

## MEMORANDUM DECISION

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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APPELLANT, PRO SE

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ATTORNEYS FOR APPELLEE

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## IN THE COURT OF APPEALS OF INDIANA

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Laurel Whitt,  
*Appellant-Defendant*

v.

Nortac Properties, LLC,  
*Appellee-Plaintiff.*

December 20, 2022

Court of Appeals Case No.  
21A-PL-1203

Appeal from the Wayne Circuit  
Court

The Honorable David A. Kolger,  
Judge

Trial Court Cause No.  
89C01-2003-PL-13

**Pyle, Judge.**

### Statement of the Case

- [1] Laurel Whitt (“Whitt”), pro se, appeals the trial court’s order granting Nortac Properties, LLC’s (“Nortac”) motion for judgment on the pleadings. Whitt

argues that the trial court erred when it granted Nortac's motion for judgment on the pleadings. Specifically, Whitt argues that her amended answer was a responsive answer and that judgment on the pleadings should not have been granted. Concluding that the trial court erred when it granted Nortac's motion, we reverse the trial court's judgment and remand for further proceedings.

[2] We reverse and remand for further proceedings.

### **Issue**

Whether the trial court erred when it granted Nortac's motion for judgment on the pleadings.

### **Facts**

[3] In May 2017, Whitt and Nortac entered into a contract for the sale of real estate. In March 2020, Nortac filed with the trial court a fifteen-paragraph complaint for breach of contract and damages. Paragraph nine of Nortac's complaint contained specific allegations detailing Whitt's breach of the contract. Nortac alleged that Whitt had: (a) failed to pay the monthly contract payments for the last twelve months; (b) failed to pay the monthly contract payments by the tenth of each month for the last twenty-nine months; (c) offered to sublet or sell the property to another individual without Nortac's consent; (d) failed to make the balloon payment by October 2018 as outlined in the contract; (e) failed to maintain insurance on the property; (f) failed to maintain utility payments on the property; and (g) failed to pay the property taxes on the property.

- [4] In April 2020, Whitt filed a pro se answer and counterclaim with the trial court. In Whitt’s answer and counterclaim, Whitt both admitted and denied portions of paragraph nine of Nortac’s complaint, but she did not respond to the other fourteen paragraphs. Further, Whitt listed a large number of defenses and counterclaims including equitable estoppel, breach of implied warranty of good faith and fair dealing, no breach of contract, failure to disclose, unclean hands, invalid or illegal contract, duress, assumption of risk, lack of consideration, contributory negligence, estoppel by laches, waiver, frustration of purpose, public policy, lack of venue, and fraud.
- [5] In May 2020, Nortac filed a motion to strike Whitt’s answer and counterclaim. Nortac argued that Whitt’s pleading was “non-responsive and immaterial” because Whitt had failed to address the majority of Nortac’s asserted claims. (Appellee’s App. Vol. 2 at 24). Specifically, Nortac argued that Whitt had failed to properly admit or deny all of its allegations, as she had only admitted and denied the allegations of paragraph nine. Further, Nortac argued that Whitt’s defenses were “immaterial to the issues” raised by Nortac and should be stricken and that her counterclaims were “impertinent” and “scandalous” and should also be stricken. (Appellee’s App. Vol. 2 at 24). In July 2020, Whitt filed a motion for summary judgment.
- [6] In September 2020, the trial court held a hearing to address Whitt’s motion for summary judgment and Nortac’s motion to strike. The trial court denied Whitt’s motion for summary judgment and ordered Whitt to file an amended answer. The trial court did not strike Whitt’s initial answer.

[7] In October 2020, Whitt filed a pro se amended answer and counterclaim. In her amended answer and counterclaim, Whitt denied “each and every allegation” that Nortac had made in paragraph nine. (Appellant’s App. 62). Whitt further argued that her contract with Nortac was unenforceable for various reasons. Additionally, Whitt’s counterclaim included allegations of intentional interference with contractual relations and defamation against Nortac.

