

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Adam Tempest,

Appellant,

v.

Fifth Third Bank, National
Association,

Appellee.

March 31, 2023

Court of Appeals Case No.
22A-PL-2222

Appeal from the Decatur Superior
Court

The Honorable Mathew D. Bailey,
Judge

Trial Court Cause No.
16D01-2205-PL-226

Memorandum Decision by Judge Brown
Judges Bailey and Weissmann concur.

Brown, Judge.

[1] Adam Tempest appeals the trial court’s order dismissing his complaint against Fifth Third Bank, National Association (“Fifth Third”). We dismiss.

Facts and Procedural History

[2] On May 10, 2022, Tempest filed a “Statement of complaint” alleging Fifth Third was “not the holder in due course” or “a party of interest” and he did not “have an obligation to pay.”¹ Appellee’s Appendix Volume II at 7. A copy of a promissory note dated April 20, 2020, attached to the complaint states that, in return for a loan he received, Tempest agreed to pay \$104,500 plus interest to Fifth Third.

[3] On June 10, 2022, Fifth Third filed a motion to dismiss. Fifth Third argued: “[t]his action is the seventh lawsuit Mr. Tempest has filed against Fifth Third since January 2022”; “[a]s with his prior lawsuits, Mr. Tempest’s Complaint makes assertions that Fifth Third has not proven it is the holder in due course of his mortgage loan, that it is the servicer of his mortgage loan and/or that Mr. Tempest owes the unpaid balance of his mortgage loan”; on April 29 and May 2, 2022, the court “granted Fifth Third summary judgment on these claims”; “[m]ost recently, in Mr. Tempest’s sixth lawsuit in which he raised these allegations, the Court dismissed his Complaint *with prejudice*”; and “as a result of this Court’s April 29 and May 2 summary judgment orders and its May 6

¹ The complaint also asserts “doesn’t the promissory note show that I am the creditor?” and “[f]urthermore, if the defendant did not offer up any consideration, then my Promissory note worth \$104,500 was simply a gift to [Fifth Third] and there is no enforceable contract.” Appellee’s Appendix Volume II at 7-8.

Order of Dismissal with Prejudice, this action by Mr. Tempest is barred by claim preclusion.” *Id.* at 45-47. Fifth Third also requested attorney fees.

[4] On June 14, 2022, Tempest filed a “Motion to Strike” requesting the court “to strike from the record the defendant[’]s Motions to dismiss and exhibits that are attached.” *Id.* at 53, 57. On June 21, 2022, Tempest filed a motion for summary judgment arguing in part that Fifth Third did not have the original promissory note, no consideration was put up by Fifth Third, and there was no loan to pay back to Fifth Third as it did not fund any loan with its own funds.

[5] On June 23, 2022, the trial court issued an order granting Fifth Third’s motion to dismiss and ordering that Tempest’s complaint be dismissed with prejudice. The court’s order also provided that, as a result of Tempest’s repetitious filings, Fifth Third was awarded reasonable attorney fees and directed that it tender proof of its fees within fourteen days. Fifth Third later filed a motion to withdraw its request for attorney fees, and the court granted the motion.

Discussion

[6] 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*.

[7] Tempest has failed to comply with the requirements of the Indiana Rules of Appellate Procedure. Ind. Appellate Rule 46(A)(5) governs the statement of case and provides “[p]age references to the Record on Appeal or Appendix are required in accordance with Rule 22(C).” Tempest’s statement of case does not include any citations to the record. Appellate Rule 46(A)(6) governs the statement of facts and provides “[t]he facts shall be supported by page references to the Record on Appeal or Appendix in accordance with Rule 22(C).” Tempest’s brief includes a heading for “Statement of Facts and Argument,” and the section contains four pages of single-spaced text and does not include any citations to the record.² Appellant’s Brief at 6. We note Tempest did not file an appendix. *See* Ind. Appellate Rules 49, 50. Tempest’s statement of issues does not “concisely and particularly describe each issue presented for review” as required by Appellate Rule 46(A)(4).

[8] Further, Appellate Rule 46(A)(8)(a) provides “[t]he argument must contain the contentions of the appellant on the issues presented, supported by cogent

² Appellate Rule 43(E) states “[a]ll text shall be double-spaced except that footnotes, tables, charts, or similar material and text that is blocked and indented shall be single-spaced.”

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” Appellate Rule 46(A)(8)(b) provides 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.” 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).

[9] Tempest’s claims in the “Statement of Facts and Argument” section of his brief are not supported by cogent argument or citations to the record. In light of the multiple violations of the Indiana Appellate Rules and lack of a cogent argument, we dismiss Tempest’s appeal. *See Keller*, 549 N.E.2d at 373-374

(dismissing the appeal because the appellant failed to provide cogent argument with adequate citation of authority).

[10] For the foregoing reasons, we dismiss.

[11] Dismissed.

Bailey, J., and Weissmann, J., concur.