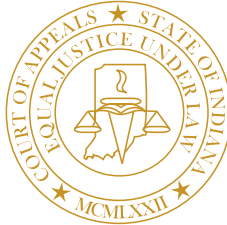


MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.



IN THE Court of Appeals of Indiana

Mario L. Sims and Tiffany Sims,
Appellants-Defendants

v.

The Bank of New York Mellon f/k/a/ The Bank of New York,
as Trustee for the Certificate Holders of the CWABS, Inc.,
Asset-Backed Certificates, Series 2005-BC5,
Appellee-Plaintiff

July 10, 2025

Court of Appeals Case No.
25A-MF-75

Appeal from the St. Joseph Circuit Court
The Honorable John E. Broden, Special Judge

Trial Court Cause No.
71D04-1003-MF-164

Memorandum Decision by Judge Bailey

Judges Brown and Weissmann concur.

Bailey, Judge.

Case Summary

- [1] Mario L. Sims and Tiffany Sims (collectively, “the Simses”) appeal following the trial court’s order allowing The Bank of New York Mellon f/k/a The Bank of New York, as Trustee for the Certificate Holders of the CWABS, Inc., Asset-Backed Certificates, Series 2005-BC5 (“the Bank”), to execute a judgment of foreclosure. We affirm.

Issues

- [2] The Simses raise the following restated issues for our review:
1. Whether the trial court abused its discretion when it denied the Simses’ motions for a change of judge.
 2. Whether the court lacked the authority to enter any orders in this case after the Simses filed a second praecipe for withdrawal.
 3. Whether the trial court erred when it dismissed the Simses’ counterclaims.
 4. Whether the Bank waived its right to execute on the foreclosure judgment.

Facts and Procedural History

[3] In 2005, John Tiffany executed a promissory note and mortgage for the purchase of a home for \$120,000, and the note and mortgage were subsequently assigned to the Bank. In October 2008, the Simses entered into a land contract to purchase the residence from Tiffany, and the contract required a down payment and monthly payments for a total purchase price of \$185,000. The Simses paid the down payment and began to make monthly payments, but Tiffany stopped making the mortgage payments. Accordingly, on December 1, 2009, the Bank filed a complaint to foreclose on its mortgage, and the Bank named as defendants Tiffany, the Simses, and other lienholders. Ultimately, in 2012, the Simses acquired a quitclaim deed for the property from Tiffany. The Bank instituted a foreclosure proceeding in Cause Number 71D04-1003-MF-164 (“MF-164” or the “Foreclosure Court”) and foreclosed on the house in 2013. The house was then scheduled for a foreclosure sale. The Simses then filed numerous lawsuits in both state and federal court over the next several years.

[4] Then, on April 27, 2023, the Bank filed a motion to renew judgment. On June 6, the court issued an order granting the Bank’s motion and confirming “that the [Bank] may proceed[] with” a June 8, 2023, sheriff’s sale. Appellants’ App. Vol. 2 at 76. The Simses filed a motion to correct error and requested that the trial judge recuse herself. On June 13, the trial court issued an order in which the judge recused herself, vacated its June 6 order, and transferred the matter to a special judge “for further proceedings.” *Id.* at 77.

- [5] Meanwhile, the Bank initiated a suit against Tiffany and other parties in Cause Number 71D06-2304-MI-157 (“MI-157”). On June 27, 2024, the special judge in MI-157 issued an order and stated that “[a]ll claims and counterclaims filed in the case at bar are improper and must be properly filed in” MF-164 “because this earlier action concerns the foreclosure of the property at issue.” *Id.* at 138. Accordingly, the court in MI-157 dismissed the case without prejudice.
- [6] On August 22, the Bank filed a motion to allow it to execute the judgment of foreclosure and proceed to a sheriff’s sale. The next day, on August 23, the Simses filed an objection to the special judge and asserted that the same judge had previously recused himself from actions involving the Simses. Then, on August 26, the Simses filed a motion for change of judge because of genuine need. The court denied the Simses’ August 23 objection to the special judge. The Simses filed a motion to correct error, which the court denied.
- [7] On September 11, the Simses filed a pleading called: “‘Notice of Claim’ Pursuant to Judge Woods Order Transferring [MI-157] and Authorizing Pending Pleadings to be Filed in this Case and heard herein Mario and Tiffany Sims Gives Notice of Filing Their Counterclaims to be set for Trial in this Case.” *Id.* at 23. At the same time, the Simses filed their answer to the Bank’s motion to allow it to execute the judgment, and they raised several defenses and a counterclaim. The next day, the Simses filed their response to the Bank’s motion and again raised numerous defenses. Then, on September 30, the Simses filed their first praecipe for withdrawal of submission based on the court’s alleged failure to rule on their motion for change of judge because of

genuine need. The Chief Administrative Officer (“CAO”) of the Indiana Supreme Court issued a notice of his determination regarding the Simses’ first praecipe. The CAO determined that the cause should not be removed from the trial court because the “court ha[d] denied the [Simses’] request for change of judge/venue on multiple occasions” and “the requested remedy is not available for repetitive motions.” *Id.* at 163. As such, the CAO denied the praecipe. Thereafter, the Simses filed a second praecipe for withdrawal of submission based on the court’s failure to timely rule on the Bank’s motion to allow it to execute the judgment.

