MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Paul Rosa,
Appellant-Petitioner

v.

County of Lake, Indiana,
Appellee-Respondent.

July 28, 2023

Court of Appeals Case No. 22A-MI-926

Appeal from the Lake Superior Court

The Honorable Bruce J. Parent, Judge

Trial Court Cause No. 45D11-1908-MI-702

Lake County Sheriff's Department Correction Merit Board
Case No. 2019-2

Memorandum Decision by Judge Pyle

Judges Bradford and Kenworthy concur.

Pyle, Judge.

Statement of the Case

[1] Paul Rosa ("Rosa") attempts to appeal the trial court's decision affirming the Lake County Corrections Officer Merit Board's ("the Board") action terminating his employment. Rosa attempts to raise numerous issues in this appeal, but, because of numerous violations of the Indiana Rules of Appellate Procedure and the failure to present cogent reasoning, he has waived all issues he has attempted to raise. As a result, we dismiss this appeal.

[2] We dismiss.

Facts

[3] On February 11, 2019, the Lake County Sheriff filed disciplinary charges and requested that the Board terminate Rosa's employment because of excessive absenteeism. The Board issued notices and scheduled a hearing for February 21, 2019. From what we can discern in the record, a series of events occurred resulting in the hearing being rescheduled several times. On June 4, 2019, the Board issued an order continuing the evidentiary hearing to July 18, 2019. All counsel of record were apparently made aware of the scheduling change.

[4] When the evidentiary hearing was held, Rosa failed to appear, but he was represented by counsel. At the hearing, Rosa's counsel "did not make any reference to any issue regarding not receiving the June 4, 2019 Merit Board Order resetting the evidentiary hearing[.]" (App. Vol. 2 at 89). Determining

that there was no justifiable reason for Rosa's absence, the Board voted to proceed in absentia.

[5] After hearing evidence, the Board voted to terminate Rosa's employment. Rosa filed a motion to correct error, which was denied, and he subsequently petitioned the trial court for judicial review of the Board's decision.

[6] On March 9, 2022, the trial court held a hearing on Rosa's petition for judicial review. At the hearing, Rosa's counsel attempted to argue that Rosa had not had proper notice of the July 18, 2019 evidentiary hearing. Counsel claimed that Rosa had found out about the hearing approximately one hour before it began. However, Rosa's counsel apparently had a copy of his client's file with him, but he could not reach Rosa because the last two digits of Rosa's telephone number, which were written on the file, had been transposed incorrectly. Rosa's counsel also claimed that Rosa had not received any email notice of the hearing because his email accounts had been hacked. Rosa's counsel also stated that he had "presented affidavits" swearing to this fact. (Tr. at 5). Finally, Rosa's counsel claimed that he never had been provided a copy of any emails purporting to show the rescheduling of the evidentiary hearing.

[7] In response, counsel for the Board, referring to the record of the proceedings from the evidentiary hearing, drew the trial court's attention to Exhibits 9, 12, and 13. He argued that the exhibits showed that Rosa's counsel had actual knowledge of the July 18, 2019 hearing. The Board's counsel also stated that

this was the first time Rosa's counsel had claimed to have not received notice of the evidentiary hearing.

[8] At the conclusion of the hearing, the trial court took the matter under advisement.[1] On April 7, 2022, the trial court issued findings of fact and conclusions of law affirming the Board's decision.

[9] Rosa seeks to appeal.

Decision

[10] Rosa seeks to raise several issues. However, numerous violations of the Rules of Appellate Procedure, the lack of cogent reasoning, and the failure to include items from the record of proceedings below in the Appendix seriously hampers our review. In fact, the Board argues in its appellee's brief that "[d]ue to the numerous and flagrant violations, the Court should dismiss [Rosa's] appeal." (Board's Br. 18). We agree.

