

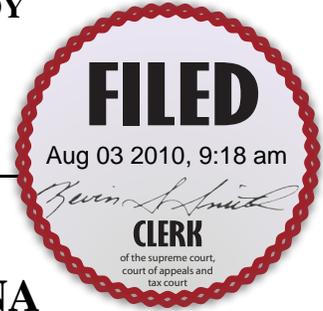
Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.

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**IN THE
COURT OF APPEALS OF INDIANA**

YUL ANDERSON and)
RACHEL ANDERSON,)
)
Appellants-Defendants/)
Cross-Appellees-Counterclaimants,)
)
vs.)
)
RONALD E. WELDY,)
)
Appellee-Plaintiff/)
Cross-Appellant-Counterclaim Defendant.)

No. 30A01-0906-CV-271

APPEAL FROM THE HANCOCK CIRCUIT COURT
The Honorable Richard D. Culver, Judge
Cause No. 30C01-0807-CT-760

August 3, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

KIRSCH, Judge

Yul and Rachel Anderson (collectively, “the Andersons”) appeal, challenging the trial court’s grant of summary judgment in favor of Ronald E. Weldy (“Weldy”) and the denial of the Andersons’ motion for summary judgment. Weldy also cross-appeals, raising several issues, which we consolidate and restate as: whether the trial court granted Weldy’s motion to amend his complaint, and if so, whether this court has subject matter jurisdiction over this appeal because the trial court’s order was not a final judgment.

We affirm in part and remand in part with instructions.

FACTS AND PROCEDURAL HISTORY

Weldy and the Andersons entered into a lease on November 15, 2006, in which the Andersons agreed to rent property owned by Weldy and located in McCordsville, Indiana. The monthly rent was \$1,250.00, with a late payment penalty of \$50.00 for any monthly rent amount paid after the fifth of the month and an additional late payment penalty of \$50.00 for any monthly rent amount paid more than thirty days late. Between February 1, 2007 and July 31, 2007, the Andersons failed to pay the rent due in a timely fashion and only paid a portion of the total rent due.

Weldy filed a complaint on July 24, 2008, alleging breach of contract. The Andersons filed an amended answer to the complaint and a counterclaim, containing claims of slander and intentional interference with a business relationship. On January 13, 2009, Weldy filed an answer to the counterclaim and a motion to amend his initial complaint to add claims for unpaid utility bills, physical damages to the leased property, and fraud against Mr. Anderson. On the same date, the Andersons filed a motion for summary judgment and an objection to

Weldy's motion to amend his complaint. On January 20, 2009, the Andersons filed an answer to Weldy's proposed amended complaint. Weldy filed a cross-motion for summary judgment, and a hearing was held on the summary judgment motions.

On April 29, 2009, the trial court issued an order, denying the Andersons' motion for summary judgment and granting Weldy's cross-motion for summary judgment. The trial court ordered damages in favor of Weldy in the amount of \$5,952.83, \$380.92 in pre-judgment interest, and post-judgment interest at 8% per annum until the judgment was paid. The trial court specifically awarded no attorney fees or costs to Weldy, but ordered that he "shall be entitled to request additional attorney fees and costs as incurred in the collection of this judgment against [the Andersons]." *Appellant's App.* at 11. The trial court never explicitly ruled upon Weldy's motion to amend his complaint. The Andersons now appeal, and Weldy cross-appeals. Additional facts will be added as necessary.

DISCUSSION AND DECISION

I. Weldy's Cross-Appeal Issues

Before we consider the Andersons' arguments, we address the potentially dispositive issue of whether we have subject matter jurisdiction over this appeal because there was no final judgment. In determining this issue, we also consider Weldy's issue of whether the trial court ruled upon his motion to amend his complaint. Subject matter jurisdiction is the power to hear and determine cases of the general class to which any particular proceeding belongs. *In re T.B.*, 895 N.E.2d 321, 329 (Ind. Ct. App. 2008) (quoting *K.S. v. State*, 849 N.E.2d 538, 540 (Ind. 2006)). "[D]ismissal for lack of subject matter jurisdiction takes precedence over

the determination of and action upon other substantive and procedural rights of the parties. Jurisdiction is a question of law we review de novo.” *Id.* (quoting *Young v. Estate of Sweeney*, 808 N.E.2d 1217, 1219 (Ind. Ct. App. 2004) (citation and quotation marks omitted)).

