

MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.



APPELLANT PRO SE

Thomas DeCola
North Judson, Indiana

IN THE COURT OF APPEALS OF INDIANA

Thomas DeCola,
Appellant,

v.

Cleveland Richard G 1/6 &
Cleveland Joshua C Jordan 1/6
& Cleveland Michael T
Supplemental Needs Trust for
1/6 & Vitoux Sally 3/6 /TC,
Paul M. & Carolyn Cleveland,
RJW Farms LLC, Haman
Harold H & Haman Marlene O
Living Trust,
*Appellees.*¹

April 26, 2023

Court of Appeals Case No.
23A-PL-230

Appeal from the Porter Superior
Court

The Honorable Michael A. Fish,
Special Judge

Trial Court Cause No.
64D05-2212-PL-10538

¹ The named Appellees are the Respondents listed in DeCola's *pro se* December 27, 2022 petition.

Memorandum Decision by Judge Brown
Judges Bailey and Weissmann concur.

Brown, Judge.

- [1] Thomas DeCola appeals the trial court’s denial of his motion to transfer the case to Porter Superior Court 2. We affirm.

Facts and Procedural History

- [2] On December 27, 2022, DeCola filed a “Verified Petition for Declaring the Easement of Necessity for Parcel 64-18-12-400-003.000-013” in the Porter Superior Court.² December 27, 2022 Petition at 1 (capitalization omitted). The petition listed “PORTER SUPERIOR COURT 2” near the top of the first page. *Id.* Above that caption, it lists the lower court cause number 64D05-2212-PL-010538 and “Porter Superior Court 5” as well as an indication that the document was filed on December 27, 2022. *Id.*
- [3] On December 29, 2022, Judge Mary A. DeBoer entered an order recusing and stating that, if the parties do not reach an agreement on a special judge, “then they shall notify the Court of such in writing at which time the Court will forward this Cause to the Porter County Court Administrator for selection of a Special Judge pursuant to Porter County Local Rules.” December 29, 2022 Order at 1.

² The Appellant’s Appendix does not include a copy of the petition. However, the petition is available using Indiana’s Odyssey Case Management System.

- [4] On December 31, 2022, DeCola filed a “Writ for Clerk to File Cause in Porter Superior Court 2” asserting he was the master of his claim and had the right to file in any court of his choosing. Appellant’s Appendix Volume II at 12.
- [5] On January 9, 2023, Judge DeBoer entered an order appointing Judge Michael A. Fish as Special Judge. On January 18, 2023, Special Judge Fish accepted the appointment of Special Judge in the matter, and the order listed Porter Superior Court 5. That same day, DeCola filed a “Motion to Transfer Case to the Porter Superior Court 2.” *Id.* at 16. He alleged that “the Porter Superior Court 5, Special Judge Michael A. Fish thereof lacks jurisdiction based upon the fact that DeCola filed the cause in the Porter Superior Court 2 on December 27, 2022.”³ *Id.*
- [6] On January 20, 2023, the court denied DeCola’s “motion for case transference to the Porter Superior Court 2.” *Id.* at 19. The order was entered by Special Judge Fish of the “Porter Superior Court 5.” *Id.*
- [7] On February 1, 2023, DeCola filed a notice of appeal of the court’s January 20, 2023 order and asserted that “[t]his is an appeal from an interlocutory order, taken as of right pursuant to Ind. Appellate Rule 14(8).” Notice of Appeal at 2.

³ In his January 18, 2023 motion, DeCola did not reference Ind. Trial Rule 75, but he asserts on appeal that he “filed a motion to transfer the case to the Porter Superior Court 2, pursuant to Ind. Trial Rule 75” Appellant’s Brief at 5.

