this end, Wilson-El attacks many aspects of the Statement of Evidence as though its various provisions constitute factual findings subject to appellate review.

Wilson-El, however, misconstrues the function and nature of the Statement of Evidence. The Statement of Evidence is *not* a recitation of evidence that the trial court found credible, but, rather, a summary of all evidence presented at trial when a transcript is not available. Ind. Appellate Rule 31(A). As it happens, we simply cannot review a Statement of Evidence prepared pursuant to Appellate Rule 31 for an abuse of discretion or any other defect, for that matter. In other words, for purposes of our review, the Summary of Evidence is the final word on the evidence and may not be gainsaid. "The certification of an accurate record, including a statement of the evidence where no transcript has been taken, is a matter left entirely to the trial court's discretion and not subject to review by this court." *Harbour v. Bob Anderson Pontiac*, 624 N.E.2d 475, 477 (Ind. Ct. App. 1993). "The trial judge, being present at the trial, is in a better position than we to determine what actually occurred." *Id*. "Once a record has been certified as true by the trial court, that is what we must use to determine the issues raised on appeal." *Id*.

Here, the Statement of Evidence indicates that Wilson-El failed to present any evidence "as to any proof of damages and gave no monetary value to the items he claims were improperly destroyed." (Appellant's App. 113). An essential element of any small claim is the amount of money in controversy,[2] and Wilson-El produced no evidence on this point. While it is true that Wilson-El, in his Notice of Claim, specified damages of $1805.70

and attached to his Notice an exhibit detailing his claimed damages, we must assume that the exhibit was never admitted at trial and that Wilson-El otherwise failed to substantiate his claimed damages. As such, the trial court properly entered judgment in favor of the defendants. Because we conclude that the fundamental deficiency in Wilson-El's small claim is dispositive, we need not address his specific claims that the trial court erroneously entered judgment in favor of the defendants and that it abused its discretion in the admission or exclusion of various pieces of evidence.

The judgment of the trial court is affirmed.

NAJAM, J., and MATHIAS, J., concur.

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[2] Because small claims jurisdiction is based entirely on the dollar amount of damages claimed, it follows that damages must be pled. Indiana Code section 33-29-2-4 provides, in part that "[t]he small claims docket has jurisdiction over … Civil actions in which the amount sought or value of the property sought to be recovered is not more than six thousand dollars ($6,000)." Moreover, Indiana Small Claims Rule 2(B)(4) requires that a notice of claim must include "the nature *and amount* of the claim[.]" (Emphasis added). In order to prevail, it also follows that a plaintiff must then *prove* the amount of the claim, something Wilson-El has not done.