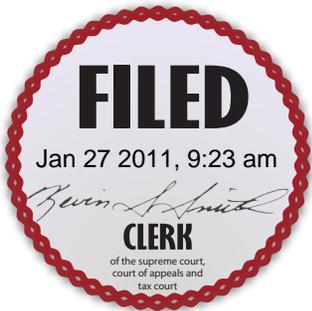


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



APPELLANT PRO SE:

STEVE NEVILL  
Greencastle, Indiana

---

**IN THE  
COURT OF APPEALS OF INDIANA**

---

STEVE NEVILL, )  
 )  
 Appellant, )  
 )  
 vs. ) No. 67A01-1007-SC-360  
 )  
 WOODLAND HEIGHTS PROPERTY )  
 OWNERS ASSOCIATION, )  
 JACK DALTON, )  
 DAVID BOMBEL, )  
 )  
 Appellees. )

---

APPEAL FROM THE PUTNAM SUPERIOR COURT  
The Honorable Charles D. Bridges, Judge  
Cause No. 67D01-1001-SC-6

---

January 27, 2011

**MEMORANDUM DECISION – NOT FOR PUBLICATION**

**MATHIAS, Judge**

Woodland Heights Property Owners Association (“the Association”) filed a small claims action against Steve Nevill (“Nevill”) for unpaid property owners’ association dues and late fees. Nevill filed a counterclaim for slander, defamation, and “dereliction of duties.” A judgment was issued in favor of the Association in the amount of \$748.00 and against Nevill on his counterclaims. Nevill appeals and raises several arguments, which we consolidate, restate, and reorder as follows:

- I. Whether the Association is a valid legal entity capable of bringing suit;
- II. Whether the small claims court abused its discretion when it excluded evidence presented by Nevill;
- III. Whether the judgment in favor of the Association was clearly erroneous; and
- IV. Whether the small claims court’s judgment against Nevill on his counterclaims was clearly erroneous.

We affirm.

### **Facts and Procedural History**

The facts most favorable to the small claims court’s judgment establish that Nevill moved into a home in the Woodland Heights subdivision in 1997. The residents of Woodland Heights are bound by certain restrictive covenants that require, in relevant part, the payment of dues to the Association in the amount of \$300 per year. Nevill paid his annual dues to the Association every year from 1997 until 2007, but he stopped paying in 2008 after his tenure as president of the Association ended.

On January 12, 2010, the Association, represented by officers Jack Dalton (“Dalton”) and David Bombei (“Bombei”), filed a small claims action against Nevill

seeking the unpaid dues and late fees. Nevill filed his notice of counterclaim on March 15, 2010, alleging slander, defamation, and “dereliction of duties.” Tr. p. 12. At a contested hearing held on May 20, 2010, Nevill admitted that he had not paid dues since 2007, but claimed the Association was without a remedy because it is not a legal entity capable of bringing suit. Nevill also disputed the amount the Association claimed he owed.

On May 27, 2010, the small claims court entered its judgment in favor of the Association and made the following relevant findings:

[T]he Court finds for the [Association] in the amount of \$672.00 and \$76.00 filing fee for a total of \$748.00, and finds the following:

\* \* \*

3. The Court cannot hold [Nevill] responsible for 2010 dues as they are not yet due.
4. [Nevill], by his own testimony, has failed to pay his 2008 and 2009 property association dues of \$300.00 each year, and both late fees for 2008 and the late fee for 2009.
5. The . . . Association is a legal entity, with standing to bring suit.

\* \* \*

7. [Nevill’s] Countersuit must fail for the following reasons.
8. [Nevill] failed to prove slander because representatives of the . . . Association said [Nevill] did not pay his association dues. That is a true statement, and the truth is an absolute defense to slander. Additionally, [Nevill] failed to prove the elements of slander, or actual damages, but the Court need not delve into that.
9. [Nevill] failed to prove defamation of character because, again, the statements are true.
10. Lastly, [Nevill’s] dereliction of duty claim must likewise fail, as the only duty the [Association] has to him is to provide what is set out in the covenants, and no evidence was presented to show it has not. [Nevill’s] trash was not removed because of his own action, not paying dues.