This court has jurisdiction over appeals from final judgments and appeals from interlocutory orders. Ind. Appellate Rule 5. Pursuant to Indiana Appellate Rule 2(H),

A judgment is a final judgment if:

- (1) it disposes of all claims as to all parties;
- (2) the trial court in writing expressly determines under Trial Rule 54(B) or Trial Rule 56(C) that there is not just reason for delay and in writing expressly directs the entry of judgment (i) under Trial Rule 54(B) as to fewer than all the claims or parties, or (ii) under Trial Rule 56(C) as to fewer than all the issues, claims or parties;
- (3) it is deemed final under Trial Rule 60(C);
- (4) it is a ruling on either a mandatory or permissive Motion to Correct Error which was timely filed under Trial Rule 59 or Criminal Rule 16; or
- (5) it is otherwise deemed final by law.

Whether an order was a final judgment determines if the appellate courts have subject matter jurisdiction, and unlike most contentions, the lack of subject matter jurisdiction cannot be waived by the parties. *In re T.B.*, 895 N.E.2d at 330. Neither the parties nor the trial court can confer appellate jurisdiction over an order that is not appealable either as a final judgment or under Trial Rule 54(B). *Id.*

In the present case, the trial court issued an order denying the Andersons’ motion for summary judgment and granting summary judgment in favor of Weldy. In its order, the trial court awarded Weldy \$5,952.83 in damages and awarded no attorney fees or costs.

Therefore, although it never explicitly granted Weldy's motion to amend his complaint, it appears from its order that the trial court impliedly granted the motion as it ruled on some of Weldy's claims in his amended complaint. In its order, the trial court granted Weldy his requested costs for physical damages to the leased property and unpaid utility bills.¹ *Appellant's App.* at 11. The order also denied him attorney fees and costs, although not specifying if these were the requested contractual attorney fees. *Id.* However, we are unable to determine from the state of the record before this court how, or if, the trial court ruled on Weldy's claim of fraud against the Andersons, as contained in his amended complaint, or the request for contractual attorney fees and costs under the lease agreement. Therefore, the trial court's order did not "dispose[] of all claims as to all parties," and the trial court did not "in writing expressly determine[] under Trial Rule 54(B) or Trial Rule 56(C) that there [was] no just reason for delay" and "in writing expressly direct[] the entry of judgment" under that rule "as to fewer than all the claims or parties." Ind. Appellate Rule 2(H). In other words, the trial court's April 29, 2009 order was not a final judgment because it did not make a final determination as to Weldy's fraud claim.

Because the trial court's order is not a final, appealable order, it can be construed as an interlocutory order. Interlocutory appeals are governed by Indiana Appellate Rule 14, and are taken as a matter of right, or accepted by this court as a discretionary interlocutory appeal, after certification by the trial court. Appeals from interlocutory orders for the payment of

¹ We ascertain that the trial court granted Weldy the \$999.93 in physical damages to the leased property because the amount of damages awarded in its order, \$5,952.83, appears to be the sum of \$6,100.00, which was the total amount of delinquent rent and late fees, the \$727.90 Weldy paid for unpaid sewer bills, and the \$999.93 in physical damages to the property minus the \$1,875.00 security deposit.

money are taken as a matter of right by filing a Notice of Appeal with the trial court clerk within thirty days of the entry of the order. Ind. Appellate Rule 14(A)(1). As the trial court's April 29, 2009 order was for the payment of money since it contained an award of damages, it can be construed as an interlocutory order as a matter of right under Appellate Rule 14(A). Thus, we have subject matter jurisdiction over this appeal and may determine the issues. We therefore conclude that the trial court impliedly granted Weldy's motion to amend his complaint as it determined some of the claims contained in his amended complaint. We also determine that the trial court's order was not a final judgment as it did not determine all of Weldy's presented claims. Accordingly, we remand to the trial court with the instruction to make a determination on the remaining claim in Weldy's amended complaint, specifically his claim of fraud, and his claim for contractual attorney fees and costs under the lease agreement.

