

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.



APPELLANTS PRO SE

Timothy Swetcoff
Gina Swetcoff
Granger, Indiana

ATTORNEYS FOR APPELLEE

Jacqueline Sells Homann
Janet G. Horvath
Amanda N. Zaluckyj
Jones Obenchain, LLP
South Bend, Indiana

IN THE COURT OF APPEALS OF INDIANA

Timothy Swetcoff and Gina
Swetcoff,
Appellants-Defendants,

v.

Knollwood Homeowners
Association, Inc.,
Appellee-Plaintiff

November 30, 2022

Court of Appeals Case No.
22A-PL-395

Appeal from the St. Joseph Circuit
Court

The Honorable Andre B.
Gammage, Magistrate

Trial Court Cause No.
71C01-2002-PL-44

Crone, Judge.

Case Summary

- [1] After the Knollwood Homeowners Association (the KHA) filed a complaint alleging that Timothy Swetcoff and Gina Swetcoff had unpaid homeowner association dues and committed violations of the KHA restrictive covenants, the Swetcoffs paid the dues and cured the violations. The KHA filed a motion for attorney's fees based on the restrictive covenants. The trial court granted the motion and entered judgment for attorney's fees in favor of the KHA. The KHA then filed a motion to correct error. The trial court held a hearing and issued an order on the motion to correct error awarding additional attorney's fees (the appealed order). The Swetcoffs, pro se, now appeal, arguing that the KHA is not entitled to attorney's fees. Finding that the Swetcoffs' violations of Indiana Appellate Rules 46 and 50 have resulted in an inadequate basis for review, we conclude that they have waived their claim that the trial court erred in awarding attorney's fees. Accordingly, we affirm.

Facts and Procedural History

- [2] The Swetcoffs own and reside in a home in the Knollwood neighborhood, are members of the KHA, and are bound by the KHA restrictive covenants.¹ Paragraphs 3(f) and 32 of the restrictive covenants provide that the KHA is

¹ The KHA has filed a motion to strike numerous exhibits in the Swetcoffs' appellants' appendix that the Swetcoffs submitted to the trial court in anticipation of an evidentiary hearing on the KHA's motion for default judgment. In its motion to strike, the KHA contends that those exhibits, although submitted to the trial court, were never admitted as evidence because there was no evidentiary hearing on the merits, and further, that the exhibits are irrelevant to the issue of attorney's fees, which is the issue on appeal. We agree and grant the KHA's motion to strike by separate order.

entitled to fees, including attorney's fees, incurred in collecting dues and enforcing the covenants:

[3.](f) Failure to pay the annual dues and/or assessments shall be a violation of these covenants. Until they are paid, these dues and assessments shall be a lien in favor of KHA upon the lot against which it is charged. If an attorney is hired to collect any past due charge assessable hereunder, the lot owner shall also be liable for all costs of collection including attorney's fees.

....

32. If any person(s) shall violate or attempt to violate any of these covenants, it shall be lawful for any owner and/or the KHA to proceed either in law or in equity, against any such person(s) violating or attempting to violate these covenants.... If the KHA or an owner employs an attorney to enforce any of the foregoing covenants and restrictions, all costs incurred in such enforcement, including reasonable attorney's fees, shall be paid by the owner of the lot against whom a successful enforcement action is brought. The KHA or the prevailing owner shall have a lien upon the lot(s) to secure such lot owner's payment of all such costs, including reasonable attorney's fees.

Appellee's App. Vol. 2 at 10, 16.

[3] In February 2020, the KHA filed a complaint against the Swetcoffs. The Swetcoffs did not file an answer, and the trial court entered a default judgment against them. In September 2020, the KHA filed an amended complaint for foreclosure of lien, injunctive relief, and attorney's fees. *Id.* at 2-25. The KHA then moved for default judgment on the amended complaint.