Discussion

- [8] We note that DeCola is proceeding *pro se*. Such litigants are held to the same standard as trained counsel and are required to follow procedural rules. *Martin v. Hunt*, 130 N.E.3d 135, 136 (Ind. Ct. App. 2019) (citing *Evans v. State*, 809 N.E.2d 338, 344 (Ind. Ct. App. 2004), *trans. denied*). This Court will not “indulge in any benevolent presumptions on [their] behalf, or waive any rule for the orderly and proper conduct of [their] appeal.” *Ankeny v. Governor of State of Ind.*, 916 N.E.2d 678, 679 n.1 (Ind. Ct. App. 2009) (citation omitted), *reh’g denied, trans. denied*.
- [9] DeCola argues that Porter County Local Rule LR64-ARO1-3000.15 does not comply with “the U.S. Supreme Court’s ‘master of the claim’ rule and Ind. Trial Rule 5(f).” Appellant’s Brief at 6. He requests that we “transfer the case to the Porter Superior Court 2 as a matter of law in recognition of the U.S. Supreme Court’s ‘master of the claim’ rule and T.R. 5(f).” *Id.* at 9. He appears to essentially argue that his case should be transferred from Porter Superior Court 5 to Porter Superior Court 2.
- [10] With respect to DeCola’s citation to Ind. Trial Rule 75, we note that Ind. Trial Rule 75(A) “sets forth the venue requirements for actions filed in Indiana courts.” *Randolph Cnty. v. Chamness*, 879 N.E.2d 555, 556 (Ind. 2008). “Generally, any case may be venued in any court in the state, subject to the right of an objecting party to request that the case be transferred to a preferred venue listed in Rule 75(A).” *Id.* “There may be, and often is, more than one preferred venue for a given case.” *Id.* at 557. “If the action was filed in a

preferred venue, change of venue cannot be granted.” *Id.* “Interpretation of our trial rules is a question of law that we review *de novo*.” *Morrison v. Vasquez*, 124 N.E.3d 1217, 1219 (Ind. 2019). Ind. Trial Rule 75 mentions the counties in which preferred venue lies, but does not address which of multiple superior courts in the same county may have preferred venue.

[11] Ind. Code § 33-33-64-3 provides that “[t]here is established a court of record to be known as Porter superior court” and “[t]he Porter superior court has five (5) judges.” Ind. Code § 33-33-64-6 is titled “Adoption of rules; judicial powers” and provides that the “judges of the Porter superior court may make and adopt rules and regulations for conducting the business of the court and have all the powers incident to a court of record in relation to the attendance of witnesses, the punishment of contempts, and the enforcement of its orders.” Porter County Local Rule LR64-ARO1-3000.15 provides:

Case Type Categories PL, CT, TS, TP, EV (civil) and MF.

PL, CT, TS, TP, EV (civil) and MF cases are assigned and distributed by the use of Odyssey Case Management Software by the Office of the Clerk and Court Administrator for each case type on an even, random and rotating assignment of cases to the following Courts:

(A) Superior Court 1

(B) Superior Court 2

(C) Superior Court 5

[12] To the extent DeCola asserts that the local rule violates the “master of the claim” rule mentioned by the United States Supreme Court, he cites *Caterpillar*

Inc. v. Williams, 482 U.S. 386, 107 S. Ct. 2425 (1987), and *Merrell Dow Pharms. Inc. v. Thompson*, 478 U.S. 804, 106 S. Ct. 3229 (1986). In *Caterpillar Inc.*, the United States Supreme Court held:

Only state-court actions that originally could have been filed in federal court may be removed to federal court by the defendant. Absent diversity of citizenship, federal-question jurisdiction is required. The presence or absence of federal-question jurisdiction is governed by the “well-pleaded complaint rule,” which provides that federal jurisdiction exists only when a federal question is presented on the face of the plaintiff’s properly pleaded complaint. *See Gully v. First National Bank*, 299 U.S. 109, 112-113, 57 S. Ct. 96, 97-98, 81 L.Ed. 70 (1936). The rule makes the plaintiff the master of the claim; he or she may avoid federal jurisdiction by exclusive reliance on state law.^[4]

