MEMORANDUM DECISION

APPELLANT, PRO SE

Andrew Young
Wadsworth, Illinois

ATTORNEY FOR APPELLEE

Rodney Pol, Jr.
Assistant City Attorney
Gary, Indiana

IN THE COURT OF APPEALS OF INDIANA

Andrew Young,
Appellant-Defendant,

v.

City of Gary,
Appellee-Plaintiff

December 19, 2022

Court of Appeals Case No. 21A-OV-2368

Appeal from the Lake Superior Court

The Honorable Gina L. Jones, Judge

Trial Court Cause No. 45D10-1608-OV-3

Vaidik, Judge.

Case Summary

[1] Andrew Young appeals the trial court's judgment against him in this ordinance-violation case brought by the City of Gary. We affirm.

Facts and Procedural History

[2] In May 2009, the City of Gary's Director of Code Enforcement, Cassandra Carter, issued citations to Young relating to his vacant commercial property and building at 810 W. Ridge Road. The citations alleged that Young "create[d] a nuisance with excessive amounts of trash and debris and treelimbs," in violation of Gary Municipal Code 95.002, and "fail[ed] to remove treelimbs," in violation of Gary Municipal Code 95.091(b). Appellant's App. Vol. II pp. 2-3. A case was opened in Gary City Court and remained pending for several years. Before each pretrial hearing—nearly forty in total—Carter returned to the property and saw that the condition had not improved. At some point, attorney Carrie Castro was appointed to preside over the case as "temporary judge." The case went to trial in June 2015. In February 2016, Castro issued a judgment finding that Young had "continuously" violated the ordinances for 2,208 days, from May 19, 2009, until June 5, 2015, and imposed fines of $50 per day for the violation of Section 95.002, for a total of $110,400, and $20 per day for the violation of Section 95.091(b), for a total of $44,160. *Id.* at 7. However, noting that Young "made an effort to bring the property into compliance after trial and his efforts have been taken under advisement as a mitigating factor," the court reduced the $110,400 fine to $100,000 and made the fines concurrent, resulting in a total fine of $100,000. *Id.*

[3] On February 26, 2016, Young filed a request for trial de novo with the Lake County Clerk of Courts under Indiana Trial De Novo Rule 2. The same day, he served the City with a copy of his request. The case was assigned to Judge

Sheila Moss. On March 16, Young moved for a change of judge, which Judge Moss granted the same day. On March 23, before a new judge had assumed jurisdiction, Young moved to have the case dismissed because the City had not yet re-filed the complaints in the trial de novo matter. He argued that under Trial De Novo Rule 2(E) the City was required to do so within fifteen days of being served with the request for trial de novo.

[4] The case, including Young's motion to dismiss, sat idle for several months while multiple judges declined jurisdiction. On August 30, 2016, Judge John Pera accepted the case and set a status conference for October 11. On September 27, the City re-filed the complaints. At the October 11 hearing, the trial court denied Young's motion to dismiss.

[5] The trial de novo was eventually scheduled for April 30, 2018. A month before trial, the City moved under Trial Rule 41(E) to have the trial de novo proceeding dismissed and the Gary City Court judgment reinstated based on Young's alleged failure to comply with court orders. The trial court granted the City's motion. Young appealed, and in July 2019 we reversed and remanded to the trial court for further proceedings. *Young v. City of Gary*, No. 18A-OV-1708, 2019 WL 3295086 (Ind. Ct. App. July 23, 2019).

[6] On remand, in February 2021, Young moved to dismiss the charges against him, claiming that Castro was improperly appointed to preside over the case in the Gary City Court and that therefore all her actions in the case, including the final judgment, were void. In response, the City argued that Young waived the

issue by failing to raise it in the city court and that in any event the city court's judgment had been vacated when Young initiated the trial de novo proceeding. The trial court denied Young's motion.

[7] The trial de novo was held on July 20, 2021. Young and his attorney both appeared, but Young said his attorney, who had been representing him for "a few years," was not "competent" and he wanted to represent himself. Tr. pp. 15-28. The trial court denied his request, explaining, "You chose to go to trial. You chose her to represent you. You cannot go midstream and choose not to have representations." *Id.* at 29. After hearing the evidence, the court took the case under advisement.

[8] In September 2021, the court issued its written judgment. The court found that Young had violated the ordinances at issue but, "[i]n an effort to craft a balance of justice and fairness with the non-compliance of [Young] and the slow enforcement on behalf of the City of Gary," "applied a credit" to Young "for his attempts to rectify the violations after [the city-court trial]." Appellant's App. Vol. II p. 13. The court ordered Young to pay $36,000 for his violation of Section 95.002 and $14,600 for his violation of Section 95.091(b), for a total of $50,600.

[9] Young now appeals.

Discussion and Decision

I. March 2016 Motion to Dismiss

[10] Young contends the trial court erred by denying the motion to dismiss he filed on March 23, 2016. He based that motion on Trial De Novo Rule 2(E), which provides:

> Promptly after the Request for Trial *de novo* is filed, the clerk of the circuit court shall send notice of the Request to the prosecuting attorney or the municipal counsel with an order from the trial *de novo* court that the prosecuting attorney or municipal counsel file a duplicate infraction or ordinance complaint and summons with the clerk of the circuit court charging the infraction or ordinance violation as originally filed with the city or town court. Upon receiving the notice of the Request, the prosecutor or municipal counsel shall within fifteen (15) days file the duplicate summons and complaint or, in the prosecutor's or municipal counsel's discretion, notify the clerk in writing that no proceeding will be filed. If the clerk is notified that no proceeding will be filed, the clerk shall bring the case to the attention of the judge who shall issue an order of dismissal.