[4] On April 22, 2021, the trial court held a hearing on the KHA's motion for default judgment on the amended complaint. That same day, the Swetcoffs, pro se, filed a response to the KHA's motion for default judgment and appeared at the hearing. The KHA appeared by counsel, Jacqueline Sells Homann from Jones Obenchain, LLP. The parties informed the trial court that the alleged violations of the covenants had been remedied and the delinquent dues had been paid, but the interest, late fees, and attorney's fees remained unpaid. Tr. Vol. 2 at 3-4. Apparently, the Swetcoffs' response included a motion to set aside the default judgment. *Id.* at 8. The trial court continued the hearing to allow the KHA to respond to the Swetcoffs' motion. In June 2021, following a hearing, the trial court issued an order vacating the default judgment on the initial complaint. Appellants' App. Vol. 3 at 2-3. Many motions followed, and the Swetcoffs filed a counterclaim, which was dismissed.

[5] In October 2021, the KHA filed a motion for a hearing on attorney's fees and enforcement of lien, and the Swetcoffs filed a response. At the hearing on the motion, the KHA explained to the court that the lien had been filed to cover the outstanding homeowner association dues and the attorney's fees that the KHA had incurred in connection with its efforts to collect the dues. Tr. Vol. 2 at 30. The Swetcoffs and the KHA agreed that the Swetcoffs had paid the outstanding dues after the amended complaint was filed. *Id.* at 29, 31. The Swetcoffs argued that the lien was invalid because it omitted required information and should not have included attorney's fees. *Id.* at 40-42. The trial court concluded as follows:

There was money owed. There was an effort made on behalf of the [KHA] to collect those fees, and that resulted in a suit that has gone on for a period of time ... so long as there's a provision for attorney fees and there was a suit filed here to be able to collect those ... they are entitled to attorney fees in this matter.

Id. at 44. The trial court ordered the KHA to file an affidavit of attorney's fees after which the Swetcoffs would have an opportunity to respond. *Id.* at 45.

[6] In December 2021, the KHA filed an affidavit of attorney's fees, which it later amended. The Swetcoffs filed a response, an amended response, a motion to strike, and a "Motion to Dismiss For Forfeiture of Lien and For Granting Payment." Appellants' App. Vol. 2 at 16. On January 26, 2022, the trial court issued an order entering "judgment for attorney fees in favor of Jones Obenchain in the amount of \$7,120.65." Appellants' App. Vol. 3 at 4. The order also declared that "all other motions and filings are considered moot." *Id.*

[7] In February 2022, the KHA filed a motion to correct error, which is not in the record before us. The Swetcoffs filed a statement opposing the motion to correct error. In April 2022, a hearing was held on the motion, but the transcript is not in the record before us. On May 11, 2022, the trial court issued the appealed order, which provides as follows:

The Court now finds that Plaintiff Knollwood incurred attorney fees in pursuit of enforcing the terms of the Homeowners Association covenants by which Defendants were governed. Attorneys on behalf of Knollwood were successful in their efforts including securing the payment of homeowner association fees and compliance with other subdivision covenants....

Attorneys for Knollwood supplemented their attorney fee request and requested additional attorney fees in the amount of \$6,9669.89

The Court grants Plaintiff's Motion to Correct Error and awards attorney fees in the total amount of \$14,090.54 and enters judgment in said amount, superseding any previous amount ordered by this court for [attorney] fees.

Appealed Order at 1. This appeal followed.

Discussion and Decision

[8] The Swetcoffs challenge the trial court's grant of attorney's fees to the KHA. We observe that the Swetcoffs appeared before the trial court and in this appeal as pro se litigants. "It is well settled that pro se litigants are held to the same legal standards as licensed attorneys." *Basic v. Amouri*, 58 N.E.3d 980, 983 (Ind. Ct. App. 2016).

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. These consequences include waiver for failure to present cogent argument on appeal. While we prefer to decide issues on the merits, where the appellant's noncompliance with appellate rules is so substantial as to impede our consideration of the issues, we may deem the alleged errors waived. We will not become an advocate for a party, or address arguments that are inappropriate or too poorly developed or expressed to be understood.

Id. at 983-84 (citations and quotation marks omitted).

