MEMORANDUM DECISION

ATTORNEY FOR APPELLANT

Jarrell B. Hammond
Lewis Wagner, LLP
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE-CROSS APPELLANT NORTH SALEM BANK

Debra A. Mastrian
Suzannah W. Overholt
Smith Amundsen, LLC
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE-CROSS APPELLANT LARRY J. WILSON

Larry J. Wilson
Greencastle, Indiana

ATTORNEYS FOR APPELLEE-CROSS APPELLANT SUSAN E. CRAFT

Andrew R. Falk
Indianapolis, Indiana

Jeffrey A. Boggess
Greencastle, Indiana

IN THE COURT OF APPEALS OF INDIANA

David B. Wilson

Appellant-Intervenor,

v.

North Salem Bank, solely in its capacity as Personal Representative of the Estate of Marjorie Bymaster Wilson,

Appellee-Plaintiff,

v.

Larry J. Wilson and Susan E. Craft,

Appellees-Defendants.

June 21, 2021

Court of Appeals Case No. 20A-CC-1362

Appeal from the Putnam Superior Court

The Honorable Charles D. Bridges, Judge

Trial Court Cause No. 67D01-1804-CC-102

Mathias, Judge.

[1] David Wilson appeals the Putnam Superior Court's final judgment as to a debt owed to the estate of his mother, Marjorie. Larry Wilson and Susan Craft, Marjorie's two other children, cross-appeal. The estate's personal representative, North Salem State Bank (the "Bank"), responds. The parties raise the following three restated issues for our review:

I. Should this case be dismissed for lack of subject matter jurisdiction?

II. Did the trial court err in entering partial summary judgment against Larry?

III. Did the trial court err when it awarded the Bank prejudgment interest?

[2] We affirm and remand solely for proceedings to determine whether the debt owed to the estate remains unpaid.

Facts and Procedural History

[3] Between 1993 and 2008, Marjorie loaned Larry $104,550. She also loaned Susan $47,755. Marjorie died in 2014, and her estate was opened in Putnam Circuit Court (the "probate court") in 2016.[1] Neither Larry nor Susan had paid their loans back by the time the estate was opened, and their unpaid debts comprised the bulk of the estate's assets. *See* Appellee's App. pp. 18–19, 43. Unlike Larry and Susan, David owed no debt to the estate.

[4] As personal representative of the estate, the Bank was tasked with collecting Larry's and Susan's debts and distributing those funds according to Marjorie's will.[2] In August 2016, the Bank petitioned the probate court for a determination as to whether Larry's loans were interest-bearing. After holding an evidentiary hearing in April 2017, the court determined that both Marjorie's will and her

[1] The probate matter proceeded under cause number 67C01-1603-ES-000024. Appellee's App. p. 145.

[2] The Bank has filed a motion to strike Larry's Brief in Reply to Cross-Appellee North Salem Bank, arguing that the reply brief contains arguments raised for the first time. We agree that Larry's reply brief contains new arguments, but those arguments are supplied within the brief's first eight pages. Nonetheless, our Appellate Rules prohibit parties from raising new arguments for the first time in a reply brief. *See* Ind. Appellate Rule 46(D)(5). We therefore grant the Bank's motion to strike in part, and we order that the first eight pages of Larry's Brief in Reply to Cross-Appellee North Salem Bank be stricken. That said, we note that our order to strike that portion of the brief has no bearing on the ultimate outcome of this appeal.

records expressed silence as to interest, and the court determined that Marjorie intended the loans to be interest-free. *Id*. at 166–67.

[5] In September 2017, the Bank asked the probate court to reconsider that determination. The probate court reaffirmed that Marjorie gave Larry and Susan interest-free loans and further concluded that the principal amount of Larry's and Susan's debts would be deducted from their respective shares of the net estate. *Id*. at 167. Then, in January 2018, David petitioned the probate court to direct the Bank to take additional action to collect Larry's unpaid debt. The probate court scheduled a hearing on David's petition.

