MEMORANDUM DECISION

APPELLANT, PRO SE

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IN THE
COURT OF APPEALS OF INDIANA

Thomas DeCola,

Appellant-Plaintiff

v.

Stephen Paul & Jean Tamara Moore (personally and as trustee), James B. and Anita J. Piper, Zion Temple of Michigan City, Inc., and Joe Ann Johnson,

Appellee-Defendants.

December 20, 2023

Court of Appeals Case No. 23A-PL-609

Appeal from the LaPorte Circuit Court

The Honorable Thomas J. Alevizos, Judge

Trial Court Cause No. 46C01-2006-PL-858

Memorandum Decision by Judge Pyle

Judges Vaidik and Mathias concur.

Pyle, Judge.

Statement of the Case

[1] Thomas DeCola ("DeCola") appeals the trial court's order granting summary judgment to James B. Piper and Anita J. Piper, Joe Ann Johnson, and Zion Temple of Michigan City, Inc., (collectively, "the Adjoining Landowners"), who were named among the multiple defendants in DeCola's quiet title complaint. DeCola argues that the trial court erred by granting summary judgment to the Adjoining Landowners. Concluding that the trial court did not err by granting summary judgment to the Adjoining Landowners, we affirm the trial court's judgment.

[2] We affirm.

Issue

> Whether the trial court erred by granting summary judgment to the Adjoining Landowners.

Facts

[3] This appeal stems from DeCola's complaint to quiet title on two parcels of real property located in LaPorte County that DeCola had purchased during two property tax sales. One parcel is commonly referred to as the West 10th Street

parcel ("the 10th Street parcel")[1] and the second parcel is commonly referred to as the Western Avenue parcel ("the Western Avenue parcel").[2] The two parcels had previously been used by a railroad, CSX Transportation, Inc. ("CSX"), as a railroad right of way for a number of years and then had been subsequently abandoned by the railroad prior to DeCola's tax sale purchases of the parcels. The Adjoining Landowners own real property that adjoins or abuts the parcels. The Adjoining Landowners' summary judgment motion referenced only the 10th Street parcel, and DeCola's appellate brief addresses only the 10th Street parcel. Accordingly, this Court's facts and analysis will focus on the 10th Street parcel.

[4] In 1993, a class action lawsuit was filed against CSX on behalf of landowners who had real estate abutting CSX's abandoned railroad right of way ("the class action cause").[3] The class action cause was filed in Hamilton County, and it addressed the superiority of title for the abandoned railroad right of way that abutted numerous parcels, including the 10th Street parcel. In November 2003, the trial court in the class action cause issued a declaratory judgment order ("November 2003 declaratory judgment order") pursuant to a previously

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[1] The legal description for the 10th Street parcel is "42-01-32-505-004 ABANDONED ROW IN W 1/2 NW 1/4 S32 T38 R4 3.30 AC[,]" and the property identification is "46-01-32-505-004.000-022[.]" (App. Vol. 2 at 114).

[2] The legal description for the Western Avenue parcel is "42-01-32-161-016 ABANDONED ROW IN W 1/2 NW 1/4 S32 T38 R4 2.02 AC[,]" and the property identification is "46-01-32-161-016.000-022[.]" (App. Vol. 2 at 115).

[3] The class action cause was filed under cause number 29D03-9308-CP-404.

entered settlement agreement. The November 2003 declaratory judgment order was titled, "Declaratory Judgment for the County of LaPorte[.]" (App. Vol. 3 at 30) (modified from all upper case letters). The November 2003 declaratory judgment order addressed the superiority of title for "the abandoned railroad corridor formerly operated by CSX" in LaPorte County. (App. Vol. 3 at 30-31). In relevant part, the November 2003 declaratory judgment order provided that where the nature of the title held by CSX for the abandoned railroad right of way was an easement and not a fee title, then the landowners' title to the portion of the abandoned railroad right of way adjacent to their property was "superior to any claims of title by CSX[.]" (App. Vol. 3 at 31). The attached exhibit to the November 2003 declaratory judgment order showed that CSX's title interest in the 10th Street parcel had been an easement in the now abandoned railroad right of way. Therefore, pursuant to the November 2003 declaratory judgment order, the Adjoining Landowners were determined to have superior title for their property adjoining the abandoned railroad right of way. The November 2003 declaratory judgment order was recorded in the LaPorte County Recorder's office in March 2007.