Appellant’s Br. at 19-20. Nevill now appeals.

## Standard of Review

We initially observe that the Association did not file an appellee's brief. When an appellee does not submit a brief, we need not undertake the burden of developing arguments for the appellee. Painter v. Painter, 773 N.E.2d 281, 282 (Ind. Ct. App. 2002). Applying a less stringent standard of review, we may reverse the trial court if the appellant establishes prima facie error. Id. Prima facie error is defined as at first sight, on first appearance, or on the face of it. Id.

Judgments in small claims actions are "subject to review as prescribed by relevant Indiana rules and statutes." Ind. Small Claims Rule 11(A). When we review claims tried by the bench without a jury, our court shall not 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). We define the clearly erroneous standard based upon whether the party is appealing a negative or an adverse judgment. Garling v. Ind. Dep't of Natural Res., 766 N.E.2d 409, 411 (Ind. Ct. App. 2002), trans denied. A negative judgment is one entered against a party who bears the burden of proof, while an adverse judgment is one entered against a party defending on a given question, i.e., one who does not bear the burden of proof. Id.

In this case, Nevill is appealing from both an adverse judgment and a negative judgment. Specifically, the entry of judgment in favor of the Association is an adverse judgment. Thus, we will hold the small claims court's findings on the Association's claim clearly erroneous if they are not supported by substantial evidence of probative

value, and even if the supporting evidence is substantial, we will reverse if we are left with a definite and firm conviction that a mistake has been made. See id. The ruling against Nevill on his counterclaims, however, is a negative judgment. Therefore, we will reverse the small claims court's judgment on Nevill's counterclaims only if the evidence is without conflict and all reasonable inferences to be drawn from the evidence lead to a conclusion other than that reached by the trial court. See Nodine v. McNerney, 833 N.E.2d 57, 65 (Ind. Ct. App. 2005), clarified on reh'g, trans. denied. In determining whether a judgment is clearly erroneous, we do not reweigh the evidence or determine the credibility of witnesses, and we consider only the evidence supporting the judgment and the reasonable inferences to be drawn therefrom. Councillor v. Ecenbarger, Inc., 834 N.E.2d 1018, 1021 (Ind. Ct. App. 2005).

### **I. The Association's Right to Sue**

Nevill first argues that the trial court's finding that the Association is a legal entity capable of bringing suit was clearly erroneous. According to Nevill, the Association is not entitled to bring suit because it is noncompliant with certain provisions of the Indiana Code referencing homeowners' associations. Specifically, Nevill argues that the Association is in violation of several provisions of Indiana Code article 32-25.5. However, this article was enacted in 2009 and applies only to homeowners associations established after June 30, 2009 and previously established homeowners associations that elect to be governed by its provisions. Ind. Code § 32-25.5-1-1 (2010). While the evidence presented at trial does not establish the precise date on which the Association

was established, Nevill testified that he paid dues to the Association from 1997 until 2007. We therefore conclude that the Association was established prior to June 30, 2009, and Nevill makes no argument that the members of the association elected to be governed by the statute. Accordingly, Indiana Code article 32-25.5 is inapplicable.

Nevill also argues that the Association does not qualify as a homeowner's association under Indiana Code section 34-6-2-58 (1999). However, this statute simply defines the phrase "homeowner's association" for the purposes of Indiana Code section 34-6-2-127 (1999 & Supp. 2010), which in turn defines the phrase "qualified director" for the purposes of Indiana Code chapter 34-30-4. Chapter 34-30-4 addresses immunity from civil liability for certain volunteer directors of charities. Thus, Indiana Code section 34-6-2-58 is inapplicable to the case before us.<sup>1</sup>

Moreover, even if the cited statutes were applicable to the case before us, Nevill makes no argument and cites no authority supporting his assumption that noncompliance or failure to meet the statutory definition of a homeowners association would deprive the Association of the right to sue. We therefore conclude that the trial court's finding that the Association is a legal entity with the right to sue was not clearly erroneous.