II. The Andersons' Appeal

When reviewing a grant or denial of summary judgment, we apply the same standard as the trial court. *Jacobs v. Hilliard*, 829 N.E.2d 629, 632 (Ind. Ct. App. 2005), *trans. denied*. We construe all facts and reasonable inferences to be drawn from those facts in favor of the nonmoving party. *Id.* Summary judgment is only appropriate when the designated evidence shows that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. Ind. Trial Rule 56(C); *Id.* The purpose of summary judgment is to terminate litigation about which there can be no material factual dispute and which can be resolved as a matter of law. *Miller v. City of Anderson*, 777 N.E.2d 1100, 1103

(Ind. Ct. App. 2002), *trans. denied* (2003). The trial court's order granting a motion for summary judgment is cloaked with a presumption of validity, and the party appealing from a summary judgment decision has the burden of persuading the court that the grant or denial of summary judgment was erroneous. *Am. Home Assurance Co. v. Allen*, 814 N.E.2d 662, 666 (Ind. Ct. App. 2004), *trans. dismissed* (2005).

The Andersons argue² that the trial court erred when it denied their motion for summary judgment and when it granted summary judgment in favor of Weldy. Specifically, the Andersons contend that the trial court erred in denying summary judgment in their favor because they believe that Weldy failed to respond to their counterclaims in a timely manner, and therefore, the averments contained in the Andersons' counterclaims should have been deemed admitted under Indiana Trial Rule 8(D). The Andersons also claim that it was error to grant summary judgment in favor of Weldy because they believe that there is a genuine issue of material fact as to the their claims of tortious interference with a business relationship and slander.

We first turn to the trial court's denial of the Andersons' motion for summary judgment. This motion sought summary judgment based on Weldy's untimely filing of his answer to the Andersons' counterclaim. The Andersons contended that, because the answer was not timely filed, the averments contained in their counterclaim should have been deemed admitted pursuant to Indiana Trial Rule 8(D). In *Dreyer & Reinbold, Inc. v.*

² We note that the appellant's brief has failed to follow many of the Indiana Appellate Rules. We remind Anderson that he is expected to follow the Appellate Rules in presenting an appeal to this court. Pro-se litigants are held to the same rules and standards as licensed attorneys. *Goossens v. Goossens*, 829 N.E.2d 36, 43 (Ind. Ct. App. 2005).

AutoXchange.com, Inc., 771 N.E.2d 764 (Ind. Ct. App. 2002), *trans. denied*, this court found that Indiana Trial Rule 8(D) does not refer to “the situation where a responsive pleading denying the averments is filed, but in an untimely manner.” *Id.* at 767. This court construed Trial Rule 8(D) as being “applicable only where no responsive pleading is filed whatsoever, or where such pleading is timely filed but fails to deny all of the averments contained in the pleading to which it responds.” *Id.* at 768. Therefore, the application of Trial Rule 8(D) does not apply to the situation here, where Weldy filed his answer to the Andersons’ counterclaim in an untimely manner, and the trial court correctly denied the Andersons’ motion for summary judgment.

The Andersons next argue that the trial court erred in granting summary judgment in favor of Weldy as to his breach of contract claim and in dismissing the Andersons’ counterclaims for tortious interference with a business relationship and slander. As to the breach of contract claim, the designated evidence showed that the Andersons and Weldy entered into a residential lease contract where the Andersons were to pay a monthly rent for the lease of a property. Between February 1, 2007 and July 31, 2007, the total rent due was \$7,500.00, but the Andersons only paid \$2,000.00. *Appellee’s App.* at 23. As a result of failing to pay their monthly rent in a timely manner, the Andersons also owed a total of \$600.00 in late fees. *Id.* at 23, 26. The designated evidence also established that the Andersons damaged the leased property, and the costs to repair these damages was \$999.93. *Id.* at 23, 29-38. Further, the designated evidence showed that the Andersons were delinquent in paying their sewer bill, as was required under the lease, and Weldy had to pay

\$727.90 in order to settle this bill and have sewer services reinstated for the property. *Id.* at 25, 39. Based on this evidence, we conclude that the trial court did not err in granting summary judgment in favor of Weldy as to his breach of contract claim.