[8] In November 2020, Nortac filed its response to Whitt’s amended answer and counterclaim. In its response, Nortac denied the allegations Whitt had made in her counterclaim. In January 2021, Nortac filed with the trial court a motion for judgment on the pleadings pursuant to Indiana Trial Rule 12(C). Specifically, Nortac argued that Whitt’s amended answer and counterclaim failed as a “responsive pleading” under Indiana Trial Rule 8(B) and “d[id] not address the majority of [Nortac’s] claims asserted” because Whitt had “only denie[d] paragraph 9.” (Appellee’s App. Vol. 2 at 41-42). Nortac argued that “[t]he time for pleadings [was] now closed, and with [Whitt] [having] fail[ed] to ever submit and file a responsive pleading, Nortac should be entitled to judgment on the pleadings” pursuant to Indiana Trial Rule 12(C). (Appellee’s App. Vol. 2 at 42). In May 2021, following a brief hearing, the trial court granted Nortac’s motion for judgment on the pleadings. In its order, the trial court stated:

4. Indiana Trial Rule 8(B) provides as follows: “A responsive pleading shall state in short and plain terms the pleader’s

defenses to each claim asserted and shall admit or controvert the averments set forth in the preceding pleading.”

5. [Whitt’s] Amended Answer also fails as a “responsive pleading,” as it does not address the majority of [Nortac’s] claims asserted. [Whitt] fails to either admit or deny the averments set forth in [Nortac’s] Petition for Ejectment and Complaint for Breach of Contract and Damages, as [Whitt] only denies Paragraph 9.

6. The time for pleadings is now closed, and with [Whitt] failing to submit and file a responsive pleading, Nortac is entitled to judgment on the pleadings, in accordance with Indiana Trial Rule 12(C).

(Appellant’s App. 19-20).

[9] Whitt now appeals.

## Decision

[10] At the outset, we note that Whitt has chosen to proceed pro se. It is well settled that pro se litigants are held to the same legal standards as licensed attorneys. *Evans v. State*, 809 N.E.2d 338, 344 (Ind. Ct. App. 2004), *trans. denied*. Thus, 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.*

[11] Whitt argues that the trial court erred when it granted Nortac’s motion for judgment on the pleadings. Judgment on the pleadings is available where it is clear from the face of the pleadings that one party is entitled to prevail as a matter of law. Indiana Trial R. 12(C); *ESPN, Inc. v. Univ. of Notre Dame Police*

*Dep't.*, 62 N.E.3d 1192, 1195 (Ind. 2016). Pleadings consist of a complaint and an answer, a reply to any counterclaim, an answer to a cross-claim, a third-party complaint, an answer to a third-party complaint, and any written instruments attached to a pleading. *Hendricks Cty. v. Green*, 120 N.E.3d 1118, 1122 (Ind. Ct. App. 2019), *trans. denied*. We review the trial court's ruling on a motion for judgment on the pleadings de novo. *ESPN*, 62 N.E.2d at 1195.

[12] Whitt argues that the trial court's order granting Nortac's motion for judgment on the pleadings is erroneous because her amended answer is a responsive pleading pursuant to Indiana Trial Rule 8. We agree. Indiana Trial Rule 8(B) provides that "[a] responsive pleading shall state in short and plain terms the pleader's defenses to each claim asserted and shall admit or controvert the averments set forth in the preceding pleading." Additionally, Indiana Trial Rule 8(D) provides:

Averments in a pleading to which a responsive pleading is required, except those pertaining to amount of damages, are admitted when not denied in the responsive pleading.  
Averments in a pleading to which no responsive pleading is required or permitted shall be taken as denied or avoided.

*See also Otter Creek Trading Co., Inc. v. PCM Enviro PTY, LTD*, 60 N.E.3d 217, 225 (Ind. Ct. App. 2016) (holding that defendant's response to plaintiff's breach of contract claim indicating that it had never entered into an agreement with an Australian company did not address any allegations in plaintiff's complaint and thus defendant had impliedly admitted those allegations), *trans. denied*.