## **II. Exclusion of Evidence**

Next, Nevill argues that the small claims court abused its discretion by excluding certain exhibits he offered into evidence at the hearing. Decisions regarding the admission or exclusion of evidence fall within the sound discretion of the small claims

---

<sup>1</sup> Nevill also cites various statutes applicable to business and nonprofit corporations. These statutes are likewise inapplicable because the Association is not a corporation.

court, and its decision will be reversed only upon a showing of a manifest abuse of discretion resulting in the denial of a fair trial. Elrod v. Brooks, 910 N.E.2d 231, 233 (Ind. Ct. App. 2009). Here, Nevill claims that he sought to introduce exhibits at the hearing, but most of them were excluded because Nevill did not bring copies for the opposing party.

In his argument, Nevill fails to cite to the portions of the transcript where the exhibits were identified, offered, and excluded, in contravention of Indiana Appellate Rule 46(A)(8)(d). Further, Nevill makes no argument that the exclusion of the exhibits resulted in the denial of a fair trial. Indeed, Nevill does not describe the contents of the excluded exhibits or explain how their exclusion prejudiced him. Nevill's failure to present any cogent argument results in a waiver of the issue on appeal. See Ind. App. R. 46(A)(8)(a).

### **III. The Association's Claim**

Nevill next argues that the small claims court's judgment in favor of the Association was clearly erroneous because the Association only presented the testimony of one witness to establish the amount owed, without supporting "official association documentation." Appellant's Br. at 11. Nevill also argues that the Association failed to prove the dates by which dues were required to be paid.

These arguments are simply requests to reweigh the evidence and judge the credibility of witnesses, which we will not do. Dalton testified that Nevill owed dues and late fees for 2008 and 2009 in the amount of \$672.00. Tr. pp. 8-9. This figure consisted

of two \$300 charges for annual dues, plus \$48 in late fees for 2008 and \$24 in late fees for 2009. Id. Dalton testified further that residents of Woodland Heights have until the first of September to pay their annual dues. Id. at 6. This testimony was sufficient to support the small claims court's judgment in favor of the Association.<sup>2</sup>

#### **IV. Nevill's Counterclaims**

Finally, Nevill argues that the small claims court's judgment against Nevill on his counterclaims was clearly erroneous. With regard to his counterclaims for slander and defamation, Nevill argues that representatives of the Association defamed him by stating that he had not paid his dues.<sup>3</sup> Nevill argues further that he was not required to establish actual damages because the statements were made maliciously. However, the small claims court ruled against Nevill on his slander and defamation claims not only because he failed to establish actual damages, but also because the statements regarding Nevill's unpaid dues were true.

Nevill admitted at the hearing that he had not paid dues to the association since 2007. Although Nevill claimed that he was not required to pay these dues because the Association was not a legal entity capable of bringing suit, the small claims court found

---

<sup>2</sup> Nevill also argues that the small claims court's ruling "was based on hearsay at best." Appellant's Br. at 12. Putting aside the issue of whether Dalton's testimony satisfies the legal definition of hearsay, we note that small claims court judgments may be supported solely by hearsay. Matusky v. Sheffield Square Apartments, 654 N.E.2d 740, 741 (Ind. 1995).