[6] However, David withdrew the petition and moved to vacate the hearing when, on April 26, 2018, the Bank initiated a collateral action to collect Larry's and Susan's debts. The Bank's complaint—filed in Putnam Superior Court (the "trial court")—sought a judgment against Larry and Susan for the principal amount of their debts "plus interest accrued, post-judgment interest, and costs of this action." *Id*. at 160–61. Larry admitted in his answer to the complaint that he owed the estate $104,550. *Id.* at 32.

[7] David, who was not initially named a party to the collection action, moved to intervene a few weeks later. In his motion, David expressed his belief that his interest as a beneficiary of the estate would "not be adequately represented" by the Bank. Appellant's App. p. 49. He also maintained that the Bank had "taken no position as to the method of computing interest." *Id*. The trial court allowed David to intervene in the collection action.

[8] In November 2018, the Bank moved for partial summary judgment as to the principal amount of Larry's debt.[3] Appellee's App. p. 20. Larry argued in response that the trial court lacked subject matter jurisdiction over the collection action and that the Bank's complaint should therefore be dismissed under Indiana Trial Rule 12(B)(1). On May 14, 2019, the trial court denied Larry's motion to dismiss, *id*. at 192, and granted the Bank's motion for partial summary judgment, concluding that Larry undisputedly owed the estate a principal balance of $104,550, Appellant's App. p. 59. Notably, the trial court also issued a separate order acknowledging that, three months prior to the court's entry of summary judgment, Larry paid $43,408.81 toward his outstanding balance. *Id*. at 61. This partial payment reduced his balance to $61,141.19. The court reserved all issues related to calculating interest on Larry's remaining balance for a later evidentiary hearing.

[9] The trial court held that hearing in February 2020 and entered findings of fact and conclusions of law on June 8, 2020. The court ordered Larry to pay his remaining balance of $61,141.19, plus post-judgment interest calculated from the date of the summary judgment order and prejudgment interest calculated from the start date of the collection action.

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[3] Susan, like Larry, does not deny her debt. Appellant's App. p. 36. But the Bank did not move for summary judgment against Susan because it previously stipulated with her that "any judgment [against Susan] should be withheld until the probate court construes the will." *Id*. at 25–26.

[10] David now appeals.[4] He argues that the trial court awarded too little prejudgment interest. Larry cross appeals, arguing that the court lacked subject matter jurisdiction to award interest and that the court should not have awarded any interest even if it did have jurisdiction.[5] We address these claims in turn.

Subject Matter Jurisdiction

[11] Larry first argues that because the probate court has "exclusive subject matter jurisdiction" over the administration of the estate, the trial court lacked authority to make any determination about his indebtedness to the estate.[6] Larry's Br. at 28. In turn, he claims the trial court's partial summary judgment order, as well as its findings of fact and conclusions of law, are void. *Id.* at 17. We review subject matter jurisdiction claims de novo. *D.A.Y. Invests. LLC v. Lake Cnty.*, 106 N.E.3d 500, 504 (Ind. Ct. App. 2018).

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[4] David has filed a motion to strike the twelfth page of Larry's Brief of Appellee and Cross-Appellant, which incorporates a photocopied portion of Larry's Appendix. *See* Larry's Br. at 12. David also moves to strike pages twenty and twenty-three of Larry's brief, both of which make reference to the material incorporated at page twelve. David argues that the Appendix material on page twelve of Larry's brief should be stricken because it was not admitted as evidence in the collection action. However, contrary to David's claim, the Appendix material on page twelve was part of the evidence the Bank designated in support of its motion for partial summary judgment against Larry. Appellee's App. pp. 65, 69–72. We therefore deny David's motion to strike.

[5] Susan also cross-appeals. She argues, like Larry, that no prejudgment interest should be applied to Larry's loans. *See* Susan's Br. at 5; Susan's Reply Br. at 5 ("Susan joined and explicitly incorporated Larry's Brief in her own, which includes the legal authority discussed and cited therein."). However, we do not address Susan's arguments here because there has been no judgment entered as to Susan's debts.