[5] In October 2018, DeCola purchased the 10th Street parcel at a tax sale. At that time, the parcel was titled in the name of CSX. In November 2018, DeCola provided notice of the tax sale and notice of the right of redemption to CSX only. In October 2019, DeCola filed in the LaPorte Superior Court ("the superior court") a petition for the issuance of a tax deed. DeCola provided notice of this tax deed petition to CSX only. DeCola did not provide any of

these notices to the Adjoining Landowners. In December 2019, the superior court entered an order to issue a tax deed for the 10th Street parcel ("December 2019 order to issue a tax deed"), and the county auditor then issued the tax deed to DeCola in January 2020 ("January 2020 tax deed").

[6] In June 2020, DeCola filed a complaint to quiet title to the 10th Street parcel. DeCola filed his complaint in the LaPorte Circuit Court ("the trial court"). Thereafter, in November 2021, DeCola filed an amended complaint, seeking to quiet title to both the 10th Street parcel and the Western Avenue parcel.[4] DeCola filed his complaint to quiet title against numerous parties, including the Adjoining Landowners. DeCola's complaint provides that he had "named as defendants all persons whom [he] kn[e]w[] may have a claim to or interest in the real estate." (App. Vol. 2 at 34, 109).

[7] The Adjoining Landowners filed a joint motion for summary judgment and argued that DeCola was not entitled to quiet title against them for the 10th Street parcel. The Adjoining Landowners designated the following evidence: (1) DeCola's amended complaint; (2) a property report for the abandoned right of way for the 10th Street parcel, which included the November 2003 declaratory judgment order from the class action cause; (3) DeCola's October 2019 petition for the issuance of a tax deed for the 10th Street parcel; and (4) the return receipts from the U.S. postal service for notices sent to CSX relating to the 10th

[4] The county auditor issued a tax deed for the Western Avenue parcel to DeCola in October 2021.

Street parcel. The Adjoining Landowners asserted that the undisputed material facts revealed that the "real estate that is the subject of this quiet title action consists of an abandoned railroad right of way located in [the 10th Street parcel]" and that they own real property that "adjoins the abandoned railroad right of way where the nature of the interest held by the railroad in the right of way was that of an easement." (App. Vol. 3 at 198-99).

[8] The Adjoining Landowners argued that they were entitled to summary judgment because the November 2003 declaratory judgment order had established that "the ownership interest[s] of [the Adjoining Landowners] were all determined to be superior to CSX Transportation with respect to that portion of the abandoned railroad right of way that abutted [the Adjoining Landowners'] property because the only interest held by CSX Transportation was an easement." (App. Vol. 3 at 200). Citing to *Calumet Nat. Bank as Tr. Under Tr. No. P-3362, Dated Sept. 1, 1986 v. Am. Tel. & Tel. Co.*, 682 N.E.2d 785, 788 (Ind. 1997), the Adjoining Landowners asserted that because "CSX Transportation held only an easement to the right of way where it adjoined with the property owned by [the Adjoining Landowners], the easement terminated, and CSX Transportation no longer held any interest in the abandoned right of way." (App. Vol. 3 at 201). The Adjoining Landowners further asserted that, as the owners of the adjoining fee, the railroad's interest vested in them "from the center line of the right-of-way to the adjoining property line." (App. Vol. 3 at 201).

[9] Additionally, the Adjoining Landowners argued that they were entitled to summary judgment because DeCola had purchased the abandoned right of way for the 10th Street parcel at a tax sale but had not provided any of the three required statutory notices[5] to the Adjoining Landowners. They argued that DeCola's failure to provide them with the necessary notices rendered his tax deed void. The Adjoining Landowners requested that the trial court "grant their motion for summary judgment and enter a judgment that the abandoned railroad right of way abutting their real property reverted to [the Adjoining Landowners] upon the abandonment of the right of way and that [DeCola] holds no title, right, or interest in the abandoned right of way abutting the [Adjoining Landowners'] real property." (App. Vol. 3 at 202).

[10] DeCola subsequently filed a response to the Adjoining Landowners' summary judgment motion. DeCola did not address the Adjoining Landowners' substantive summary judgment arguments or argue that there were genuine issues of material fact. Instead, DeCola argued that there were procedural deficiencies that should preclude the trial court from ruling in favor of the Adjoining Landowners' summary judgment motion. Specifically, DeCola argued that: (1) under Trial Rule 12(B)(1), the trial court did not have subject matter jurisdiction over DeCola's quiet title action because the superior court, and not the trial court, had entered the December 2019 order to issue a tax deed

[5] The three required notices included: (1) notice of the tax sale under INDIANA CODE § 6-1.1-24-4; (2) notice of the right of redemption under INDIANA CODE § 6-1.1-25-4.5; and (3) notice of petition for a tax deed under INDIANA CODE § 6-1.1-25-4.6.

and that the Adjoining Landowners should have objected to the trial court's jurisdiction in their answer; (2) the Adjoining Landowners were improperly using their summary judgment motion filed with the trial court to challenge the superior court's December 2019 order to issue a tax deed for the 10th Street parcel and that they should have instead filed a Trial Rule 60 motion with the superior court; and (3) the Adjoining Landowners had failed to state a claim upon which relief could be granted pursuant to Trial Rule 12(B)(6).

