

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 Appellate Rule 65(D), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.



APPELLANT PRO SE

Phillip J. Dukett
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

In the Matter of the Paternity of
J.D. (Minor Child),
Philip J. Dukett,
Appellant-Respondent,

v.

Symona R. Miles,
Appellee-Petitioner.

September 25, 2023

Court of Appeals Case No.
23A-JP-1030

Appeal from the Marion Circuit
Court

The Honorable Melissa Hayden
Kramer, Magistrate

Trial Court Cause No.
49C01-1911-JP-48159

Memorandum Decision by Judge Brown
Judges Vaidik and Bradford concur.

Brown, Judge.

- [1] Philip J. Dukett (“Father”), *pro se*, appeals the trial court’s order on modification. We dismiss.

Facts and Procedural History

- [2] On April 28, 2023, the trial court entered a Final Order on Modification which observed that paternity of J.D. had been established in January 2020, Symona Miles (“Mother”) had been previously granted sole legal and primary physical custody of the child in 2020 subject to Father’s parenting time, and, pursuant to a February 4, 2022 order, Mother had sole legal and primary physical custody of the child subject to Father’s age-appropriate parenting time pursuant to the Indiana Parenting Time Guidelines. The court stated that there had not been a substantial change in circumstances warranting a modification of custody. It observed that the parties “did not progress into the age-appropriate parenting time as the Child has aged” and ordered a modification of parenting time. Appellant’s Appendix Volume III at 4. Specifically, it ordered age-appropriate parenting time pursuant to the Indiana Parenting Time Guidelines with the slight deviation that Father exercise “parenting time midweek overnight and alternating weekends, including a Sunday overnight on his weekends.” *Id.* at 6.

Discussion

- [3] A *pro se* litigant is held to the same established rules of procedure that trained legal counsel are bound to follow, and the fact that a litigant proceeds *pro se* does not excuse the litigant from complying with appellate rules. *Foster v. Adoption of Federspiel*, 560 N.E.2d 691, 692 (Ind. Ct. App. 1990). Where an

appellant fails to substantially comply with the appellate rules, dismissal of the appeal is warranted. *Hughes v. King*, 808 N.E.2d 146, 147 (Ind. Ct. App. 2004). This Court has discretion to dismiss an appeal for the appellant's failure to comply with the Rules of Appellate Procedure. *See Miller v. Hague Ins. Agency, Inc.*, 871 N.E.2d 406, 407 (Ind. Ct. App. 2007) ("Although we will exercise our discretion to reach the merits when violations are comparatively minor, if the parties commit flagrant violations of the Rules of Appellate Procedure we will hold issues waived, or dismiss the appeal."), *reh'g denied*.

[4] Dukett has failed to comply with the requirements of the Indiana Rules of Appellate Procedure. Ind. Appellate Rule 46 governs the arrangement and contents of briefs and provides in part that the appellant's brief "shall contain the following sections" including a "Table of Contents," "Table of Authorities," "Statement of Issues," "Statement of Case," "Statement of Facts," "Summary of Argument," and an "Argument." Dukett's brief does not include a Statement of Issues, Statement of Case, Statement of Facts, or Argument section. Rather, his brief contains a "Table of Contents," a "Table of Authorities," and a "Summary of Argument" section. Appellant's Brief at 2-3 (capitalization omitted).

[5] Ind. Appellate Rule 46(A)(8)(a) provides that "[t]he argument must contain the contentions of the appellant on the issues presented, supported by cogent reasoning" and "[e]ach contention must be supported by citations to the authorities, statutes, and the Appendix or parts of the Record on Appeal relied on, in accordance with Rule 22." Ind. Appellate Rule 22(C) provides that

“[a]ny factual statement shall be supported by a citation to the volume and page where it appears in an Appendix, and if not contained in an Appendix, to the volume and page it appears in the Transcript or exhibits” Ind. Appellate Rule 46(A)(8)(b) provides that the argument “must include for each issue a concise statement of the applicable standard of review” and “a brief statement of the procedural and substantive facts necessary for consideration of the issues presented on appeal, including a statement of how the issues relevant to the appeal were raised and resolved by any . . . trial court.” Ind. Appellate Rule 46(A)(8)(d) provides that “[i]f the admissibility of evidence is in dispute, citation shall be made to the pages of the Transcript where the evidence was identified, offered, and received or rejected, in conformity with Rule 22(C).”

This Court has previously stated:

We demand cogent argument supported with adequate citation to authority because it promotes impartiality in the appellate tribunal. A court which must search the record and make up its own arguments because a party has not adequately presented them runs the risk of becoming an advocate rather than an adjudicator. *Keller v. State*, 549 N.E.2d 372, 373 (Ind. 1990). A brief should not only present the issues to be decided on appeal, but it should be of material assistance to the court in deciding those issues. *Hebel v. Conrail, Inc.*, 475 N.E.2d 652, 659 (Ind. 1985). On review, we will not search the record to find a basis for a party’s argument . . . nor will we search the authorities cited by a party in order to find legal support for its position.

Young v. Butts, 685 N.E.2d 147, 151 (Ind. Ct. App. 1997) (footnote omitted).

[6] At one point, Dukett asserts, without citation to the transcript, that he presented Exhibit G which consisted of a background check. The Exhibits Volume does not contain an Exhibit G, and our review of the transcript indicates that the trial court sustained an objection to the admission of Exhibit G into evidence. Dukett does not develop an argument that the trial court abused its discretion in not admitting Exhibit G into evidence. Further, over the course of the ten-page portion of his brief titled “Summary of Argument,” only two of the pages contain references to “the audio transcript play back,” and he does not cite to any pages of the transcript.¹ Appellant’s Brief at 3, 11-12. In light of the multiple violations of the Indiana Appellate Rules and lack of a cogent argument, we dismiss Father’s appeal.

[7] For the foregoing reasons, we dismiss the appeal.

[8] Dismissed.

Vaidik, J., and Bradford, J., concur.

¹ The record does not contain an audio version of the transcript.