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**IN THE
COURT OF APPEALS OF INDIANA**

MAX STILLWELL,

Appellant-Defendant,

vs.

DEER PARK MANAGEMENT,

Appellee-Plaintiff.

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No. 53A04-0612-CV-743

APPEAL FROM THE MONROE CIRCUIT COURT
The Honorable Stephen R. Galvin, Judge
Cause No. 53C06-0607-SC-3963

November 28, 2007

MEMORANDUM DECISION ON REHEARING—NOT FOR PUBLICATION

BAKER, Chief Judge

We grant rehearing for the limited purpose of addressing appellant-defendant Max Stillwell's argument regarding appellee-plaintiff Deer Park's pretrial lack of representation. In our opinion, we concluded that the trial court erred by allowing Deer Park to proceed without legal representation before trial in violation of Small Claims Rule 8. However, we ultimately held that such error was not reversible because Deer Park was, in fact, represented at trial. In so holding, we remarked that "while this issue would have been ripe for a pretrial motion to dismiss when Deer Park was not represented, Stillwell did not file a motion of that nature." Stillwell v. Deer Park Mgmt., 873 N.E.2d 647, 651 (Ind. Ct. App. 2007).

In his petition for rehearing, Stillwell argues that he actually did file a pretrial motion to dismiss. Pet. for Rhg. p. 3 (citing "Appendix, Transcript September 28, page 1, lines 12-16"). However, after scouring the record on appeal, we are unable to find any evidence that Stillwell filed a pretrial motion to dismiss. The only evidence in the record regarding September 28, 2006, is a CCS entry reading, "[h]earing held. Case reset for contested hearing on September 29, 2006 at 3:15 p.m. All parties must appear." Appellant's App. p. 3. Because there is no transcript from the September 28 hearing in the record¹ and there is no evidence that Stillwell filed a pretrial motion to dismiss, our original opinion remains unchanged. In all other respects, we deny Stillwell's petition for

¹ Because the parties "waived record," the only "transcript" the trial court certified for Stillwell's appeal was a summary of proceedings it filed with our court on February 23, 2007. Appellant's App. p. 10. The trial court compiled the summary based on the parties' statements of fact and its own recollection of the proceedings. The summary does not support Stillwell's claim that he filed a motion to dismiss.

rehearing.

BAILEY, J., and VAIDIK, J., concur.