[6] Larry has filed a motion to dismiss this appeal pursuant to Appellate Rule 36(B). However, Larry's motion parrots his brief, reiterating his claim that the trial court lacked subject matter jurisdiction to hear the collection action. Because we address the merits of Larry's jurisdictional claims here, we deny his motion to dismiss.

[12] Without subject matter jurisdiction, a trial court cannot act in a given case. *R.L. Turner Corp. v. Town of Brownsburg*, 963 N.E.2d 453, 459 (Ind. 2012). A trial court has subject matter jurisdiction when the Indiana Constitution or a statute grants the court power to hear and determine cases of the general class to which a particular case belongs. *Brown v. Lunsford*, 63 N.E.3d 1057, 1060 (Ind. Ct. App. 2016). Like circuit courts, superior courts—such as the Putnam Superior Court here—possess "original and concurrent jurisdiction in all civil cases." Ind. Code § 33-29-1-1.5; *see also* I.C. § 33-33-67-2(b) (providing that the Putnam Superior Court is a standard superior court). Yet, other statutes may limit a court's authority to exercise its subject matter jurisdiction. *See Lollar v. Hammes*, 952 N.E.2d 754, 756 (Ind. Ct. App. 2004).

[13] Larry claims that Indiana Code section 29-1-13-16, a provision of the probate code, provides such a limitation. That statute provides, in relevant part:

> Whenever any interested person files with the court having jurisdiction of an estate a petition showing that such person has reason to believe and does believe that the personal representative of the estate or any other person is indebted to the estate . . . and that diligent effort is not being made to collect such indebtedness . . . the court shall hold a hearing upon such petition and shall determine what action, if any, shall be taken. Should the court decide that there is sufficient merit in the petitioner's claim to warrant action, it shall direct the personal representative to take such action as the court deems necessary . . . .

I.C. § 29-1-13-16. Larry contends that "a proceeding to recover indebtedness brought in response to a petition under I.C. § 29-1-13-16 is under the exclusive subject matter jurisdiction of the probate court." Larry's Br. at 32.

[14] Yet, although David initially filed a section 29-1-13-16 petition in the probate court, and although the probate court scheduled a hearing to determine what action, if any, should be taken, David later withdrew the petition. As a result, the probate court did not hold a hearing on David's petition, and the parties did not proceed under section 29-1-13-16. Instead, the Bank initiated a collection action in the trial court. The Bank argues in response to Larry's subject matter jurisdictional claim that the collection action was authorized by Indiana Code section 29-1-13-3. That statute provides:

> Every personal representative shall have full power to maintain any suit in any court of competent jurisdiction, in his name as such personal representative, for any demand of whatever nature due the decedent or his estate . . . .

I.C. § 29-1-13-3. We agree with the Bank.

[15] We have previously acknowledged "the authority of the personal representative or administrator of an estate to bring suit to protect or recover property necessary to satisfy debts, pay taxes, or distribute assets to the rightful beneficiaries." *Inlow v. Ernst & Young, LLP*, 771 N.E.2d 1174, 1181 (Ind. Ct. App. 2002) (collecting cases). Indeed, personal representatives are duty-bound to protect an estate's assets by taking precautionary measures to prevent loss. *Id.* One precautionary measure a personal representative may take is to bring suit

under Indiana Code section 29-1-13-3 to recover property belonging to the estate. *Id.*

[16] Nonetheless, Larry maintains that the trial court is not a "court of competent jurisdiction" under section 29-1-13-3 because the probate code lodges subject matter jurisdiction over actions to collect probate assets exclusively in the probate court. Again, however, the trial court here has original and concurrent jurisdiction in all civil cases. I.C. § 33-29-1-1.5. The Bank's collection action—a civil case authorized by Indiana Code section 29-1-13-3—therefore falls into the general category of actions the trial court is empowered to hear. In turn, we conclude that the trial court did not lack subject matter jurisdiction and that the court did not err by denying Larry's motion to dismiss.