[8] On December 18, the court entered its order regarding the Simses’ “Notice of Claim” and noted that the final order from MI-157 did “not transfer” that cause to the instant cause but “dismiss[ed]” it without prejudice. *Id.* at 23. The court then concluded that a final judgment had been entered in the present case such that the Simses’ counterclaim was not proper. Thereafter, the court granted the Bank’s motion to allow it to execute the judgment of foreclosure. This appeal ensued.

Discussion and Decision

[9] At the outset, we first note that the Simses are proceeding pro se. “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.” *Basic v. Amouri*, 58 N.E.3d 980, 983-84 (Ind. Ct. App. 2016) (internal citation omitted).

Issue One: Change of Judge

[10] The Simses first contend that the trial court abused its discretion when it denied their motion for a change of judge. A motion for change of judge is governed by Indiana Trial Rule 76, which provides, in pertinent part:

(B) In civil actions, where a change may be taken from the judge, such change shall be granted upon the filing of an unverified application or motion without specifically stating the ground therefor by a party or his attorney. Provided, however, a party shall be entitled to only one [1] change from the judge. . . .

(C) In any action except criminal no change of judge . . . shall be granted except within the time herein provided. Any such application for change of judge . . . shall be filed not later than ten [10] days after the issues are first closed on the merits.

[11] Indiana Trial Rule 76 “provides that the granting of a motion to change judge is automatic if made within the time limitations established by the rule.” *Mann v. Russell’s Trailer Repair, Inc.*, 787 N.E.2d 922, 924-25 (Ind. Ct. App. 2003), *trans. denied*. But when a party desires a change of judge after the time for an automatic change has expired, that party must show a genuine need for such change. *See Hunter v. Milhous*, 305 N.E.2d 448, 455 (Ind. Ct. App. 1973). If the motion is not within the time limitations, “we review the trial court’s ruling on a motion for change of judge for an abuse of discretion.” *Mann*, 787 N.E.2d at 925.

[12] On appeal, the Simses purport to challenge the court’s denial of their motion for change of judge. However, other than reciting case law, the entirety of the Simses’ argument on appeal is as follows: “Here, Mario and Tiffany Sims [have] shown the trial judge’s actions or demeanor ‘crossed the barrier of impartiality’ and prejudiced their case.” Appellants’ Br. at 22.¹ But the Simses have not outlined any actions that the judge took or how those actions “crossed the barrier of impartiality.” *Id.*

[13] The Indiana Appellate Rules require an appellant to include an argument section that “contain[s] 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[.]” Ind. Appellate Rule 46(A)(8)(a). Cogent argument supported by adequate citation to authority “promotes impartiality in the appellate tribunal. A court which must search the record and make up its own argument because a party has not adequately presented them runs the risk of becoming an advocate rather than an adjudicator.” *Young v. Butts*, 685 N.E.2d 147, 151 (Ind. Ct. App. 1997). We will not address arguments so poorly developed or expressed that they cannot be understood. *Basic*, 58 N.E.3d at 984 (quotation marks omitted).

¹ The Simses do not address the time limitations but appear to concede that they did not file their motion within the time for an automatic change of judge.

[14] Here, the Simses have not provided cogent argument on this issue, and they have waived it for our review. We therefore affirm the court’s denial of the Simses’ motion for change of judge.

Issue Two: Trial Court Authority

[15] The Simses next contend that the trial court lacked authority to enter any orders on this case after they filed their second praecipe for withdrawal based on their allegation that the trial court did not timely rule on a motion. Indiana Trial Rule 53.1(E) provides:

Upon the filing by an interested party of a praecipe specifically designating the motion or decision delayed, the Clerk of the court shall enter the date and time of the filing on the praecipe, record the filing in the Chronological Case Summary under the cause, which entry shall also include the date and time of the filing of the praecipe, and promptly forward the praecipe and a copy of the Chronological Case Summary to the [CAO] of the Indiana Office of Judicial Administration (IOJA). The CAO shall determine whether or not a ruling has been delayed beyond the time limitation set forth under Trial Rule 53.1 or 53.2.

[16] Here, the Simses simply contend that “[n]o determination was made on the Second Praecipe for Withdrawal of Submission filed November 28, 2024[,] at the time Mario and Tiffiny Sims filed their notice of appeal[,] and therefore the trial court lacked authority from November 28, 2024[,] to enter any orders after that date.” Appellants’ Br. at 24-25. But the Simses do not cite any authority to support their position that a trial court cannot enter any orders while a praecipe is pending or that any orders so issued are void.