[11] It is well settled that flagrant violations of the appellate rules can result in the dismissal of an appeal. *Galvan v. State*, 877 N.E.2d 213, 215 (Ind. Ct. App. 2007). First, we note that Rosa's Statement of the Case contains numerous arguments and lacks any description of the course of proceedings. Indiana Appellate Rule 46(A)(5) requires that this section of the brief "describe the nature of the case, the course of proceedings relevant to the issues presented for

[1] The transcript of the hearing on judicial review is 12 pages long.

review, and the disposition of these issues by the trial court[.]" Instead, Rosa argues that the Sheriff's absentee policy "is in direct conflict with the [Family Medical Leave Act.]" (Rosa's Br. at 5). He also argues that Rosa had a justified reason for missing work because he had "spent missed days being at the bedside of his wife not knowing if his wife would live or his children would survive." (Rosa's Br. at 5). Further, he continued his arguments by stating that Rosa did not have notice of the evidentiary hearing and that his counsel "proceeded to Trial without benefit of his file and Mr. Rosa." (Rosa's Br. at 5).

[12] Secondly, Rosa's brief also includes arguments in the Statement of Facts section. Those arguments overwhelmingly focused on trying to persuade this Court that neither Rosa nor his counsel had notice of the evidentiary hearing. However, Indiana Appellate Rule 46(A)(6) requires this section to "describe the facts relevant to the issues presented for review but need not repeat what is in the statement of the case." It should not contain arguments. *Basic v. Amouri*, 58 N.E.3d 980, 984 (Ind. Ct. App. 2016), *reh'g denied*.

[13] Third, Rosa's brief is required to summarize the arguments to be made on appeal. Specifically, "[t]he summary should contain a succinct, clear, and accurate statement of the arguments made in the body of the brief." Ind. Appellate Rule 46(A)(7). However, Rosa's Summary of Argument section contains an attempt to cut and paste various sections of ordinances and statutes in a jumbled manner with hyperlinks and footnotes that are out of place.

[14] Additionally, Rosa's Argument section lacks cogent reasoning, has limited citations to authority or the Appendix, and contains numerous spelling errors. The appellate rules require this section to "contain the contentions of the appellant on the issues presented, supported by cogent reasoning." App. R. 46(A)(8)(a). "This means that an appellant's argument section must contain a clear presentation of appellant's contentions with respect to the issues presented, the reasons in support of the contentions with any applicable citation to authorities, statutes, and parts of the record relied upon, and a clear showing of how the issues and contentions relate to particular facts of the case under review." *Burnell v. State*, 110 N.E.3d 1167, 1171 (Ind. Ct. App. 2018) (internal quotations and citations omitted). Our job is not to review underdeveloped arguments. *Id*. If we were to search the record and make up our own arguments because a party has presented them in perfunctory form, we would run the risk of becoming an advocate rather than an adjudicator. *Id.* This we will not do. It is insufficient for an appellant to merely recite facts and make conclusory statements in his argument section without analysis or authoritative support. *Id*.

[15] While Rosa has failed to present cogent reasoning relating to three of the four issues he has sought to present, we are able to decipher one issue: Whether it was appropriate for Rosa to be tried in absentia. However, our review is impeded because Rosa has not included all relevant exhibits and materials from the record of proceedings that were before the trial court. It is clear from the transcript and the parties' briefs that the Board issued certain notices regarding

the scheduling of the evidentiary hearing. However, none of these items are included in the Appendix. These items are referred to in the parties' arguments and their existence can be inferred from the trial court's findings and conclusions that Rosa's counsel had actual notice. However, as a reviewing court, we will not rely on inferences. Rosa was responsible for including all relevant materials for this appeal in his Appendix. App. R. 50(A). Because his failure to do so has substantially impeded our ability to determine and review this issue, he has waived consideration of this issue. *Martin v. Brown*, 129 N.E.3d 283, 286 (Ind. Ct. App. 2019). As no issues remain, this appeal is dismissed.

[16] Dismissed.

Bradford, J., and Kenworthy, J., concur.