Focusing on the second sentence, Young argues the City received "notice" of his request for trial de novo when he served the City with the request on February 26, 2016, and that the City then had fifteen days to re-file the complaints. The City didn't do so until September 2016, after Judge Pera accepted the case. Young asserts the delay "stripped the court of subject-matter jurisdiction to preside over the re-issued charges[.]" Appellant's Br. p. 6.

[11] This argument fails for two reasons. First, the "notice" referred to in the second sentence is the notice described in the preceding sentence: the notice sent by the clerk of court "with an order from the trial *de novo* court that the prosecuting attorney or municipal counsel file a duplicate infraction or ordinance complaint and summons[.]" Only when that notice and order are received is the re-filing requirement triggered. Here, we see no indication in the record that the notice and order were ever issued, let alone received by the City (perhaps because Young successfully moved for change of judge on March 16, 2016, shortly after filing his request for trial de novo). Second, even if Young's service of his request on the City had triggered the re-filing requirement, he cites no authority in support of his contention that the City's subsequent delay deprived the trial court of subject-matter jurisdiction. Young has not shown any error in the denial of his March 2016 motion to dismiss.

II. February 2021 Motion to Dismiss

[12] Young also argues the trial court erred by denying the motion to dismiss he filed in February 2021. In that motion, he claimed Castro was improperly appointed to preside over the case in the Gary City Court and that as a result all her actions in the case, including the final judgment, were void. Young doesn't cite anything in the record setting forth the circumstances of Castro's appointment or supporting his argument that it was improper, so the argument is waived. *See* Ind. Appellate Rule 46(A)(8)(a). Moreover, the City notes, as it did in the trial court, that any actions taken by Castro were rendered moot when the city-court judgment was vacated based on Young's request for trial de

novo. *See Taylor v. State*, 120 N.E.3d 635, 638 (Ind. Ct. App. 2019) (agreeing with defendant that his right to a trial de novo "is a right to a fresh start—that 'anything regarding the prior proceeding is not relevant'"). Young offers no response to that point in his reply brief. He has not shown any error in the trial court's denial of his February 2021 motion to dismiss.

III. Request for Self-Representation

[13] Young contends the trial court erred by denying his request—made on the morning of trial—to dismiss his attorney and represent himself. He doesn't cite any authority in support of his argument, in violation of Appellate Rule 46(A)(8)(a). He asserts "there had been a critical breakdown in the relationship between client and counsel," Appellant's Br. p. 13, but he doesn't cite anything in the record to support that claim. Young has not shown any error. And even if the trial court erred, Young doesn't explain how he was prejudiced by counsel's representation. A trial-court error is not grounds for reversal if it doesn't "affect the substantial rights of the parties." Ind. Appellate Rule 66(A).

IV. Sufficiency of the Evidence

[14] Young contends the evidence is insufficient to support the trial court's judgment. In reviewing such a claim, we will consider only the evidence favorable to the judgment and the reasonable inferences therefrom. *Brant v. City of Indianapolis*, 975 N.E.2d 376, 379 (Ind. Ct. App. 2012). We will not reweigh the evidence or judge the credibility of witnesses, and we will affirm if there is

substantial evidence of probative value to establish each material element of the claim. *Id.*

A. Property Boundaries

[15] Young argues "there was a dispute as to whether certain items were within or without the property." Appellant's Br. p. 10. He notes that a witness for the City was asked about Exhibit 7—a photograph that shows tree limbs on both sides of a chain-link fence—and was unable to testify whether the fence "delineates" the property line. *Id.* But many other photographs were admitted, and witnesses testified unequivocally that they show significant debris on Young's property, including the building, which was indisputably on the property. *See* Exs. 3-23; Tr. pp. 39-84. Young doesn't address any of that evidence. The fact that "certain items" in one photograph might have been off Young's property doesn't call into doubt the sufficiency of this other evidence.

B. Continuing Violations

[16] Young also contends the evidence is insufficient to support the trial court's finding that his violations continued from May 2009 to June 2015.[1] We disagree. Carter, the City's former Director of Code Enforcement, testified that when she went to the property in May 2009, she saw that the doors of the

[1] In addition, Young asserts the trial court was not allowed to find continuing violations because the complaints didn't specifically allege continuing violations. He doesn't cite any authority that supports this argument. He claims he "had no idea that the potential fines could be $50,000.00," Appellant's Br. p. 7, but based on the city-court proceedings, Young was well aware the City was claiming continuing violations.

building on the property were open, there was debris inside the building, and there were tree limbs and high weeds outside the building. She said she then returned to the property before each hearing in city court—there were nearly forty hearings between the original citation and the city-court trial in June 2015—and saw that the condition had not improved. While she couldn't recall whether this particular property had been cleaned up by the time of the city-court trial, she said that, if it had been, the case probably wouldn't have gone to trial. Additionally, Peter Julovich, a code enforcement officer for the City, testified that he inspected the property "shortly before" the city-court trial and saw open doors, trash, tires, and tree limbs. Tr. p. 74. Both witnesses testified the property wasn't meaningfully cleaned up until after the city-court trial. The trial court did not err by finding a continuing violation.

[17] Affirmed.

Riley, J., and Bailey, J., concur.