MEMORANDUM DECISION

ATTORNEY FOR APPELLANT

Anthony J. Saunders
New Castle, Indiana

ATTORNEY FOR APPELLEES

Kory T. Bell
Federico & Bell
Hagerstown, Indiana

IN THE COURT OF APPEALS OF INDIANA

Richard Million,
Appellant-Plaintiff,

v.

Marc Foust and Foust Enterprises, LLC,
Appellees-Defendants

January 8, 2024

Court of Appeals Case No. 23A-CT-1539

Appeal from the Wayne Superior Court

The Honorable Gregory A. Horn, Judge

Trial Court Cause No. 89D02-1811-CT-48

Memorandum Decision by Judge Crone
Judges Bailey and May concur.

Crone, Judge.

Case Summary

[1] Richard Million filed a complaint against Marc Foust and Foust Enterprises, LLC (Enterprises) (collectively Appellees). Million filed a motion for summary judgment, which the trial court denied. Appellees filed a motion for summary judgment, which the trial court granted. Million appeals these rulings, as well as discovery and procedural rulings related to his summary judgment motion. We find Million's arguments waived for lack of cogency and therefore affirm.

Facts and Procedural History

[2] According to Million's one-paragraph factual summary of the events that led to the filing of his complaint, he "and Foust entered into a business arrangement for the repair and sale of farm machinery on January 23, 2003, and formed [Enterprises] in furtherance thereof." Appellant's Br. at 7. "The business arrangement of the parties was that Million would provide operating capital and Foust would use that capital to acquire machinery, then use his facilities to repair the machinery, sell it and then Million and Foust would split the profits." *Id*. Enterprises "was administratively dissolved on December 10, 2007." *Id*. "In 2015, Million purchased a 1991 Ford Tractor, Foust repaired it and sold it, following which, the parties split the profits." *Id*. "Million filed his Complaint for breach of contract and other claims on November 2, 2018." *Id*. Million has not bothered to divulge the factual or legal bases for those claims.

[3] In December 2019, Million served requests for admissions on Foust, who was unrepresented at that point. According to Million, Foust did not respond to the

requests, and thus the matters therein were deemed admitted pursuant to Indiana Trial Rule 36. In June 2021, Million filed a motion for summary judgment against Appellees. In October 2021, Appellees, by counsel, filed a response to the motion, which Million moved to strike as untimely. Foust filed an affidavit averring that he had responded to Million's requests for admissions, as well as a request to withdraw his admissions. Later that month, after a hearing, the trial court issued an order granting Foust's request and denying Million's motion to strike and motion for summary judgment.

[4] In September 2022, Appellees filed a motion for summary judgment. According to Million's brief, the basis for the motion "was the expiration of the statute of limitations with regard to Million's claims and the nonexistence of a partnership or joint venture." *Id.* at 8. Million filed a response asserting "that the administrative dissolution of [Enterprises] in 2007 converted the business relationship of Million and Foust to that of a partnership and the partnership was still in effect in 2015, when a 1991 Ford Tractor was bought, repaired, and sold." *Id.* "The position of Million was that the last transaction date in the partnership was 2015, so the statute of limitations"—presumably for his claim for breach of partnership agreement—"should only run from 2015 to 2018." *Id.* In June 2023, after a hearing, the trial court issued an order granting Appellees' summary judgment motion on all of Million's claims. This appeal ensued.

Discussion and Decision

[5] "While we prefer to decide cases on their merits, we will deem alleged errors waived where an appellant's noncompliance with the rules of appellate

procedure is so substantial it impedes our appellate consideration of the errors." *Thacker v. Wentzel*, 797 N.E.2d 342, 345 (Ind. Ct. App. 2003). "The purpose of our appellate rules, especially Indiana Appellate Rule 46, is to aid and expedite review and to relieve the appellate court of the burden of searching the record and briefing the case." *Id*. "We will not step in the shoes of the advocate and fashion arguments on his behalf, nor will we address arguments that are too poorly developed or improperly expressed to be understood." *Miller v. Patel*, 212 N.E.3d 639, 657 (Ind. 2023) (citation and quotation marks omitted). "A court which must search the record and make up its own arguments because a party has not adequately presented them runs the risk of becoming an advocate rather than an adjudicator." *Young v. Butts*, 685 N.E.2d 147, 151 (Ind. Ct. App. 1997). "A brief should not only present the issues to be decided on appeal, but it should be of material assistance to the court in deciding those issues." *Id*.

[6] In his brief, Million frames the issues as follows:

> Whether the Trial Court erred in Allowing the Defendant, Mar[c] Foust, to withdraw his admissions and deny[ing] the Plaintiff's Motion for Summary Judgment.
>
> Whether the Trial Court erred in finding that the Defendants were entitled to Summary Judgment on the issue of the existence of a Partnership or Joint Venture between the Plaintiff, Richard Million, and the Defendant, Mar[c] Foust.

Appellant's Br. at 5.

[7] The gist of Million's argument regarding the first issue is that "[e]ven without the admissions, the only evidence with regard to Million's Motion for Summary Judgment before the Court would be the evidence that he designated"—because the court should have stricken Appellees' belated response—and that, "based solely on the evidence before the Trial Court (the Affidavit of Richard Million and the Complaint), the Trial Court had no basis in the law to deny Million's Motion for Summary Judgment." *Id*. at 13-14. Million offers no support for this conclusory assertion. We have said, "It is not sufficient for the argument section [of a brief] that an appellant simply recites facts and makes conclusory statements without analysis or authoritative support." *Kishpaugh v. Odegard*, 17 N.E.3d 363, 373 n.3 (Ind. Ct. App. 2014). Million's brief does not even provide us with the operative facts and legal theories underlying his complaint or the substance of his affidavit, and we will not fashion a cogent argument about them on his behalf.[1] We find Million's argument on this issue waived.

[8] As for the second issue, Million's argument presumes familiarity with a factual and legal background that he failed to provide elsewhere in his brief, including the basis for his claim for breach of partnership agreement. Accordingly, we find his argument on this issue waived as well, and we affirm the trial court in all respects.

---

[1] To their credit, Appellees provide a much more detailed factual and legal background in their brief, but "it is the appellant's burden to demonstrate reversible error." *Holland v. Ketcham*, 181 N.E.3d 1030, 1035 (Ind. Ct. App. 2021). Million has failed to carry that burden here.

[9] Affirmed.

Bailey, J., and May, J., concur.