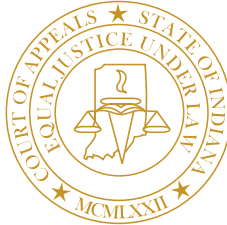


MEMORANDUM DECISION ON REHEARING

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 Appellate Rule 65(D), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.



IN THE Court of Appeals of Indiana

Adam Sean Tempest and Tiffany Dawn Tempest,
Appellants-Defendants

v.

Fifth Third Bank, National Association,
Appellee-Plaintiff

July 24, 2024

Court of Appeals Case No.
23A-MF-2245

Appeal from the Decatur Superior Court
The Honorable Kenneth R. Bass, Magistrate

Trial Court Cause No.
16D01-2302-MF-14

Memorandum Decision by Judge May
Judges Bailey and Felix concur.

May, Judge.

- [1] Tempest requests rehearing of our memorandum decision issued on May 29, 2024, in which we affirmed the trial court’s order granting summary judgment in favor of Fifth Third. *Tempest v. Fifth Third Bank, Nat’l Ass’n*, 23A-MF-2245 (Ind. Ct. App. May 29, 2024). We held that Tempest waived all issues on appeal because of his manifest failures to comply with the Indiana Appellate Rules. *Slip op.* at 7.
- [2] Tempest asserts in his petition for rehearing that “a magistrate cannot issue a final order in a mortgage foreclosure case due to not having subject matter jurisdiction.” (Pet. for Reh’g at 5.) In support of his argument, Tempest relies on Indiana Code section 33-23-5-5(15) (2019), which stated: “A magistrate may do any of the following . . . (15) Enter a final order or judgment in any proceeding involving matters specified in IC 33-29-2-4 (jurisdiction of small claims docket) or IC 34-26-5 (protective orders to prevent domestic or family violence or harassment).” However, that statute was repealed by P.L. 162-2020, SEC. 2, eff. July 1, 2020. Indiana Code section 33-23-5-8.5, which became effective on July 1, 2020, provides: “Except as provided in section 8 of this chapter, a magistrate has the same powers as a judge.” Indiana Code section 33-21-5-8 provides that “[a] magistrate does not have the power of judicial mandate,” but that exception is not applicable here. *Cf. Price v. Ind. Dep’t of Child Servs.*, 80 N.E.3d 170, 172 (Ind. 2017) (“Judicial mandate is an extraordinary remedy—available only when the law imposes a clear duty upon a defendant to perform a specific, ministerial act and the plaintiff is clearly

entitled to that relief.”). Fifth Third filed its complaint on January 11, 2023, and therefore, Magistrate Kenneth Bass had the authority to preside over the case and issue a final order. Accordingly, we grant Tempest’s petition for rehearing solely to address the argument presented in his petition for rehearing, but we affirm our original opinion in all other respects.

[3] Affirmed.

Bailey, J., and Felix, J., concur.

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