[13] Here, the crux of Nortac's complaint is its assertions that Whitt had breached the terms of her contract with Nortac. Nortac's specific allegations regarding Whitt's breach are detailed in paragraph nine, and Whitt denied each and every allegation of paragraph nine in her amended answer and counterclaim. Even if every other paragraph of Nortac's complaint outside of statements related to damages are deemed admitted due to Whitt's failure to deny them pursuant to Indiana Trial Rule 8(D), judgment on the pleadings would still be inappropriate because Whitt has still denied every allegation related to her breach.

[14] The trial court's order granted Nortac's motion for judgment on the pleadings because it found that Whitt's amended answer was not a responsive pleading. Because we find that Whitt's amended answer was a responsive pleading, we hold that the trial court erred when it granted Nortac's judgment on the pleadings. Therefore, we reverse and remand to the trial court for further proceedings.

[15] Reversed and remanded for further proceedings.

May, J., concurs.

Brown, J., dissents with opinion.

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Laurel Whitt,  
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v.

Nortac Properties, Inc.,  
*Appellee-Plaintiff.*

Court of Appeals Case No.  
21A-PL-1203

**Brown, Judge.**

[16] I respectfully dissent and would affirm the trial court. Ind. Trial Rule 8 provides:

(B) Defenses: Form of Denials. A responsive pleading shall state in short and plain terms the pleader's defenses to each claim asserted and shall admit or controvert the averments set forth in the preceding pleading. If in good faith the pleader intends to deny all the averments in the preceding pleading, he may do so by general denial subject to the provisions of Rule 11. If he does not intend a general denial, he may:

- (1) specifically deny designated averments or paragraphs;
- or



(2) generally deny all averments except such designated averments and paragraphs as he expressly admits.

If he lacks knowledge or information sufficient to form a belief as to the truth of an averment, he shall so state and his statement shall be considered a denial. If in good faith a pleader intends to deny only a part or a qualification of an averment, he shall specify so much of it as is true and material and deny the remainder. All denials shall fairly meet the substance of the averments denied. This rule shall have no application to uncontested actions for divorce, or to answers required to be filed by clerks or guardians ad litem.

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(D) Effect of Failure to Deny. Averments in a pleading to which a responsive pleading is required, except those pertaining to amount of damages, are admitted when not denied in the responsive pleading. Averments in a pleading to which no responsive pleading is required or permitted shall be taken as denied or avoided.

[17] In Whitt’s amended answer, she denied each allegation in Paragraph 9 of the complaint. However, she did not dispute the description of the contract in Paragraphs 4 through 8 or the allegations in the other paragraphs of the complaint.<sup>1</sup> Paragraph 11 of the complaint alleged:

[Whitt] was sent notice of all of the ways in which she has breached the Contract, and continues to be in breach of the Contract, and was given options as to how she could resolve said

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<sup>1</sup> Nortac’s March 30, 2020 “Verified Petition for Ejectment & Complaint for Breach of Contract & Damages” consisted of fifteen numbered paragraphs excluding the portion making specific requests for judgment. Appellee’s Appendix Volume II at 2.

breaches and remain in the Property, and continue to purchase the property, however, [Whitt] has failed to take any action, or cure said defaults.

Appellee's Appendix Volume II at 4. Paragraph 12 asserted that Nortac was "entitled to immediate possession of the Property, but [Whitt] wrongfully and unlawfully continues to retain possession thereof." *Id.* Further, Paragraph 15 asserted:

Per the Contract, "Should Buyer have reduced the purchase price by twenty-five percent (25%), then the Buyer shall be deemed to have a substantial equity in the real estate." Based on the number of payments made, together with interest and late fees, Defendant has not paid a total of Twenty Five percent (25%) of the total purchase price, therefor is not deemed to have equity in the real estate.

*Id.* at 5.