<sup>3</sup> On appeal, Nevill also claims that the Association defamed him by stating that during his previous tenure as president of the Association, Nevill "was responsible for the [A]ssociation going broke." Appellant's Br. at 13. However, Nevill did not raise this argument at the hearing; rather, his arguments on slander and defamation referred only to statements made by representatives of the Association regarding Nevill's unpaid dues. See Tr. pp. 12-13, 17. Nevill has therefore waived appellate review of this issue. GKC Ind. Theatres, Inc. v. Elk Retail Investors, LLC, 764 N.E.2d 647, 652 (Ind. Ct. App. 2002) (a party waives appellate review of an issue or argument unless the party raised that issue or argument before the trial court).

to the contrary. Thus, the small claims court's finding that the complained-of statements were true is not clearly erroneous, and truth is a complete defense to slander and defamation. See Doe v. Methodist Hosp., 690 N.E.2d 681, 687 (Ind. 1997); Gatto v. St. Richard Sch., Inc., 774 N.E.2d 914, 924 (Ind. Ct. App. 2002). Accordingly, the small claims court's judgment against Nevill on his counterclaims for slander and defamation was not clearly erroneous.

With regard to Nevill's counterclaim for "dereliction of duties," Tr. p. 12, we first note that our research has not discovered any authority supporting the existence of such a cause of action in Indiana. Looking to the substance of Nevill's arguments on appeal, he appears to argue that he is entitled to compensation because the Association stopped his trash collection service in 2009. The entirety of his argument on this issue is contained in the following two sentences: "The judgement entered by the Court included payment of services not rendered, trash service, by the Association (Tr. p. 11 lines 17-25) which has been a precedence for at least ten years now for the Association [sic]. This is just another example of the Association not performing its duties." Appellant's Br. at 10. However, this assertion is neither supported by citation to relevant authority nor sufficiently developed to allow for meaningful appellate review. The issue is therefore waived. See Ind. Appellate Rule 46(A)(8)(a); Cole v. Holt, 725 N.E.2d 145, 149 n.4 (Ind. Ct. App. 2000), trans. denied.

Nevill also claims that the trial court's finding that "[Nevill's] trash was not removed because of his own action, not paying his dues" was clearly erroneous because

neither Dalton nor Bombei testified that Nevill's trash collection service was stopped due to his failure to pay dues. Appellant's Br. at 20. Nevill argues further that this finding is evidence that the small claims court was biased in favor of the Association. However, given Nevill's testimony that he failed to pay dues in 2008 and 2009 and that the trash collection services are paid for by the Association out of the dues it collects, it was reasonable for the trial court to infer that Nevill's trash collection service was stopped due to his failure to pay dues. The trial court's finding regarding Nevill's trash collection service was therefore neither clearly erroneous nor indicative of bias.

It appears that Nevill is also seeking compensation for the Association's failure to enforce various covenants against the other residents of Woodland Heights. However, Nevill again fails to support his argument with citation to relevant authority, and he does not attempt to explain how he suffered damages as a result of this failure or why the Association should be held responsible for the residents' alleged breach of the covenants. Nevill has therefore waived appellate review of this argument. For all of these reasons, we cannot conclude that the small claims court's ruling against Nevill on his counterclaim for "dereliction of duties" was clearly erroneous.<sup>4</sup>

---

<sup>4</sup> Nevill raises two additional, related arguments, which are also unavailing. First, he asserts that Dalton sent a letter to the small claims court, which the court read prior to the trial. The letter to which Nevill refers is a request filed by the Association on May 20, 2010, seeking to amend the Association's small claims notice to include a claim for Nevill's 2010 dues. Appellant's App. p. 8. Nevill argues that he was unaware of the letter's existence until after the hearing, and that it was somehow improper that the letter was neither read aloud during the hearing nor entered as an exhibit. Second, Nevill argues that because the request for the 2010 dues was not included in the Association's initial small claims notice, the small claims court erred in considering the Association's request. However, given the fact that the small claims court declined to award the Association dues for 2010, any alleged error in the court's consideration of the Association's request would be, at most, harmless error.

## **Conclusion**

The small claims court's finding that the Association was a valid legal entity capable of bringing suit was not clearly erroneous. Nevill's claim that the small claims court abused its discretion by excluding his evidence is waived for failure to make a cogent argument. The small claims court's judgments in favor of the Association and against Nevill on his counterclaims were not clearly erroneous.

Affirmed.

FRIEDLANDER, J., and MAY, J., concur.