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IN THE
COURT OF APPEALS OF INDIANA

Michelle L. Dridi, Power of Attorney for Dennis L. Fulner, and Dennis L. Fulner,

Appellants-Defendants,

v.

Cole Kline LLC, d/b/a Hope Public Adjusters,

Appellee-Plaintiff.

June 14, 2021

Court of Appeals Case No. 20A-PL-2112

Appeal from the Johnson Superior Court

The Honorable Kevin M. Barton, Judge

Trial Court Cause No. 41D01-2006-PL-81

Pyle, Judge.

Statement of the Case

[1] Dennis Fulner ("Fulner") appeals the trial court's order finding that he breached his contract with Cole Kline, LLC d/b/a Hope Public Adjusters

("Hope")[1] and ordering him to pay Hope $37,562.27. As best we can tell, Fulner argues that his contract with Hope was invalid and that he should have received a larger settlement. However, because Fulner has violated numerous provisions of Appellate Rule 46, including the failure to present cogent arguments, we conclude that he has waived appellate review of his issues. We, therefore, affirm the trial court's judgment.

[2] We affirm.

Facts

[3] In January 2019, Fulner's Greenwood home was damaged in a fire. At the time of the fire, Fulner had a home insurance policy with American Family Mutual Insurance Company ("American Family"). Following the fire, in February 2019, Fulner executed a power of attorney naming his daughter, Michelle Dridi ("Dridi"), attorney in fact so that she could negotiate a settlement with American Family.

[4] In February 2019, American Family proposed to settle Fulner's claim for $79,932.27. Two months later, in April 2019, American Family increased the proposed settlement to $88,932.27. Also in April 2019, American Family proposed to settle Fulner's claim for personal property for $2,005.81.

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[1] Cole Kline ("Kline") is the owner of Hope, which is a public adjusting firm that "assist[s] policy holders and the insured party through the claiming process to ensure they receive a fair settlement from their insurance company." (Tr. Vol. 2 at 9).

[5] After rejecting American Family's settlement offers, Fulner, through Dridi, who was acting as his attorney in fact, entered into a contract ("the Contract") with Hope in June 2019. The Contract authorized Hope to discuss and negotiate the settlement for Fulner's home with American Family. The Contract further provided that Hope would be paid ten percent (10%) of "the settlement to assist in the preparations and adjusting the coverages attached to the policy that apply to the loss and/or settlement awarded from the date of loss." (Appellee's App. at 6). In addition, the Contract provided that it might "be necessary to incur professional services to recover a proper settlement." (Appellee's App. at 6). The Contract also provided that Hope made no promises or guarantees regarding the outcome of the Contract and that the "prevailing party, in enforcing any terms or provisions of the [Contract], sh[ould] be entitled to collect its reasonable attorney's fees and costs." (Appellee's App. at 6).

[6] When Hope's negotiations with American Family reached an impasse, Hope invoked an arbitration provision in Fulner's insurance policy. During the arbitration process, Hope paid an appraiser $6,872.50 and an umpire $1,675.50. After the arbitration process had been completed, American Family increased its settlement offer to an actual cash value loss determination of $237,892.71.

[7] Based on this settlement offer, Hope advised Fulner that he owed Hope $32,337.27. Hope's fee included: (1) $23,789.27, which was ten percent (10%) of the settlement that Hope had negotiated with American Family; (2) $6,872.50, which Hope had paid the appraiser; and (3) $1,675.50, which Hope had paid the umpire.

[8] After Fulner refused to pay Hope, Hope filed a breach of contract action against Fulner and Dridi in June 2020. The trial court held a bench trial in October 2020 and heard evidence of the facts as set forth above. After hearing this evidence, the trial court concluded that Fulner had breached the Contract and ordered him to pay Hope $37,562.27, which included $23,789.27 for the settlement fee, $6,872.50 for the appraiser's fee, $1,675.50 for the umpire's fee, and $5,225.00 for attorney fees.[2] Fulner now appeals.

Decision

[9] At the outset, we note that Fulner has chosen to proceed pro se. The law is well-settled that pro se litigants are held to the same legal standards as licensed attorneys. *Basic v. Amouri*, 58 N.E.3d 980, 983 (Ind. Ct. App. 2016). "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." *Id*. at 983-84. These consequences include waiver for failure to present cogent arguments on appeal. *Id*. at 984. Although we prefer to decide issues on the merits, where the appellant's noncompliance with the rules of appellate procedure is so substantial that it impedes our appellate consideration of the errors, we may deem the alleged errors waived. *Id.*

[10] "The purpose of our appellate rules, Ind. Appellate Rule 46 in particular, is to aid and expedite review and to relieve the appellate court of the burden of

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[2] The trial court entered judgment in favor of Dridi and against Hope.

searching the record and briefing the case." *Ramsey v. Rev. Bd. of Ind. Dep't of Workforce Dev.*, 789 N.E.2d 486, 487 (Ind. Ct. App. 2003). "'We will not become an advocate for a party, nor will we address arguments which are either inappropriate, too poorly developed or improperly expressed to be understood.'" *Id.* (quoting *Terpstra v. Farmers and Merch. Bank*, 483 N.E.2d 749, 754 (Ind. Ct. App. 1985), *trans. denied*).

