MEMORANDUM DECISION

APPELLANTS PRO SE

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IN THE COURT OF APPEALS OF INDIANA

Kathryn Dircks and Barry Dircks,

Appellants-Defendants,

v.

Julie Camden and Camden & Meridew, P.C.,

Appellees-Plaintiffs.

March 17, 2023

Court of Appeals Case No. 22A-PL-1292

Appeal from the Boone Circuit Court

The Honorable Lori N. Schein, Judge

Trial Court Cause No. 06C01-2106-PL-768

Memorandum Decision by Judge Robb
Judges Mathias and Foley concur.

Robb, Judge.

Case Summary and Issue

[1] Kathryn Dircks and Barry Dircks (collectively, the "Dirckses") filed their Proposed Complaint with the Indiana Department of Insurance ("IDOI"). The Dirckses' complaint named dozens of individuals and entities as defendants, including Julie Camden and Camden & Meridew, P.C. (collectively, "Camden"). The Dirckses alleged Camden committed legal malpractice. Camden filed a motion for preliminary determination of law and a subsequent motion for judgment on the pleadings arguing they were not health care providers and thus the Dirckses' claim against them, brought before the IDOI, was inappropriate. The trial court granted Camden's motion for judgment on the pleadings. Subsequently, Camden filed a petition requesting attorney's fees and costs. Following a hearing, the trial court granted Camden's petition. The Dirckses now appeal raising multiple issues for our review, which we consolidate and restate as whether the trial court abused its discretion by awarding Camden attorney's fees and costs. Concluding the trial court did not abuse its discretion, we affirm.

Facts and Procedural History

[2] Kathryn and Barry are married and have two children together. On March 4, 2019, Kathryn went to St. Vincent Hospital. Doctors determined Kathryn was exhibiting delusional behavior and believed she was mentally ill. Kathryn was subsequently involuntarily committed. During Kathryn's involuntary commitment, the Indiana Department of Child Services ("DCS") removed the

children from the Dirckses' home. DCS petitioned for the children to be adjudicated children in need of services ("CHINS"). Barry then hired Camden to represent him in the CHINS matter and entered an attorney client engagement agreement.

[3] On March 11, 2019, an involuntary commitment hearing was held. Kathryn was provided with a court-appointed attorney. Following the hearing, Kathryn was ordered involuntarily committed for ninety days. Subsequently, Kathryn entered into an attorney client engagement agreement with Camden. Camden entered an appearance in the involuntary commitment matter. On May 14, Kathryn's involuntary commitment was reversed. Afterward, Camden terminated the attorney client relationship with the Dirckses.

[4] In 2021, the Dirckses, pro se, filed a Proposed Complaint with the IDOI alleging, in relevant part, "Willful and Wanton Legal Malpractice" by Camden.[1] Appellants' Appendix, Volume II at 113.[2] On June 11, 2021, Camden filed a motion for preliminary determination of law in the Boone Circuit Court pursuant to Indiana Code section 34-18-11-1, arguing it was improper for the Dirckses to bring a legal malpractice claim before the IDOI.[3]

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[1] Citation to Appellants' Appendix is based on pdf. pagination. Also, as noted above, the Dirckses' Proposed Complaint includes claims against dozens of other defendants, none of whom are a party to this appeal.

[2] Prior to filing their complaint with the IDOI, the Dirckses filed a nearly identical complaint in the United States District Court for the Southern District of Indiana. The District Court dismissed the Dirckses' claims against Camden.

[3] Indiana Code section 34-18-11-1 permits the trial court to make preliminary determinations on issues of law or fact "upon the filing of a copy of the proposed complaint and a written motion[.]"

The Dirckses filed an answer to Camden's motion admitting that Camden are not "health care providers" nor are they themselves "patients as defined by the [Medical Malpractice] Act as it relates to their claims against" Camden. *Id*. at 146-48.

[5] On January 17, 2022, Camden filed a motion for judgment on the pleadings arguing that under no circumstances could the relief sought by the Dirckses in their Proposed Complaint be granted. Camden requested that the trial court dismiss them from the complaint and requested attorney's fees and costs. On February 15, 2022, the trial court issued an order granting Camden's motion for judgment on the pleadings. However, the order did not grant Camden attorney's fees.

