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.

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IN THE
COURT OF APPEALS OF INDIANA

ROBERT POPE and LAURA CRIPE,	)	
	)	
Appellants-Defendants,	)	
	)	
vs.	)	No. 17A04-1010-SC-655
	)	
PATRICK SMITH,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE DeKALB SUPERIOR COURT
The Honorable Monte L. Brown, Judge
Cause No. 17D02-1009-SC-942

July 26, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

MAY, Judge

Robert Pope and Linda Cripe ("Tenants") appeal the small claim court's order of eviction in favor of Patrick Smith ("Landlord"). We affirm.

FACTS AND PROCEDURAL HISTORY

Tenants and Landlord entered into a written lease agreement in March 2007. At the end of the twelve-month term, both parties agreed to continue the tenancy month-to-month. In 2009, Tenants fell behind in their rent payments, and Landlord allowed them to trade independent contract labor for rent. This arrangement continued through August 2010, when Landlord served Tenants with a "General Notice to Quit" based on their rent arrearage.

On September 10, 2010, Landlord filed an eviction claim because Tenants did not leave. Tenants filed a counterclaim for "Non Credit [sic] of rental monies paid, Non payment [sic] of labor and supplies to be credited to rental agreement, unjust enrichment, and reasonable legal fees." (App. at 38.) The small claims court held a hearing on September 23 regarding the eviction claim, bifurcated the damages counterclaim, and set it for a hearing on January 10, 2011.

On September 23, the parties met in the hallway prior to the eviction hearing. Landlord's attorney asked Tenants if they would be able to move out of the leased premises by October 1. Tenants requested they be given until October 3 to move, and Landlord agreed. After the eviction hearing, the small claims court ordered Tenants to vacate the leased premises by October 3.

DISCUSSION AND DECISION

Tenants appeal *pro se*. Litigants who choose to do so are held to the same established rules of procedure that trained legal counsel are bound to follow. *Wright v. Elston*, 701 N.E.2d 1227, 1231 (Ind. Ct. App. 1998), *trans. denied*.

As this claim was litigated in small claims court, we review the decision for clear error. *Flint v. Hopkins*, 720 N.E.2d 1230, 1231 (Ind. Ct. App. 1999). We presume the court correctly applied the law, and we give deference to the court's opportunity to judge the credibility of witnesses and weigh evidence. *Barber v. Echo Lake Mobile Home Comm.*, 759 N.E.2d 253, 255 (Ind. Ct. App. 2001). This deferential standard of review is particularly appropriate in small claims actions, where trials are informal, with the sole objective of dispensing speedy justice according to the rules of substantive law. *Id*.

Tenants claim they were erroneously evicted and the court prevented them from presenting evidence at the eviction hearing.[1] The Trial Court Clerk indicated the eviction hearing was not recorded and therefore could not be transcribed. In such a situation, Ind. Appellate Rule 31 provides the parties should file a "Statement of Evidence" regarding the parties' recollections of the hearing. No such statement was filed in this case, and thus we cannot know what occurred during the hearing.

While we do not know what issues were brought forth in front of the small claims

[1] Tenants advance many damage-related issues on appeal. However, as the appealed order addresses only the eviction, we will not address damages. *See Rust-Oleum v. Fitz*, 801 N.E.2d 754, 761 (Ind. Ct. App. 2004) (issue not yet litigated at the trial court level may not be decided on appeal), *trans. denied*.

court or what evidence was presented, we presume the small claims court knows and correctly applies the law. As Tenants have not rebutted that presumption, we affirm the eviction order. *See, e.g.*, *Shigley v. Whitlock*, 160 Ind. App. 78, 81-83, 310 N.E.2d 93, 95-96 (1974) (to be properly reviewed, error must be disclosed in the appellate record; appellant has affirmative duty to bring proper record before appellate court and we cannot consider matters outside the record).

Affirmed.

BAKER, J., and BRADFORD, J., concur.