[11] Here, Fulner's appellate brief contains "a multitude of deficiencies and violates nearly every provision of App. R. 46(A) in some way." *See Ramsey*, 789 N.E.2d at 487. For example, Appellate Rule 46(A)(4) provides that the statement of issues section "shall concisely and particularly describe each issue presented for review." Fulner's statement of issues section sets forth no issues. Rather, it includes references to a "Lawsuit Bad Faith" that Fulner filed against American Family as well as Fulner's "attempt to avoid the Fraud, Bad Faith, Breach of Contract, Lies told, Lies at trial . . . that Cole Kline, American Family and [the appraiser] had done all together in this house fire claim to the victims [Fulner and Dridi]." (Fulner's Br. 4-5). Fulner's references certainly do not satisfy the requirements of the appellate rule or sufficiently apprise this Court of the issues presented for review. *See Ramsey*, 789 N.E2d at 488.

[12] Appellate Rule 46 next requires an appellant to provide a statement of case, which "shall briefly describe the nature of the case, the course of the proceedings relevant to the issues presented for review, and the disposition of these issues by the trial court[.]" App. R. 46(A)(5). Rather than complying with this rule, Fulner has crafted a statement of the case that is argumentative in

nature and does not contain any references to the course of the proceedings or the disposition of the issues relevant to this appeal. For example, Fulner argues that Hope's "lawsuit . . . is an attempt to avoid and legalize the Fraud, Bad Faith, Breach of Contract, Lies told, Lies at trial, to split up, and judge on" the "Lawsuit – Bad Faith" that Fulner filed against American Family. (Fulner's Br. 6). Fulner also argues that the trial court judge in this case was "helping to legalize the Fraud, Bad Faith, Breach of Contract, and Lies told, Lies at the trial done by Cole Kline, [the appraiser] and American Family." (Fulner's Br. 6). Fulner has obviously not complied with Rule 46(A)(5) and we "do not look favorably upon disparaging and disrespectful language in briefs with regard to this Court or the trial courts of this state." *Small v. Centocor, Inc.*, 731 N.E.2d 22, 31 (Ind. Ct. App. 2000), *trans. denied*.

[13] 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. App. R. 46(A)(6). Here, Fulner should have presented the facts in a light most favorable to the judgment. *See Harris v. Copas*, 165 N.E.3d 611, 617 (Ind. Ct. App. 2021). However, he failed to do so.

[14] Further, the statement of facts must also be devoid of argument. *Ramsey*, 789 N.E.2d at 488. Here, however, Fulner's statement of facts is almost purely argument and certainly does not provide a narrative statement of the facts presented in a light most favorable to the judgment. More troubling is that Fulner's facts section again contains argument and unsupported accusations

against the trial court judge. For example, Fulner argues that Kline, the appraiser, and the trial court judge worked together with American Family to "force [a] change [in] the policy[.]" (Fulner's Br. 7). Fulner also accuses Kline, the appraiser, and the trial court judge of acting fraudulently and in bad faith.

[15] Appellate Rule 46 next requires an appellant to provide a summary of argument section, which "should contain a succinct, clear, and accurate statement of the arguments made in the body of the brief." App. R. 46(A)(7). Here, however, Fulner's summary of argument section does not contain a clear and accurate statement of the arguments. Rather, Fulner merely continues to accuse the trial court judge of "help[ing] [Kline and the appraiser] on doing the Fraud by ma[]king these Lies and Fraud all legal even though they break the Rules of the court, laws of Indiana, and laws of our country." (Fulner's Br. 9).

[16] We finally reach the argument section of Fulner's appellate brief, which should contain his contentions, supported by cogent reasoning and relevant authority, as to why the trial court committed reversible error. *See Ramsey*, 789 N.E.2d at 489 (citing App. R. 46(A)(8)). Fulner's arguments also fail to meet these requirements. First, Fulner fails to support his arguments with cogent argument or citation to relevant authority. Indeed, Fulner cites not one case in his appellate brief, and most of his citations are to the exhibits that were admitted into evidence at trial. A party waives an issue where the party fails to develop a cogent argument or provided adequate citation to authority and portions of the record. *In re Garrard*, 985 N.E.2d 1097, 1104 (Ind. Ct. App. 2013) (citing *Ramsey*, 789 N.E.2d at 490). Fulner's lack of cogent argument impedes our

ability to provide meaningful appellate review of any of his apparent issues. In addition, in contravention of Appellate Rule 46(A)(8), Fulner's brief does not include a statement of an applicable standard of review.

[17] We further note that Fulner's brief is unnecessarily hostile in tone throughout and impugns Kline, the appraiser, and the trial court judge. "'Petulant grousing' and 'hyperbolic barbs' do not suffice as cogent argument as required by our appellate rules. 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." *Basic*, 58 N.E.3d at 985 (internal citations omitted).

[18] "'While 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 (quoting *Sartain v. Blunck*, 453 N.E.2d 324, 325 (Ind. Ct. App. 1983)). Here, because Fulner'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. *See Ramsey*, 789 N.E.2d at 490 (holding that the appellant's substantial noncompliance with the appellate rules resulted in waiver of his issues on appeal). *See also Basic*, 58 N.E.3d at 980.

[19] Affirmed.

Najam, J., and Tavitas, J., concur.