[18] While Whitt asserted in her amended answer that she denied "each and every allegation contained [in] paragraph 9 of the complaint," she admitted to a number of the allegations in her initial answer. Appellant's Appendix Volume I at 64.<sup>2</sup> Specifically, she admitted that she stopped making payments in September 2019, that she rented the property, and that she failed to make the

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<sup>2</sup> Ind. Appellate Rule 51(C) provides that "[a]ll pages of the Appendix volume, including the front page (see Rule 51(E)), shall be consecutively numbered at the bottom starting with numeral one on each volume's front page." The first two pages of Whitt's appendix are numbered but the numbering begins again with "1" on page 3. The page numbers used in this dissent refer to the actual page number as if the appendix had been paginated pursuant to Ind. Appellate Rule 51(C).

balloon payment due in October 2018. *See id.* at 23-24. She also stated: “Answering allegation/[ ]paragraph 9e, Ms. Whitt ADMITS to the allegations contained therein.”<sup>3</sup> *Id.* at 24. Further, at the September 29, 2020 hearing, Whitt stated that she did not receive written permission to have a tenant, *see* Transcript Volume II at 6, which appears to acknowledge the allegation in Paragraph 9(c) of the complaint alleging that she had “sublet, and offered to sell the Property to another individual or individuals, without first obtaining written consent from Nortac Properties, LLC, as required per the terms of the Contract.” Appellee’s Appendix Volume II at 3. Under these circumstances, I would find Nortac’s argument that Whitt’s amended answer lacked good faith to be persuasive.

[19] The record also reveals that, similar to Whitt’s initial answer, the amended answer was not signed. *See* Appellant’s Appendix Volume II at 41, 71. Accordingly, Whitt’s amended answer did not comply with Ind. Trial Rule 11(A), which provides that “[a] party who is not represented by an attorney shall sign his pleading and state his address.” In light of the record, I would

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<sup>3</sup> Paragraph 9(e) of Nortac’s complaint alleged:

[Whitt] has failed to procure and maintain at all times during the term of the Contract fire and extended coverage insurance, with an insurer reasonably acceptable to the Seller, upon all improvements on the real estate. Nortac Properties, LLC, has requested proof of said coverage from [Whitt], and [Whitt] has failed and refused to provide said proof of coverage. Nortac Properties, LLC, has had to purchase and maintain fire and extended coverage insurance on the Property as a result of [Whitt’s] failure and refusal to do so.

Appellee’s Appendix Volume II at 3.

conclude that Whitt's amended answer did not comply with the Ind. Trial Rules and that reversal is not warranted.

[20] Additionally, with respect to Nortac's separately filed Motion for Attorneys' Fees, Ind. Appellate Rule 66(E) provides: "The Court may assess damages if an appeal, petition, or motion, or response, is frivolous or in bad faith. Damages shall be in the Court's discretion and may include attorneys' fees." "Our discretion to award attorney fees under Ind. Appellate Rule 66(E) is limited to instances when 'an appeal is permeated with meritlessness, bad faith, frivolity, harassment, vexatiousness, or purpose of delay.'" *Staff Source, LLC v. Wallace*, 143 N.E.3d 996, 1012 (Ind. Ct. App. 2020) (quoting *Thacker v. Wentzel*, 797 N.E.2d 342, 346 (Ind. Ct. App. 2003)).

[21] The record reveals that the trial court told Whitt at the September 29, 2020 hearing, that "it's going to be very hard for me to follow with what you've done here" and "I can't make heads or tails from your answers." Transcript Volume II at 7, 9. The Appellant's Appendix contains a number of documents which the table of contents refers to as "EXHIBIT AND WITNESS LIST." Appellant's Appendix Volume I at 2. These documents, as well as some of Whitt's arguments, do not appear to relate to the trial court's order or the relevant issue. Accordingly, I would conclude that Nortac is entitled to appellate attorney fees and remand for the trial court to determine the proper amount of fees.