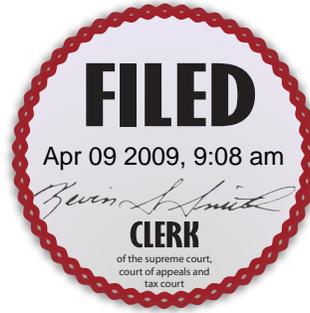


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

GARY VAUGHT,)

Appellant,)

vs.)

No. 49A02-0810-CV-945

UNIQUE THE SPECIALTY GROUP, INC. and)
JENNIFER FLORA)

Appellees.)

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Thomas J. Carroll, Judge
Cause No. 49D06-0508-PL-33761

April 9, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

Gary Vaught appeals the trial court's grant of summary judgment in favor of Unique, The Specialty Group, Inc. and Jennifer Flora (collectively, Unique) on his claims for unpaid wages and unjust enrichment and on Unique's counterclaim for breach of contract.

We affirm.

On August 29, 2005, Vaught filed his complaint for damages against Unique, alleging claims for unpaid wages under Indiana's Wage Payment Statutes,¹ unjust enrichment, and conversion. Unique filed a counterclaim for breach of the employment agreement between Unique and Vaught on October 25, 2005. Vaught later stipulated to the dismissal of his conversion claim.

On May 19, 2008, the parties filed cross motions for summary judgment, along with supporting briefs and designations of evidence. Following a summary judgment hearing, the trial court denied Vaught's motion for summary judgment and granted Unique's motion for summary judgment on Vaught's claims for unpaid wages and unjust enrichment² and on Unique's counterclaim for breach of contract.³ The trial court found no just reason for delay and directed the entry of final judgment in favor of Unique, indicating that a damages hearing on Unique's counterclaim would be scheduled at a later date. Vaught now appeals from the grant of summary judgment.

We need not delve into the specific facts of this case, as Vaught has waived all of the

¹ Ind. Code Ann. § 22-2-5-1 *et. seq.* (West, PREMISE through 2008 2nd Regular Sess.).

² The basis of both of Vaught's claims was that Unique failed to pay him a commission of \$1750, which he allegedly earned prior to his resignation on July 20, 2005 but did not become due until after said resignation.

³ The counterclaim was based in large part on allegations that Vaught breached the non-competition and non-solicitation covenants in his employment contract with Unique.

issues he presents on appeal. Initially, we observe that Vaught has failed to provide us with a complete record, as he has not included in his appendix any of the motions, memoranda, or designated evidence filed by Unique. “It is the duty of an appellant to provide this court with a record sufficient to enable us to review the claim of error”. *Lenhardt Tool & Die Co., Inc. v. Lumpe*, 703 N.E.2d 1079, 1084 (Ind. Ct. App. 1998), *trans. denied*. While we prefer to decide cases on the merits, we have frequently affirmed or dismissed an appeal based upon the appellant’s failure to provide us with the necessary summary judgment material. *See, e.g., Yoquelet v. Marshall County*, 811 N.E.2d 826 (Ind. Ct. App. 2004); *Hughes v. King*, 808 N.E.2d 146 (Ind. Ct. App. 2004). *See also Finke v. Northern Ind. Pub. Serv. Co.*, 862 N.E.2d 266, 272-73 (Ind. Ct. App. 2006) (“[w]e cannot review a claim that a trial court erred in granting a motion for summary judgment when the appellant does not include in the record all the evidence designated to the trial court and before it when it made its decision”), *trans. denied*. Were this Vaught’s only failing, we would reach the merits of the case solely due to the fact that Unique properly filed a supplemental appendix with the omitted summary judgment materials.

While Vaught’s appellate brief certainly has other flaws, the one we cannot overlook is his complete failure to provide any cogent argument in favor of reversal. We remind Vaught that the party appealing the grant of summary judgment has the burden of persuading us that the trial court’s ruling was improper. *See, e.g., Reel v. Clarian Health Partners, Inc.*, 873 N.E.2d 75 (Ind. Ct. App. 2007), *trans. denied*. Moreover, Ind. Appellate Rule 46(A)(8)(a) requires the argument section of an appellant’s brief to be supported by cogent

reasoning, with each contention “supported by citations to the authorities, statutes, and the Appendix or parts of the Record on Appeal relied on”. Vaught does not support his slender, three-page argument with even one citation to the record or to legal authority.⁴ Under the circumstances, we find the issues presented by Vaught waived. *See Marshall v. State*, 621 N.E.2d 308, 318 (Ind. 1993) (“[w]ithout citation to legal authority in addition to citation of the record, we cannot determine the merits of the claim and, thus, consider the issue waived”).

We caution counsel that “[i]nadequate briefing is not, as any thoughtful lawyer knows, helpful to either a lawyer’s client or to the Court.” *Keeny v. State*, 873 N.E.2d 187, 189-90 (Ind. Ct. App. 2007) (quoting *Firth v. State*, 325 N.E.2d 186, 189 (1975)). In the instant appeal, Vaught’s counsel has filed a brief written in a manner sure to require the maximum expenditure of time both by the opposing party and this court. To be sure, it is evident that Unique’s counsel spent considerable time and effort drafting a detailed, well-reasoned, twenty-three-page brief addressing the relatively complex issues that Vaught raised in only the most general of ways in *his* appeal from the trial court’s grant of summary judgment on three separate claims. We observe that Unique does not seek appellate attorney fees, pursuant to Ind. Appellate Rule 66(E), despite Vaught’s procedural bad faith in this appeal. Had Unique done so, we would have been hard pressed to deny such a request. *See*

⁴ Vaught makes a number of unsupported legal and factual assertions. For example, Vaught baldly asserts that he was an employee of Unique, not an independent contractor. Further, he asserts that if he was an employee, his earned commissions constitute wages under Indiana law. If he was an independent contractor, Vaught argues that his only legal remedy would be under a theory of unjust enrichment. With respect to Unique’s counterclaim, Vaught asserts that Unique’s prior material breach relieved him from any further

Catellier v. Depco, Inc., 696 N.E.2d 75, 80 (Ind. Ct. App. 1998) (granting attorney fees for procedural bad faith and assessing said fees against appellate counsel because “the brief submitted by Catellier was prepared by his counsel, who alone is responsible for violating our appellate rules to an extent warranting an attorney fee award”).

Judgment affirmed.

NAJAM, J., and VAIDIK, J., concur.

obligations under the employment agreement, including the provisions of the restrictive covenants contained therein.