Partial Summary Judgment

[17] Larry next argues that the trial court should not have entered partial summary judgment against him because there was a genuine dispute of material fact as to the amount of his indebtedness. We review a grant of summary judgment using the same standard as the trial court: summary judgment is appropriate only when the "designated evidentiary matter shows that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Ind. Trial Rule 56(C). The party moving for summary judgment bears the burden of showing that there are no genuine issues of material fact and that it is entitled to judgment as a matter of law. *Ka v. City of Indianapolis*, 954 N.E.2d 974, 977 (Ind. Ct. App. 2011). Once the moving party has met that burden, the party who did not move for summary judgment must come forward

with specific evidence demonstrating the existence of genuine factual issues. *Goodwin v. Yeakle's Sports Bar & Grill, Inc.*, 62 N.E.3d 384, 386 (Ind. 2016). If the nonmoving party fails to do so, summary judgment should be granted. *Id.*

[18] Despite his suggestion that a material factual dispute exists, Larry's brief does not cite to any evidence establishing a factual dispute. Instead, Larry argues simply that "[t]he Motion for Partial Summary Judgment should have been denied and a trial held on all issues." Larry's Br. at 34. This argument is unavailing.

[19] When the Bank moved for partial summary judgment in November 2018, its designated evidence included an affidavit of the Bank's trust officer. He attested in his affidavit that Larry owed the estate $104,550. Appellee's App. p. 45. The Bank also designated Larry's answer to the collection action complaint, in which he admitted owing the estate $104,550. *Id.* at 31. In light of that evidence, the burden shifted to Larry to come forward with specific evidence demonstrating the existence of a genuine factual dispute. The trial court noted in its summary judgment order that Larry's response "contained no designated evidence, legal authority, or argument disputing the principal debt." Appellant's App. p. 55. And here, Larry has not pointed us to any designated evidence demonstrating a dispute over the fact that he owed the estate $104,550.[7]

[7] While the Bank's summary judgment materials are included in Larry's Appendix, neither his nor David's Appendix contains Larry's response to the Bank's motion. Appellate Rule 50(A)(1) provides that "[t]he purpose of an Appendix in civil appeals and appeals from Administrative Agencies is to present the Court

Because he has failed to do so, we cannot say the trial court erred in entering summary judgment against him.

[20] Lastly, we address David and Larry's dispute over the trial court's award of prejudgment interest.

Prejudgment Interest

[21] The trial court awarded prejudgment interest on the judgment against Larry, calculated as of April 26, 2018, the date the Bank initiated the collection action.[8] David contends that the trial court erred because it failed to follow two specific provisions of the Indiana Code, which he believes required calculation of compound interest as of the date Larry received each loan. We do not agree.

[22] Specifically, David claims Indiana Code sections 24-4.6-1-102 and 24-4.6-1-104 mandate that "interest on a loan begins to accrue on the day money is lent," David's Br. at 24, and that the trial court therefore erred by awarding

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with copies of only those parts of the record on appeal that are necessary for the Court to decide the issues presented." Our review is limited to those materials designated to the trial court. T.R.56; *Haskin v. City of Madison*, 999 N.E.2d 1047, 1050 n.2 (Ind. Ct. App. 2013). And because we may affirm an award of summary judgment on any grounds supported by the designated evidence, it is important that the record on appeal include all of the parties' summary judgment materials. *Id.*

[8] The trial court also awarded post-judgment interest, calculated as of May 14, 2019, the date the court entered partial summary judgment against Larry. Larry attempts to claim this was error, but his argument as to post-judgment is no more than one sentence long: "Since the agreement between the parties were that the loans did not bear interest, 0% is the applicable rate for both prejudgment and post-judgment interest." Larry's Br. at 36. As a result, Larry has failed to present a cogent argument as to the trial court's award of post-judgment interest, *see* Ind. Appellate Rule 46(A)(8)(a), and he has waived this issue on appeal. *Vandenburgh v. Vandenburgh*, 916 N.E.2d 723, 729 (Ind. Ct. App. 2009) ("Although the failure to comply with the appellate rules does not necessarily result in waiver of an issue, it is appropriate where noncompliance impedes our review.").