[17] And contrary to the Simses’ argument, the plain language of Trial Rule 53.1(E) provides that the CAO shall determine whether a ruling has been delayed. If the CAO so determines, the CAO “shall give written notice . . . that the submission of the case has been withdrawn from the judge.” Ind. Trial Rule 53.1(E)(2). Stated differently, a cause remains with the judge unless and until the CAO determines otherwise. And, here, there is no indication in the record that the CAO determined that a ruling had been delayed. As such, the matter had not been withdrawn from the court, and the court did not lack authority to enter any orders after the date the Simses filed their second praecipe.

Issue Three: Dismissal of Counterclaim

[18] The Simses next assert that the trial court abused its discretion when it “ignored” the order in MI-157, which the Simses purport “authoriz[ed] the filing of Verified Answer to Complaint and Counterclaims[.]” Appellants’ Br. at 25 (bold removed). However, the Simses have not developed cogent argument on this issue. The entirety of the Simses’ argument on this issue is:

Here, the trial court impermissibly acting as an appellee court simply refused to follow the prior Order entered by the trial court in Cause Number 71D06 2304 MI 000157 after the [Bank] had chosen that venue under that cause number, thereby waiving any defense of Mario and Tiffiny cannot file a countersuit authorizing, the filing of Verified Answer to Complaint and Counterclaims for action to quiet, violations of the Indiana Constitution, civil breach of contract, Indiana Code 32-29-7-77, and damages and erroneously dismissed it.

Id. at 25-26 (errors in original).

[19] We are unable to discern the Simses’ argument on that issue. And, again, we will not address arguments so poorly developed or expressed that they cannot be understood. *Basic*, 58 N.E.3d at 984. In addition, the Simses have not cited any case law to support their contention or directed us to any parts of the Record on Appeal relied on in violation of Indiana Appellate Rule 46(A)(8)(a). As such, the Simses have waived our review of this purported argument.

Issue Four: Bank’s Motion to Renew

[20] Finally, the Simses contend that the Bank waived its right to file its August 22, 2024, motion to allow it to execute the judgment of foreclosure. The Bank filed a motion to renew judgment in April 2023 and asked to proceed with a sheriff’s sale. That motion was granted, but following a motion to correct error, the court, on June 13, 2023, vacated its prior order and transferred the matter to a special judge for further proceedings. The Simses contend that, because the Bank did not appeal following the court’s grant of the Simses’ motion to correct error, the Bank waived any right to file its subsequent motion to execute the foreclosure judgment.

[21] But we agree with the Bank that the June 13, 2023, order was not a final, appealable judgment. According to Indiana Appellate Rule 2(H), a judgment is final if: (1) it “disposes of all claims as to all parties”; (2) the trial court in writing expressly determines “that there is no just reason for delay and in writing expressly directs the entry of judgment” as to fewer than all the claims or parties; (3) it is deemed final under Trial Rule 60(C); (4) it is a ruling on

either a mandatory or permissive motion to correct error; or (5) it is otherwise deemed final by law.

[22] Here, the Simses make no argument as to how the June 13, 2023, order was a final order. Indeed, they do not mention Appellate Rule 2(H) or explain how the court's order fits into one of those five subsections. Rather, the Simses focus on the Bank's April 27, 2023, motion to renew judgment and assert that it "would have disposed of all issues as to all parties[.]" Appellants' Br. at 27. But the question is not whether an order on the Bank's earlier motion disposed of all issues as to all parties. Instead, the question is whether the order vacating the order was a final order. And it was not. The June 13, 2023, order vacated a prior order allowing a sheriff's sale, assigned it to a special judge, and explicitly called "for further proceedings." Appellants' App. Vol. 2 at 77. The plain language of the order contemplated a future determination on the Bank's motion. Because the court's June 13, 2023, order was not a final, appealable order, the Bank did not waive its right to execute the foreclosure when it did not appeal that order.

Conclusion

[23] The Simses have waived their claims that the trial court abused its discretion when it denied their motion for a change of judge and when it dismissed their counterclaims. In addition, the Simses' second praecipe for withdrawal did not divest the court of the authority to enter any orders in this case. Finally, the Bank did not waive its right to execute the foreclosure judgment by failing to

appeal the court's order vacating a prior order. We therefore affirm the trial court.²

[24] Affirmed.

Brown, J., and Weissmann, J., concur.

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² In their Reply Brief, the Simses appear to assert that this Court has “refused to follow the Indiana Rules of Appellate Procedure in this appeal” when it granted the Bank’s motion for extension of time to file its Appellee’s Brief. Reply Br. at 6. But the Simses do not make any argument as to why it was improper for this Court to grant the motion for extension of time. In any event, even if we were to disregard the Appellee’s Brief, the Simses would still not prevail in their appeal.