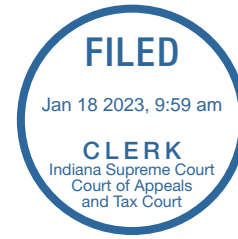


MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as binding precedent, but it may be cited for persuasive value or to establish res judicata, collateral estoppel, or law of the case.



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IN THE COURT OF APPEALS OF INDIANA

Patrick H. McDonald,
Appellant-Defendant,

v.

Mike Royer,
Appellee-Plaintiff

January 18, 2023

Court of Appeals Case No.
22A-PL-1976

Appeal from the Allen Superior
Court

The Honorable Craig J. Bobay,
Judge

Trial Court Cause No.
02D02-2109-PL-387

Crone, Judge.

Case Summary

- [1] Patrick H. McDonald, pro se, appeals the trial court's entry of summary judgment in favor of Mike Royer. Concluding that McDonald violated numerous provisions of Indiana Appellate Rule 46, including the obligation to present cogent argument, we conclude that he has waived all issues for appeal. And finding that he acted in procedural bad faith, we grant Royer's request for appellate attorney's fees. Therefore, we affirm and remand to the trial court for a determination of those fees.

Facts and Procedural History

- [2] The undisputed facts indicate that in March 2020 and then in April 2021 Royer obtained money judgments against McDonald in the Allen Superior Court, the first in the amount of \$21,329.76 and the second in the amount of \$3,308.39.¹ As of September 2021, both judgments remain unpaid. Accordingly, on September 21, 2021, Royer filed a motion for proceedings supplemental and foreclosure action against McDonald seeking to foreclose those judgment liens against real property owned by McDonald on Brooklyn Avenue in Fort Wayne.
- [3] On March 31, 2022, Royer filed a motion for summary judgment on his foreclosure action. McDonald filed a pro se reply to the motion. On June 29, 2022, the trial court entered summary judgment in favor of Royer. Specifically, the trial court concluded that Royer was entitled to foreclose on his judgment

¹ Both judgments include accrued interest at a rate of 8% per annum through June 22, 2022.

liens against McDonald as owner of the Brooklyn Avenue property. The trial court entered an order against McDonald in the amount of \$24,638.15 and further ordered that the Brooklyn Avenue property be sold at a sheriff's sale. McDonald filed a pro se motion to correct error, which the trial court denied. This appeal ensued.

Discussion and Decision

[4] At the outset, we note that McDonald has chosen to proceed pro se on appeal. We have explained the perils of such a decision.

It is well settled that pro se litigants are held to the same legal standards as licensed attorneys. This means that pro se litigants are bound to follow the established rules of procedure and must be prepared to accept the consequences of their failure to do so. These consequences include waiver for failure to present cogent argument on appeal. While we prefer to decide issues on the merits, where the appellant's noncompliance with appellate rules is so substantial as to impede our consideration of the issues, we may deem the alleged errors waived. We will not become an advocate for a party, or address arguments that are inappropriate or too poorly developed or expressed to be understood.

Basic v. Amouri, 58 N.E.3d 980, 983-84 (Ind. Ct. App. 2016) (citations and quotation marks omitted).

[5] Here, McDonald's noncompliance with appellate rules is so substantial that it has impeded our consideration of the issues raised in this appeal. His appellate brief contains "a multitude of deficiencies and violates nearly every provision of App. R. 46(A) in some way." *Ramsey v. Rev. Bd. of Ind. Dep't of Workforce Dev.*,

789 N.E.2d 486, 487 (Ind. Ct. App. 2003). For example, Appellate Rule 46(A)(4) provides that the statement of issues section “shall concisely and particularly describe each issue presented for review.” McDonald’s statement of issues section is argumentative, rambling, and incoherent and certainly does not satisfy the requirements of the appellate rule or sufficiently apprise this Court of the issues presented for review. *See id.* at 488.