[6] On February 21, 2022, Camden filed a petition for attorney's fees and costs. Camden requested $7,500.00 to pay their professional liability insurance deductible, $9,445.00 in attorney's fees, and $557.55 in copy and mailing expenses, for a total of $17,502.55.

[7] Following a hearing, the trial court issued an order granting Camden's petition for attorney's fees and costs pursuant to Indiana Code section 34-52-1-1, Indiana's General Recovery Rule. The trial court awarded Camden $9,455.00 in attorney's fees and $557.55 in expenses for a total of $10,002.55. The Dirckses then filed a motion to correct error which was denied. The Dirckses now appeal.

Discussion and Decision

Attorney's Fees[4]

A. Standard of Review

[8] The court's decision to award attorney's fees under Indiana Code section 34-52-1-1 is subject to a multi-level review. *In re Moeder*, 27 N.E.3d 1089, 1101 (Ind. Ct. App. 2015), *trans. denied*. First, the trial court's findings of fact are reviewed under the clearly erroneous standard. *Id.* Next, the court's legal conclusions regarding whether the litigant's claim was frivolous, unreasonable, or groundless are reviewed *de novo. Id.* Finally, the court's decision to award attorney's fees and the amount thereof is reviewed for an abuse of discretion. *Id.* at 1101-02. A trial court abuses its discretion if its decision is clearly against the logic and effect of the facts and circumstances or if the court has misinterpreted the law. *Id.* at 1102.

[4] The Dirckses also argue that the amount of attorney's fees awarded was excessive. However, the Dirckses fail to present a cogent argument. Ind. Appellate Rule 46(A)(8)(a). Therefore, this argument is waived. *See Cooper v. State*, 854 N.E.2d 831, 834 n.1 (Ind. 2006) (explaining contentions supported by neither cogent argument nor citation to authority are waived).

B. General Recovery Rule

[9] The Dirckses argue the trial court abused its discretion by awarding attorney's fees to Camden because the General Recovery Rule does not apply to complaints filed with the IDOI.[5] The General Recovery Rule states:

> (a) In all civil actions, the party recovering judgment shall recover costs, except in those cases in which a different provision is made by law.
>
> (b) In any civil action, the court may award attorney's fees as part of the cost to the prevailing party, if the court finds that either party:
>
> > (1) brought the action or defense on a claim or defense that is frivolous, unreasonable, or groundless;
> >
> > (2) continued to litigate the action or defense after the party's claim or defense clearly became frivolous, unreasonable, or groundless; or
> >
> > (3) litigated the action in bad faith.

Ind. Code § 34-52-1-1.

[5] Generally, Indiana has followed the American Rule by which both parties pay their own fees. In absence of statutory authority, agreement between the parties to the contrary, or an equitable exception, a prevailing party has no right to recover attorney fees from the opposition. *BioConvergence, LLC v. Menefee*, 103 N.E.3d 1141, 1160 (Ind. Ct. App. 2018), *trans. denied.*

[10] The Dirckses contend the General Recovery Rule does not apply to administrative claims filed with the IDOI because they are not "civil actions[.]" Appellants' Brief at 17. Here, the Dirckses filed a claim with the IDOI pursuant to the Medical Malpractice Act. The Dirckses argue that such a claim is an "informal process that must be completed *before* one can proceed with a civil action" and therefore the trial court erred by awarding the attorney's fees and costs under the General Recovery Rule. *Id.* at 19 (emphasis added).

[11] An action against a health care provider may not be commenced in an Indiana court before (1) the complaint has been presented to a medical review panel and (2) an opinion is given by the panel. Ind. Code § 34-18-8-4. However, Indiana Code section 34-18-11-1 permits the trial court to make preliminary determinations on issues of law or fact "upon the filing of a copy of the proposed complaint and a written motion[.]" Further, the Indiana Rules of Trial Procedure dictate that "a civil action is commenced by filing with the court a complaint or *such equivalent pleading or document as may be specified by statute*[.]" Ind. Trial Rule 3 (emphasis added).

[12] Accordingly, we conclude that by filing a motion for preliminary determination of law pursuant to Indiana Code section 34-18-11-1, Camden initiated a civil

action.[6] Thus, attorney's fees are available to Camden under the General Recover Rule if the criteria of the statute are met.