[9] Here, the Swetcoffs’ brief fails to comply with Appellate Rule 46(A)(6), -(7), and -(8). “The purpose of our appellate rules, especially Indiana Appellate Rule 46, is to aid and expedite review and to relieve the appellate court of the burden of searching the record and briefing the case.” *Tipton v. Est. of Hofmann*, 118 N.E.3d 771, 776 (Ind. Ct. App. 2019). Pursuant to Appellate Rule 46(A)(6), the statement of facts “shall describe the facts relevant to the issues presented for review” and “shall be supported by page references to the Record on Appeal or Appendix.” Most of the Swetcoffs’ statement of facts is either unsupported by citation to the record or is supported only by citation to the chronological case summary (the CCS) or the table of contents. In addition, their statement of facts relies largely on facts that were not submitted as evidence before the trial court or relied on by the trial court in awarding attorney’s fees.

[10] Appellate Rule 46(A)(7) requires that the summary of the argument “contain a succinct, clear and accurate statement of the arguments made in the body of the brief.” Contrary to Rule 46(A)(7), the Swetcoffs’ summary consists solely of additional background information as to how the case has proceeded.

[11] Appellate Rule 46(A)(8) provides that the “argument must contain the contentions of the appellant on the issues presented, supported by cogent reasoning” and supported by citation to the authorities, statutes, or record on appeal, and must include the applicable standard of review. The Swetcoffs’ argument, like their statement of facts, relies largely on facts not submitted in evidence, their standard of review is not supported by citation to authority, and their arguments are not supported by cogent reasoning. “A party waives an

issue where the party fails to develop a cogent argument or provide adequate citation to authority and portions of the record.” *Dickes v. Felger*, 981 N.E.2d 559, 562 (Ind. Ct. App. 2012).

[12] In addition to the above violations, the Swetcoffs’ appellants’ appendix fails to comply with Indiana Appellate Rule 50(A)(2)(f), which requires the inclusion of pleadings and other documents necessary for resolution of the issues raised on appeal. The Swetcoffs’ appendix contains the CCS, the appealed order, the January 2022 order granting attorney’s fees, and the June 2021 order setting aside the default judgment. It does not contain *any* pleadings or motions other than the Swetcoffs’ statement in opposition to the KHA’s motion to correct error. Although the Swetcoffs filed a supplemental appendix with their reply brief, it contains only their June 2021 motion to dismiss the amended complaint and their January 2022 amended response to the KHA’s affidavit for attorney’s fees. Also, the transcript of the hearing held on the KHA’s motion to correct error is not in the record before us.

[13] We recognize that failure to comply with the Indiana Rules of Appellate Procedure does not necessarily result in waiver of an issue. *See* Ind. Appellate Rule 49 (“Any party’s failure to include any item in an Appendix shall not waive any issue or argument”). However, “[i]t is the appellant’s duty to present an adequate record on appeal, and when the appellant fails to do so, he is deemed to have waived any alleged error based upon the missing material.” *Cook v. Beeman*, 150 N.E.3d 643, 647 (Ind. Ct. App. 2020) (quoting *Rausch v. Reinhold*, 716 N.E.2d 993, 1002 (Ind. Ct. App. 1999), *trans. denied* (2000)). In

this case, the Swetcoffs' violations are so substantial that they have impeded our ability to meaningfully review their appeal, and accordingly we conclude that they have waived their claim that the trial court erred in awarding the KHA attorney's fees. *See Martin v. Brown*, 129 N.E.3d 283, 286 (Ind. Ct. App. 2019) (waiving claims on appeal when violations of Appellate Rules impeded ability to review).

[14] Waiver notwithstanding, the Swetcoffs' have failed to establish error. We note that the Swetcoffs mistakenly refer to the appealed order as an "Amended Default Judgment." Appellants' Br. at 6, 10, 24. They argue that the entry of default judgment was vacated, and that is correct, but that fact is not relevant to the trial court's decision to award attorney's fees. The trial court awarded attorney's fees because the KHA hired attorneys to collect unpaid homeowner association dues and enforce the restrictive covenants, and the attorneys were successful in securing payment of the dues and obtaining compliance with the covenants. As indicated above, paragraphs 3(f) and 32 of the covenants clearly provide for this. Accordingly, we find no error in the trial court's award of attorney's fees to KHA and affirm the appealed order.

[15] Affirmed.

May, J., and Weissmann, J., concur.