

## 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.



APPELLANT PRO SE

Joyce M. DiFatta  
Gary, Indiana

## IN THE COURT OF APPEALS OF INDIANA

Joyce M. DiFatta,

*Appellant,*

v.

Estate of Theresa M. DiFatta,  
Deceased,

*Appellee.*

October 7, 2021

Court of Appeals Case No.  
21A-ES-34

Appeal from the Lake Circuit  
Court

The Honorable Marissa J.  
McDermott, Judge

The Honorable Jewell Harris, Jr.,  
Commissioner

Trial Court Cause No.  
45C01-1901-ES-17

**Najam, Judge.**

### Statement of the Case

- [1] Joyce DiFatta, *pro se*, appeals the trial court's order that the Estate of Theresa M. DiFatta ("the Estate") pay the attorney's fees incurred by the personal

representative of the Estate. DiFatta raises one issue for our review, which we revise and restate as whether the court erred when it ordered the Estate to pay the attorney's fees.

[2] We affirm.

### **Facts and Procedural History<sup>1</sup>**

[3] On January 24, 2019, the trial court opened the Estate. At the outset, both DiFatta and Theresa Earley filed their appearances as personal representatives of the Estate. DiFatta was initially represented by counsel, but her attorney withdrew shortly after the case was filed. And Earley was represented throughout the underlying proceeding by Benjamin Ballou.

[4] After the court opened the Estate, DiFatta filed various documents in which she asserted that she was entitled to half of the Estate but that Earley had not provided her with her equal share. DiFatta also filed numerous motions and pleadings, all of which the court denied. *See Appellant's App. Vol. 2 at 38.* The court then held a hearing on May 7, 2020, to discuss several more pleadings.<sup>2</sup> Among those was a request by Earley for attorney's fees and several more filings by DiFatta. Following the hearing, the court found that the "majority of

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<sup>1</sup> DiFatta has not provided a brief or an appendix sufficient to establish a complete factual or procedural history of this case. As a result, we are only able to provide the facts that we can discern from the CCS or the various documents she chose to include in her appendix. In addition, many of her purported facts are not supported by any document in the record.

<sup>2</sup> DiFatta has not provided a transcript of the May 7 hearing in her record on appeal.

the attorney's fees and costs incurred to administer the Estate have been caused by [DiFatta's] redundant, repetitive, and frivolous filings with the Court and her attempts to re-litigate matters which have previously been ruled upon by this Court and addressed in prior Orders." *Id.* at 41. At some point thereafter, Earley filed a petition for attorney's fees and costs. The court ordered the Estate to pay \$23,000 in Ballou's fees as "part of the expenses of administration of said estate." *Id.* at 23. This appeal ensued.

## Discussion and Decision

- [5] DiFatta appeals the trial court's order that the Estate pay Ballou's attorney's fees. We first note that DiFatta is proceeding *pro se*. "It is well settled that *pro se* litigants are held to the same legal standards as license 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).
- [6] The Indiana Appellate Rules require an appellant to include in her brief 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).

[7] Here, DiFatta’s brief on appeal wholly fails to comply with Indiana Appellate Rule 46(A)(8)(a). DiFatta fails to set out her contentions supported by cogent reasoning. DiFatta’s argument is not clear, but she appears to contend that, because Ballou did not represent both her and Earley’s interests equally, “the Estate is not responsible for” his fees. Appellant’s Br. at 10. However, DiFatta has not provided us with any citation to the record to support her assertion. Rather, she simply states, without any specificity, that her “arguments are supported by DiFatta App. Vol. 2.” Appellant’s Br. at 9. Indeed, DiFatta focuses much of her one-paragraph argument on her claims that Ballou altered the will of the deceased and failed to distribute the estate per the terms of the will, yet DiFatta has failed to provide us with a copy of the will or any court document from which we could discern the actual terms of the will or distribution of the estate.

[8] Further, DiFatta has not provided any citation to authority to demonstrate that Ballou was required to represent DiFatta’s interests when the CCS indicates that he was only Earley’s attorney. *See* Appellant’s App. Vol. 2 at 2. Nor has she acknowledged the court’s May 20, 2020, order in which the court concluded that, as of that date, the “majority of the attorney’s fees and costs incurred to administer the Estate” were the result of DiFatta’s numerous,

repetitive filings. Appellant's App. Vol. 2 at 41. And DiFatta does not cite any case law, let alone relevant case law, to support her assertion on appeal.<sup>3</sup> As a result of her noncompliance with the appellate rules, DiFatta has failed to meet her burden on appeal<sup>4</sup> to demonstrate that the trial court erred, and we affirm the court's order that the Estate pay Ballou's attorney's fees.<sup>5</sup> *See Basic*, 58 N.E.3d at 984.

[9] Affirmed.

Riley, J., and Brown, J., concur.

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<sup>3</sup> In her statement of the facts, DiFatta cites four statutes regarding the distribution of an estate. But DiFatta makes no argument in her argument section as to how those statutes are relevant or how the court's actions violated those statutes. She also cites Indiana Appellate Rule 23(D) but similarly fails to explain how that rule applies to these proceedings.

<sup>4</sup> We note that the Estate has not filed an appellee's brief. As such, we apply a less stringent standard and may reverse the trial court if DiFatta establishes prima facie error. *See Deckard v. Deckard*, 841 N.E.2d 194, 199 (Ind. Ct. App. 2006). However, because of her noncompliance with the appellate rules, DiFatta has failed to meet even this low standard of review.

<sup>5</sup> To the extent DiFatta asserts in her conclusion section that the court erred when it entered various other orders, she has likewise failed to support those purported arguments with cogent reasoning.