[11] The trial court held a hearing on the Adjoining Landowners' summary judgment motion.[6] In January 2023, the trial court issued an order, finding that there were no genuine issues of material facts and granting the Adjoining Landowners' summary judgment motion.[7] In its order, the trial court explained that relevant Indiana common law and statutory law[8] as well as the November 2003 declaratory judgment order had established that the railroad's abandonment of the railroad right of way had resulted in the termination of the railroad's easement and the vesting of the interest in the right of way to the Adjoining Landowners as owners of the land adjoining that abandoned railroad right of way. The trial court explained that, therefore, the tax deed issued to DeCola in January 2020 for the 10th Street parcel "did not convey any right,

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[6] When DeCola filed his Notice of Appeal, he did not request a transcript of the summary judgment hearing. In his appellate brief, DeCola states that he did not request the transcript, opining that the transcript was not needed due to "the irrelevancy of the hearing[.]" (DeCola Br. 8).

[7] The trial court entered the order as a final, appealable judgment.

[8] The trial court cited to *Consol. Rail Corp. v. Lewellen*, 682 N.E.2d 779, 782 (Ind. 1997) and INDIANA CODE § 32-23-11-10.

title, or interest to [DeCola] [for] any portion of the abandoned railroad right of way abutting the real estate of the Adjoining Landowners." (App. Vol. 4 at 7). Additionally, the trial court determined that the January 2020 tax deed issued to DeCola for the 10th Street parcel was "void as against the interests of the Adjoining Landowners" because DeCola had not provided the required statutory notices to the Adjoining Landowners. (App. Vol. 4 at 7). The trial court concluded that "[p]ursuant to I.C. § 32-23-11-10([c]), the Adjoining Landowners hold title superior to that of [DeCola] in this lawsuit to that portion of the abandoned railroad right of way which abuts the real estate of the Adjoining Landowners from the center line of the right of way to the adjoining property line." (App. Vol. 4 at 8).

[12] Thereafter, DeCola simultaneously filed a motion to correct error and a motion to "open the judgment[.]" (App. Vol. 5 at 237). In DeCola's motion to correct error, he attached two exhibits, including a United States Interstate Commerce Commission Certificate and Decision to show that CSX had abandoned the railroad right of way in 1980. In DeCola's motion to open the judgment, he argued that the trial court should enter a "new judgment" pursuant to Indiana Trial Rule 52. (App. Vol. 5 at 237).

[13] In February 2023, the trial court entered an order denying DeCola's motion to open the judgment. DeCola's motion to correct error was deemed denied.

[14] DeCola now appeals.

Decision

[15] DeCola argues that the trial court erred by granting summary judgment to the Adjoining Landowners. We disagree.

[16] At the outset, we note that DeCola has chosen to proceed pro se.[9] It is well settled that pro se litigants are held to the same legal standards as licensed attorneys. *Evans v. State*, 809 N.E.2d 338, 344 (Ind. Ct. App. 2004), *trans. denied*. *See also DeCola v*, 207 N.E.3d at 443. Thus, "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." *DeCola*, 207 N.E.3d at 443 (cleaned up). "We will not become a party's advocate, nor will we address arguments that are inappropriate, improperly expressed, or too poorly developed to be understood." *Barrett v. State*, 837 N.E.2d 1022, 1030 (Ind. Ct. App. 2005), *trans. denied*.

[17] Our standard of review for summary judgment cases is well-settled. When we review a trial court's grant of a motion for summary judgment, our standard of review is the same as it is for the trial court. *Knighten v. E. Chi. Hous. Auth.,* 45 N.E.3d 788, 791 (Ind. 2015). Summary judgment is appropriate only where the moving party has shown that there is no genuine issue of material fact and that

[9] In a recent appeal involving DeCola and an action in which he filed a claim to quiet title to property purchased in a tax sale in Porter County, our Court noted that "it [wa]s 'quite clear' that the trial court consider[ed] DeCola to be a 'prolific, abusive litigant[,]'" and we further noted that DeCola had engaged in "byzantine" litigation. *DeCola v. Steinhilber*, 207 N.E.3d 440, 443 (Ind. Ct. App. 2023) (cleaned up), *reh'g denied*.

it is entitled to judgment as a matter of law. *Hughley v. State*, 15 N.E.3d 1000, 1003 (Ind. 2014). "On review, we may affirm a grant of summary judgment on any grounds supported by the designated evidence." *Chmiel v. US Bank Nat'l Ass'n*, 109 N.E.3d 398, 407 (Ind. Ct. App. 2018).

