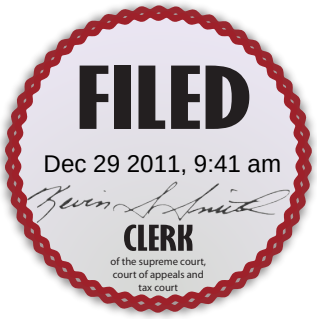

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IN THE
COURT OF APPEALS OF INDIANA

GLENN D. ODOM II,	)	
	)	
Appellant-Plaintiff,	)	
	)	
vs.	)	No. 77A05-1103-SC-161
	)	
INDIANA DEPARTMENT OF CORRECTION,	)	
	)	
	)	
Appellee-Defendant.	)	

APPEAL FROM THE SULLIVAN SUPERIOR COURT
The Honorable Robert E. Springer, Judge
The Honorable Ann Smith Mischler, Magistrate
Cause No. 77D01-1009-SC-739

December 29, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

BROWN, Judge

Glenn D. Odom, II, *pro se*, appeals a small claims court's judgment in favor of the Indiana Department of Correction ("DOC"). Odom raises one issue which we revise and restate as whether the court erred in ruling in favor of the DOC. We affirm.

The relevant facts follow. On September 2, 2010, Odom filed a Notice of Claim against Officer Gilstrap, Officer Ewers, and the DOC. Odom alleged that the defendants discarded his property valued at $208.38 while he was in Kentucky as a result of a criminal charge against him there between January 6, 2006, and June 2, 2009.[1] On November 15, 2010, Officer Gilstrap and Officer Ewers filed a motion to dismiss. On November 29, 2010, the court granted the officers' motion to dismiss and scheduled the matter against the DOC for trial on February 16, 2011.

On February 4, 2011, the DOC filed a motion for trial by affidavits and exhibits. On February 8, 2011, the court granted the DOC's motion and ordered that all documentary evidence be submitted in thirty days. On March 3, 2011, the DOC filed a motion to dismiss and argued that Odom had failed to comply with the statute of limitations and the Indiana Tort Claims Act. On March 8, 2011, the DOC filed its submission of evidence and arguments for trial.

On March 10, 2011, Odom filed a Trial Readiness Certificate which asked the court to set his case for trial. That same day, Odom filed a response to the DOC's motion

[1] Odom alleged that the following items were lost: book/bible, coax cable cord, dental floss, hairbrush, pack of razors, lotions, toothbrush, bowl, photos, soap, two pairs of underwear, two t-shirts, and three pairs of socks.

to dismiss. Odom argued that "[w]hen he returned to [W]abash facility on June 2, 2009[,] he 'discovered' that all his property had been lost." Appellee's Appendix at 92.

On March 14, 2011, the court issued an order finding in favor of the DOC because Odom's claim was barred by the statute of limitations and Odom failed to provide the court with any documentary evidence as required by the court's February 8, 2011 order. Specifically, the court held that Odom's action must fail for the following reasons:

> 1. First, his complaint could not have survived dismissal for failure to comply with the two (2) year statute of limitations. The Court reviewed two (2) inventory sheets submitted by the parties dated October 19, 2005, and January 6, 2006. It is readily apparent from reviewing the inventory sheets that several items of personal property were missing from [Odom's] property from October 19, 2005 to January 6, 2006; thus, the statute of limitations began to run on January 6, 2006.
>
> 2. Even if the Court had ignored the statute of limitations issue, [Odom] failed to provide the Court with any documentary evidence as required by the Court's Order of February 8, 2011. The Court reviewed the pleadings submitted by [Odom] as of the date of this Order, and [Odom] has to show how he came up with the amount of damages he was requesting. Further, [Odom] claims he lost a Bible worth $24.95 but according to the inventory sheet of January 6, 2006, he was allowed to possess that item.

Appellant's Appendix at 12-13.

The issue is whether the court erred in ruling in favor of the DOC. 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 "[t]he 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. To prevail on a claim of negligence, which Odom argues on appeal, a plaintiff is required to prove: (1) a duty owed by the defendant to the plaintiff; (2) a breach of that duty by the defendant; and (3) an injury to the plaintiff proximately caused by the breach. Ford Motor Co. v. Rushford, 868 N.E.2d 806, 810 (Ind. 2007).