C. Frivolous, Unreasonable, or Groundless

[13] The Dirckses argue their claim and continued litigation was not frivolous, unreasonable, or groundless. We disagree. A claim or defense is "frivolous" if it is taken primarily for the purpose of harassment, if the proponent is unable to make a good faith and rational argument on the merits of the action, or if the proponent is unable to support the action taken by a good faith and rational argument for an extension, modification, or reversal of existing law. *Branham Corp. v. Newland Res., LLC,* 17 N.E.3d 979, 992 n.12 (Ind. Ct. App. 2014). A claim or defense is "unreasonable" if, based on the totality of the circumstances, including the law and the facts known at the time of filing, no reasonable person would consider the claim or defense worthy of litigation. *Id.* And a claim or defense is "groundless" if no facts exist which support the legal claim presented by the losing party. *Id.* A claim or defense is not, however, groundless

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[6] The Dirckses also contend the General Recovery Rule does not apply because the Medical Malpractice Act already has a provision regarding attorney's fees. *See City of Jeffersonville v. Env't. Mgmt. Corp.*, 954 N.E.2d 1000, 1014 (Ind. Ct. App. 2011) ("Indiana Code section 34-52-1-1 is the general recovery statute and provides for the recovery of costs in all civil actions, except in those cases in which a different provision is made by law."). However, pursuant to Indiana Code section 34-18-11-2:

> The filing of a copy of the proposed complaint and motion [for preliminary determination] with the clerk confers jurisdiction upon the court over the subject matter and the parties to the proceeding for the limited purposes stated in this chapter, including the taxation and assessment of costs or the allowance of expenses, including reasonable attorney's fees[.]"

(Emphasis added.)

or frivolous merely because the party loses on the merits. *Smyth v. Hester,* 901 N.E.2d 25, 33 (Ind. Ct. App. 2009), *trans. denied.*

[14] The Medical Malpractice Act provides "for the establishment of medical review panels to review proposed malpractice complaints against health care providers[.]" Ind. Code § 34-18-10-1. Health care providers include, in part, the following:

> An individual, a partnership, a limited liability company, a corporation, a professional corporation, a facility, or an institution licensed or legally authorized by this state to *provide health care or professional services* as a physician, psychiatric hospital, hospital, health facility, emergency ambulance service (IC 16-18-2-107), dentist, registered or licensed practical nurse, physician assistant, certified nurse midwife, anesthesiologist assistant, optometrist, podiatrist, chiropractor, physical therapist, respiratory care practitioner, occupational therapist, psychologist, paramedic, advanced emergency medical technician, or emergency medical technician, or a person who is an officer, employee, or agent of the individual, partnership, corporation, professional corporation, facility, or institution acting in the course and scope of the person's employment.

Ind. Code § 34-18-2-14(1) (emphasis added). The statute also has a catch-all provision that includes:

> A corporation, limited liability company, partnership, or professional corporation not otherwise qualified under this section that:
>
> (A) as one (1) of its functions, *provides health care*;

> (B) is organized or registered under state law; and
>
> (C) is determined to be eligible for coverage as a health care provider under this article for its health care function.

Ind. Code § 34-18-2-14(7) (emphasis added). "Health care" is defined as "an act or treatment performed or furnished . . . by a health care provider for . . . a patient during the patient's medial care, treatment, or confinement." Ind. Code § 34-18-2-13.

[15] The record is clear that Camden does not provide health care and are not a health care provider as defined by Indiana Code section 34-18-2-14. The Dirckses even admit this in their answer to Camden's motion for preliminary determination, stating that Camden were not "health care providers" and that they themselves are "not patients as defined by the Act as it relates to their claims against" Camden. Appellants' App., Vol. II at 146-48.[7]

[16] Therefore, we conclude that the Dirckses' claim against Camden filed with the IDOI pursuant to the Medical Malpractice Act was groundless as was their

[7] The Dirckses also contend that Camden's "affirmative defenses are derivative claims subject to the dictates" of the Medical Malpractice Act. Appellants' Br. at 22. Derivative claims include "the claim of a parent or parents, guardian, trustee, child, relative, attorney, or any other representative of the patient[.]" Ind. Code § 34-18-2-22. However, as our supreme court explained, this refers to a third party whose claim against a medical provider "results from a provider's malpractice to . . . a traditional patient." *Cutchin v. Beard*, 171 N.E.3d 991, 995 (Ind. 2021). Thus, the Dirckses' argument misses the mark.