The Andersons also contend that the trial court incorrectly granted summary judgment in favor of Weldy as to their counterclaim of tortious interference with a business relationship. The elements of tortious interference with a business relationship are: (1) the existence of a valid business relationship; (2) the defendant's knowledge of the existence of the relationship; 3) the defendant's intentional interference with that relationship; (4) the absence of justification; and (5) damages resulting from the defendant's wrongful interference with the relationship. *Columbus Med. Servs. Org. LLC v. Liberty Healthcare Corp.*, 911 N.E.2d 85, 94 (Ind. Ct. App. 2009). Additionally, our Supreme Court has held that "this tort requires some independent illegal action." *Id.* at 95 (quoting *Brazauskas v. Fort Wayne-South Bend Diocese Inc.*, 796 N.E.2d 286, 291 (Ind. 2003), *cert. denied* (2004)).

In their counterclaim, the Andersons contended that Weldy committed tortious interference with a business relationship when he made statements to a potential client, Layonda Williams ("Williams"), that the Andersons owed him money and would pay Weldy after they finished the work for Williams. *Appellants' App.* at 4. The Andersons claimed that these statements by Weldy caused Williams not to enter into a contract with them and caused them damages. *Id.* at 5.

The designated evidence showed that, at the time that Weldy made the alleged statements to Williams, there was no valid business relationship between Williams and the

Andersons. Specifically, the Andersons had made a bid to do roofing work for Williams, but she had not yet decided who was going to do the work for her. *Appellee's App.* at 44. Therefore, no valid business relationship existed with which Weldy could have interfered. Further, the evidence demonstrated that Weldy did not engage in any illegal conduct when he allegedly spoke with Williams. The evidence showed that Weldy asked Williams if the Andersons were working on her roof. *Id.* She asked why Weldy had inquired about it, and Weldy replied that the Andersons were his tenants, they owed him money, and they had told Weldy that they would pay him after working on Williams's roof. *Id.* This conversation did not constitute "independent illegal action," and the trial court correctly dismissed this claim, and granted summary judgment in favor of Weldy. *Columbus Med. Servs. Org. LLC*, 911 N.E.2d at 95.

The Andersons finally contend that the trial court incorrectly granted summary judgment in favor of Weldy as to their counterclaim of slander. In their counterclaim, the Andersons claimed that Weldy committed slander by making statements to employees at Carplex that the Andersons did not pay their bills and that the car the Andersons had purchased from Carplex was stolen. *Appellants' App.* at 5. The truth is a complete defense in civil actions for libel and slander. *Doe v. Methodist Hosp.*, 690 N.E.2d 681, 687 (Ind. 1997). The designated evidence showed that, as of July 31, 2008, Weldy had learned that the Andersons: (1) had their gas turned off in April 2008 for non-payment of their bill; (2) were behind on their water bill; and (3) were behind on their electric bills. *Appellee's App.* at 25. Further, the Andersons were delinquent on their rent and sewer bills. *Id.* at 23, 25.

Additionally, the evidence demonstrated that, according to Officer Charles Butler of the Indianapolis Metropolitan Police Department, he ran the vehicle identification number of the car purchased by the Andersons and discovered that the car had been reported stolen by the Chicago Police Department. *Id.* at 41. Therefore, the statements made by Weldy to Carplex were truthful, and did not constitute slander. The trial court correctly dismissed the Andersons' counterclaim and granted summary judgment in favor of Weldy.

Affirmed in part and remanded in part with instructions.

FRIEDLANDER, J., and ROBB, J., concur.