482 U.S. at 392, 107 S. Ct. at 2429 (footnotes omitted). In *Merrell Dow Pharms. Inc.*, the United States Supreme Court held that “[t]his case . . . poses what Justice Frankfurter called the ‘litigation-provoking problem,’ *Textile Workers v. Lincoln Mills*, 353 U.S. 448, 470, 77 S. Ct. 912, 928, 1 L.Ed.2d 972 (1957)

⁴ The Court included a footnote here which stated:

See The Fair v. Kohler Die & Specialty Co., 228 U.S. 22, 25, 33 S. Ct. 410, 411, 57 L.Ed. 716 (1913) (“Of course, the party who brings a suit is master to decide what law he will rely upon”) (Holmes, J.); see also *Merrell Dow Pharmaceuticals, Inc. v. Thompson*, 478 U.S. 804, 809, n.6, 106 S. Ct. 3229, 3233, n.6, 92 L.Ed.2d 650 (1986) (“Jurisdiction may not be sustained on a theory that the plaintiff has not advanced”); *Great North R. Co. v. Alexander*, 246 U.S. 276, 282, 38 S. Ct. 237, 239-240, 62 L.Ed. 713 (1918) (“[T]he plaintiff may by the allegations of his complaint determine the status with respect to removability of a case”).

482 U.S. at 392 n.7, 107 S. Ct. at 2429 n.7.

(dissenting opinion)—the presence of a federal issue in a state-created cause of action.” 478 U.S. at 809-810, 106 S. Ct. at 3233. The Court also noted:

Jurisdiction may not be sustained on a theory that the plaintiff has not advanced. *See Healy v. Sea Gull Specialty Co.*, 237 U.S. 479, 480, 35 S. Ct. 658, 659, 59 L.Ed. 1056 (1915) (“[T]he plaintiff is absolute master of what jurisdiction he will appeal to”); *The Fair v. Kohler Die & Specialty Co.*, 228 U.S. 22, 25, 33 S. Ct. 410, 411, 57 L.Ed. 716 (1913) (“[T]he party who brings a suit is master to decide what law he will rely upon”). *See also United States v. Mottaz*, 476 U.S. 834, 850, 106 S. Ct. 2224, 2233, 90 L.Ed.2d 841 (1986).

Id. at 809 n.6, 106 S. Ct. at 3233 n.6. DeCola does not cite to authority suggesting that either of these cases, which discussed removal of federal question cases from state into federal courts, impacts whether the Porter Superior Court 5 was required to transfer the case to Porter Superior Court 2. As for DeCola’s argument that Porter County Local Rule LR64-ARO1-3000.15 violates Ind. Trial Rule 5(F),⁵ we cannot say DeCola develops a cogent

⁵ Ind. Trial Rule 5(F) provides:

Filing With the Court Defined. The filing of pleadings, motions, and other papers with the court as required by these rules shall be made by one of the following methods:

- (1) Delivery to the clerk of the court;
 - (2) Sending by electronic transmission under the procedure adopted pursuant to Administrative Rule 12;
 - (3) Mailing to the clerk by registered, certified or express mail return receipt requested;
 - (4) Depositing with any third-party commercial carrier for delivery to the clerk within three (3) calendar days, cost prepaid, properly addressed;
 - (5) If the court so permits, filing with the judge, in which event the judge shall note thereon the filing date and forthwith transmit them to the office of the clerk;
- or
- (6) Electronic filing, as approved by the Indiana Office of Judicial Administration (IOJA) pursuant to Trial Rule 87.

argument. Accordingly, he has waived this argument. *See Price v. Rev. Bd. of Ind. Dep't of Workforce Dev.*, 2 N.E.3d 13, 16 (Ind. Ct. App. 2013) (holding the claimant's brief did not present cogent argument related to one of her claims and she waived the claim for appellate review).

[13] For the foregoing reasons, we affirm the trial court's order.

[14] Affirmed.

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

Filing by registered or certified mail and by third-party commercial carrier shall be complete upon mailing or deposit.
Any party filing any paper by any method other than personal delivery to the clerk shall retain proof of filing.