- [6] We now turn to the statement of facts section. An appellant is required to provide a narrative statement of the facts presented in accordance with the standard of review appropriate to the judgment or order being appealed. Ind. Appellate Rule 46(A)(6). The statement of facts must also be devoid of argument. *Ramsey*, 789 N.E.2d at 488. McDonald’s statement of facts is rambling and argumentative.
- [7] Most significantly, McDonald’s argument section is not cogent. Appellate Rule 46(A)(8) lists the requirements for the argument section of an appellant’s brief including that it must “contain the contentions of the appellant on the issues presented, supported by cogent reasoning. Each contention must be supported by citations to the authorities, statutes, and the Appendix or parts of the Record on Appeal relied on, in accordance with Rule 22.” McDonald’s entire argument is irrelevant and nonresponsive to the trial court’s current entry of summary judgment. First, other than a general citation to Indiana’s summary judgment standard, McDonald’s argument section contains not a single citation to legal authority or to the record. Further, his incredibly short yet convoluted argument focuses entirely on the alleged facts and events that led to Royer, in

McDonald's opinion, erroneously obtaining money judgments against him in the first place. Simply put, that ship has sailed. McDonald fails to address or even mention the material facts, disputed or otherwise, that led to the current entry of summary judgment in Royer's favor.

- [8] We further note that McDonald's brief is unnecessarily hostile in tone throughout. "Petulant grouching" and "hyperbolic barbs" do not suffice as cogent argument as required by our appellate rules. *County Line Towing, Inc. v. Cincinnati Ins. Co.*, 714 N.E.2d 285, 291 (Ind. Ct. App. 1999), *trans. denied* (2000). Moreover, "[a] brief cannot 'be used as a vehicle for the conveyance of hatred, contempt, insult, disrespect, or profession[al] discourtesy of any nature for the court of review, trial judge, or opposing counsel.'" *Cochran v. Cochran*, 717 N.E.2d 892, 895 n.3 (Ind. Ct. App. 1999) (quoting *Pittsburgh, Cincinnati, Chicago & St. Louis Ry. Co. v. Muncie & Portland Traction Co.*, 166 Ind. 466, 466, 77 N.E. 941, 942 (1906)), *trans. denied* (2000).
- [9] In sum, "[w]hile we are often tolerant of minor infractions of the appellate rules so that we may decide appeals on their merits, those rules are nonetheless binding on all persons bringing appeals to this court." *Ramsey*, 789 N.E.2d at 490 (citation omitted). In the instant case, because McDonald's noncompliance with the appellate rules substantially impedes us from reaching the merits of this appeal, we are compelled to find that the issues raised are waived.
- [10] Moreover, just as pro se litigants are required to follow all of the rules of appellate procedure, they are liable for attorney fees when they disregard the

rules in bad faith. *Boczar v. Meridian St. Found.*, 749 N.E.2d 87, 95 (Ind. Ct. App. 2001). Royer requests an award of his appellate attorney fees.² Our discretion to award attorney fees under Indiana Appellate Rule 66(E) is limited to instances when “an appeal is permeated with meritlessness, bad faith, frivolity, harassment, vexatiousness, or purpose of delay.” *Thacker v. Wentzel*, 797 N.E.2d 342, 346 (Ind. Ct. App. 2003). Procedural bad faith occurs when a party flagrantly disregards the form and content requirements of the rules of appellate procedure, omits and misstates relevant facts appearing in the record, and files briefs written in a manner calculated to require the maximum expenditure of time both by the opposing party and the reviewing court. *Staff Source, LLC v. Wallace*, 143 N.E.3d 996, 1012 (Ind. Ct. App. 2020). We agree with Royer that McDonald’s appellate failures amount to procedural bad faith, and we conclude that an award of appellate attorney fees is appropriate in this case. *See Basic*, 58 N.E.3d at 986 (awarding attorney fees based on pro se litigant’s procedural bad faith). Accordingly, we affirm and remand for a determination of Royer’s appellate attorney fees pursuant to Indiana Appellate Rule 66(E).

[11] Affirmed and remanded.

May, J., and Weissmann, J., concur.

² Royer claims he has incurred \$5,016.50 in appellate attorney’s fees. Appellee’s App. Vol. 2 at 223-24.