Odom sets forth the elements required to prevail on a claim of negligence and Odom cites the Interstate Agreement on Detainers.[2] Without citation to the record, Odom argues that he left for court in Kentucky on January 6, 2006, and "could not have inventoried his property." Appellant's Brief at 5. Odom argues that "[w]hen [he] returned on June 2, 2009 he discovered that all his property was missing." Id. at 6. Odom argues that he "should not be denied his legitimate claim solely, or partially, because defendants destroyed all receipt evidence." Id. Odom argues that "[i]t is clear

[2] Specifically, Odom states: "Under the I.A.D. provisions, ARTICLES III, IV, & V '. . . the sending state shall deliver temporary custody of such prisoner to the appropriate authority . . . the prisoner shall be deemed to remain in the custody of and subject to jurisdiction of the sending state.'" Appellant's Brief at 5-6.

that [W]abash facility had jurisdiction over appellant at all relevant times and had a continuous duty to hold his property in storage just as they held a bed opening for him." Id. at 7. The DOC argues that Odom failed to prove any duty, that the DOC breached such a duty, that Odom suffered any damages, or the amount of the claimed damages.[3]

Although Odom is proceeding *pro se*, such 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. Odom's statement of case and statement of the facts do not contain any citations to the record, which does not comply with Ind. Appellate Rule 46(A)(5)-(6).[4] Odom also fails to cite to the record for some of his arguments and fails to put forth a cogent argument.[5] Consequently, those issues are waived. See Cooper v. State, 854 N.E.2d 831, 834 n.1 (Ind. 2006) (holding that the defendant's contention was waived because it was "supported neither by cogent argument nor citation to authority"); Shane v. State, 716 N.E.2d 391, 398 n.3 (Ind. 1999) (holding that the defendant waived argument on appeal by failing to develop a cogent argument);

[3] With respect to the statute of limitations, the State observes that "it is unclear that Odom was ever transferred out of segregation prior to being released to Kentucky such that the items on the October 2005 inventory sheet would have been returned to him." Appellee's Brief at 5 n.3. The State argues that "[r]egardless of the trial court's finding regarding the statute of limitations, its judgment in favor the [sic] DOC should be upheld because Odom failed to prove negligence and damages." Id.

[4] Ind. Appellate Rule 46(A)(5) governs 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)." Ind. Appellate Rule 46(A)(6) governs the statement of facts and provides that "[t]he facts shall be supported by page references to the Record on Appeal or Appendix in accordance with Rule 22(C)."

[5] Specifically, Odom argues that he "left for court on Jan. 6, 2006 and could not have inventoried his property," he "was not allowed to take his two (2) boxes of property to court with him," and that when he "returned on June 2, 2009 he discovered that all his property was missing." Appellant's Brief at 5. However, Odom does not cite to the record for these statements.

Johnson v. State, 675 N.E.2d 678, 681 n.1 (Ind. 1996) (observing that the defendant failed to cite to the record and "[o]n review, this Court will not search the record to find grounds for reversal"); Keller v. State, 549 N.E.2d 372, 373 (Ind. 1990) (holding that a court which must search the record and make up its own arguments because a party has presented them in perfunctory form runs the risk of being an advocate rather than an adjudicator).

To the extent that Odom develops certain arguments, we observe that the court granted the DOC's motion for trial by affidavits and exhibits and ordered that all documentary evidence be submitted within thirty days of February 8, 2011. On March 10, 2011, Odom filed a Trial Readiness Certificate and a response to the DOC's motion to dismiss, but neither filing contained any documentary evidence. On appeal, Odom does not point to the record regarding the amount of his damages, but points to certain exhibits attached to his Notice of Claim including: (1) a request dated May 13, 2010, for "a copy of all commissary orders prior to Jan. 6th, 2006," which contains a handwritten notation stating "Not on computer;" (2) a statement apparently signed by the commissary supervisor that states that the policy is not to keep commissary records more than five years old; and (3) a 2005 inventory list for Odom's items from Wabash Valley Correctional Facility. Appellee's Appendix at 8. We cannot say that these exhibits demonstrate that Odom has met his burden. Consequently, we conclude that the small claims court did not err in ruling in favor of the DOC.

For the foregoing reasons, we affirm the small claims court's judgment in favor of the DOC.

Affirmed.

CRONE, J., concurs.

MAY, J., concurs in result.