prejudgment interest as of the day the collection action began. David is incorrect. Those statutes provide that "[w]hen the parties do not agree on the rate, interest on loans . . . shall be at the rate of eight percent (8%) per annum," I.C. § 24-4.6-1-102, and that "[i]f the parties do not agree on the method of computation, interest shall be computed and charged" according to section 24-4.6-1-102 and subsection 24-4.6-1-104(b)(2), I.C. § 24-4.6-1-104(d)(2). However, those statutes are only invoked if the parties first "have *agreed* to the payment of interest." *Firstmark Std. Life Ins. Co. v. Goss*, 699 N.E.2d 689, 694 (Ind. Ct. App. 1998).

[23] On the other hand, "when there is no contractual agreement for the payment of interest," such as in this case, "interest on a damage award should not be compounded but calculated as simple interest." *Bd. of Works of Lake Station v. I.A.E., Inc.*, 956 N.E.2d 86, 95–96 (Ind. Ct. App. 2011) (citing *Firstmark*, 699 N.E.2d at 693–94). Prejudgment interest is recoverable as additional damages to fully compensate a party for the lost use of money. *Fackler v. Powell*, 923 N.E.2d 973, 977 (Ind. Ct. App. 2010); *see also Johnson v. Eldridge*, 799 N.E.2d 29, 32 (Ind. Ct. App. 2003).

[24] We review the award of prejudgment interest for an abuse of discretion. *Id.* Prejudgment interest is appropriate if it has been determined that a party is liable for damages and if the damages may be ascertained as of a particular time. *Song v. Iatarola*, 76 N.E.3d 926, 939 (Ind. Ct. App. 2017). In other words, an award of prejudgment interest is proper when only a simple mathematical computation is required. *Id.* It is computed from the time the principal amount

was demanded or due, and it accrues at the permissible statutory rate. *Id.* The current statutory rate is 8% per annum when the parties have no contract specifying a different rate. I.C. § 24-4.6-1-101.

[25] Here, the trial court determined that after he paid a portion of his judgment, Larry owed $61,141.19. Having ascertained the specific amount Larry owed, the trial court awarded prejudgment interest on that amount, to be calculated "at the statutory rate," as of April 26, 2018—the date the Bank filed the collection action demanding payment from Larry. Appellant's App. p. 23. From there, calculating the amount of Larry's prejudgment interest became a simple mathematical computation.[9] For all of these reasons, we conclude that the trial court did not abuse its discretion in awarding prejudgment interest on the judgment against Larry.

Conclusion

[26] The trial court did not err in denying Larry's motion to dismiss, in entering partial summary judgment against Larry as to the principal amount of his debt, or in awarding simple prejudgment interest at the applicable statutory rate of 8% per annum on Larry's unpaid $61,141.19 principal balance. We therefore

[9] The trial court concluded that Larry's January 10, 2019 partial payment reduced the amount of the judgment against him to $61,141.19. Appellant's App. pp. 22, 23. Additionally, the eleventh footnote to the Bank's brief states that "[o]n June 23, 2020, Larry Wilson made a payment to the Clerk of the Court in the amount of $66,622.01." Bank's Br. at 13 n.11. The CCS reveals that Larry indeed paid that amount to the clerk on June 23, 2020—one month before David initiated this appeal. Assuming Larry intended it to be applied toward the judgment, his June 23 payment may be sufficient to satisfy his remaining principal balance, as well as pre- and post-judgment interest.

affirm the trial court's judgment and remand solely for proceedings to determine whether any amount of Larry's judgment or pre- and post-judgment interest remains unpaid.

Altice, J., and Weissmann, J., concur.