[18] This appeal stems from DeCola's claim against the Adjoining Landowners in his action to quiet title. "An action to quiet title brings into issue all claims regarding the property in question." *Id.* "A plaintiff may recover only upon the strength of his own title and must show that he has legal title with a present right of possession paramount to the title of the defendant." *Id.* "It is therefore appropriate for a defendant to prove that the plaintiff does not have title or interest in the property." *Id.*

[19] The Adjoining Landowners moved for summary judgment to show that DeCola did not have title or interest in the property at issue. The trial court granted summary judgment to the Adjoining Landowners, concluding that "the Adjoining Landowners hold title superior to that of [DeCola] in this lawsuit to that portion of the abandoned railroad right of way which abuts the real estate of the Adjoining Landowners from the center line of the right of way to the adjoining property line." (App. Vol. 4 at 8). Additionally, the trial court determined that the January 2020 tax deed issued to DeCola for the 10th Street parcel was "void as against the interests of the Adjoining Landowners" because DeCola had not provided the required statutory notices to the Adjoining Landowners. (App. Vol. 4 at 7).

[20] On appeal, DeCola's challenge to the trial court's grant of summary judgment does not include any argument that the trial court erred in its substantive determinations in its summary judgment order. DeCola does not challenge the trial court's conclusions. Instead, DeCola raises a procedural argument and a constitutional argument that he did not raise in his summary judgment response.

[21] We first address DeCola's procedural argument. DeCola argues that the trial court erred by granting summary judgment because "the [Adjoining Landowners'] failed to object to DeCola's selection of jurisdiction at their first opportunity within their answer[.]" (DeCola's Br. 9). He contends that the trial court lacked jurisdiction to hear the Adjoining Landowners' summary judgment motion in DeCola's quiet title action because the superior court had issued the January 2020 tax deed and that, under INDIANA CODE § 6-1.1-24-4.7(f), the superior court retained continuing jurisdiction over all issues related to the tax sale of the property.

[22] We conclude that DeCola, who invoked the jurisdiction of the trial court by filing his action to quiet title in the circuit court, waived any objection to jurisdiction and "cannot be heard to complain" that the trial court lacked jurisdiction to rule on the summary judgment motion. *See Bank One Tr. No. 386 v. Zem, Inc.*, 809 N.E.2d 873, 877 (Ind. Ct. App. 2004) (rejecting a plaintiff's appellate argument that a county superior court lacked jurisdiction to rule on a summary judgment motion in the plaintiff's quiet title cause when the tax deed had been issued by the circuit court and holding that the plaintiff—who had

filed the quiet title action in the superior court—had waived any objection to jurisdiction and "c[ould] not be heard to complain" that the superior court lacked jurisdiction), *trans. denied*.

[23] Next, we turn to DeCola's second appellate argument. DeCola asserts that the trial court's entry of summary judgment was erroneous because the trial court failed to recognize that the November 2003 declaratory judgment order was "*ipso jure* unconstitutional[.]"[10] (DeCola's Br. 10). Aside from DeCola failing to provide a cogent argument in support of his assertion, DeCola also did not raise this constitutional argument when he responded to the Adjoining Landowners' summary judgment motion.[11] Accordingly, he has waived appellate review of this argument as a basis for his assertion that the trial court erred by granting summary judgment to the Adjoining Landowners. *See* Ind. Appellate Rule 46(A)(8)(a) (explaining that an appellant's arguments must be supported by cogent argument); *Hite v. Vanderburgh Cnty. Office of Family & Children*, 845 N.E.2d 175, 180 (Ind. Ct. App. 2006) (holding that it is "well established" that a party's constitutional claim is waived when raised for the first time on appeal). Accordingly, we affirm the trial court's judgment granting summary judgment to the Adjoining Landowners.

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[10] "Ipso jure" is defined as "[b]y the operation of the law itself[.]" Black's Law Dictionary (11th ed. 2019).

[11] We note that, after the trial court had entered its summary judgment order, DeCola filed a motion to open the judgment and merely "aver[red]" that the November 2003 declaratory judgment order was "*ipso jure* unconstitutional[.]" (App. Vol. 6 at 10).

[24] Affirmed.

Vaidik, J., and Mathias, J., concur.