continued litigation after Camden filed the motion for preliminary determination of law.[8]

D. Prevailing Party

[17] The Dirckses argue that Camden was not a prevailing party as required by the General Recovery Rule. Specifically, the Dirckses contend the trial court's order granting Camden's motion for judgment on the pleadings was not a judgment on the merits. In *River Ridge Dev. Auth. v. Outfront Media, LLC*, our supreme court held that to be considered a prevailing party under the General Recovery Rule, "a party must obtain a favorable judgment on the merits or comparable relief[.]" 146 N.E.3d 906, 913-14 (Ind. 2020) (stating that a claim voluntarily dismissed by the plaintiff was not a favorable judgment on the merits).

[18] Here, Camden filed a motion for preliminary determination of law pursuant to Indiana Code section 34-18-11-1, arguing they were not health care providers and thus not proper parties to be included in a proposed complaint before the IDOI. Subsequently, Camden moved for judgment on the pleadings pursuant to Trial Rule 12(C), which the trial court granted. A motion for judgment on the pleadings attacks the legal sufficiency of the pleadings. *Davis ex rel. Davis v. Ford Motor Co.*, 747 N.E.2d 1146, 149 (Ind. Ct. App. 2001), *trans. denied.* "A

[8] Because Indiana Code sections 34-52-1-1(b)(1) and (2) are written in the disjunctive, and we have determined that the Dirckses' claim and continued litigation was groundless, we need not determine whether they were also frivolous or unreasonable.

judgment on the pleadings is proper only when there are no genuine issues of material fact and when the facts shown by the pleadings clearly establish that the non-moving party cannot in any way succeed under the facts and allegations therein." *Eskew v. Cornett*, 744 N.E.2d 954, 956 (Ind. Ct. App. 2001), *trans. denied.* We conclude Camden obtained a favorable judgment on the merits when the trial court granted their motion for judgment on the pleadings. Therefore, Camden was a prevailing party pursuant to the General Recovery Rule.

E. Costs

[19] The Dircksses argue that the General Recovery Rule "does not permit an award of photocopying and mailing expenses." Appellants' Br. at 28. Pursuant to the General Recovery Rule, "the party recovering judgment shall recover costs[.]" Ind. Code § 34-52-1-1(a). "The term 'costs' is an accepted legal term of art that has been strictly interpreted to include only filing fees and statutory witness fees." *Van Winkle v. Nash*, 761 N.E.2d 856, 861 (Ind. Ct. App. 2002). "Thus, in the absence of manifest contrary legislative intent, the term 'costs' must be given its accepted meaning which does not include litigation expenses." *Id.* In *Van Winkle*, this court held that expenses associated with "deposition transcription, medical records acquisition, photograph and diagram exhibits, and photocopying" were not included in "costs" under Indiana Code section 34-52-1-1(a). *Id.* at 862. However, *Van Winkle* did not deal with subsection (b) of the General Recovery Rule.

[20] Indiana Code section 34-52-1-1(b) states that when a claim or continued litigation is frivolous, unreasonable, or groundless "the court may award attorney's fees *as part of the cost* to the prevailing party[.]" (Emphasis added.) This is clear and manifest legislative intent that in certain cases the term costs should be expanded beyond its original meaning. Indiana Code section 34-52-1-1(b) explicitly includes attorney's fees as a recoverable; however, we believe this opens the door for expenses that are accrued by attorneys during the natural course of litigation, such as photocopying and mailing expenses.[9] Accordingly, we conclude that the trial court did not abuse its discretion by awarding Camden litigation expenses.

Conclusion

[21] We conclude the trial court did not abuse its discretion awarding Camden attorney's fees and expenses. Accordingly, we affirm.

[22] Affirmed.

Mathias, J., and Foley, J., concur.

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[9] In *R.L. Turner Corp. v. Town of Brownsburg*, this court determined that the trial court did not abuse its discretion by determining that costs included attorney's fees and expenses. 949 N.E.2d 372, 379 (Ind. Ct. App. 2011). Subsequently, our supreme court granted transfer and affirmed in part and vacated in part, both on different grounds. *See R.L. Turner Corp. v. Town of Brownsburg*, 963 N.E.2d 453 (Ind. 2012).