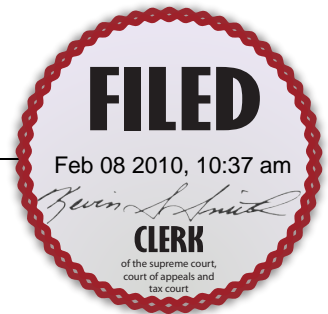


Pursuant to Ind.Appellate Rule 65(D),
this Memorandum Decision shall not be
regarded as precedent or cited before
any court except for the purpose of
establishing the defense of res judicata,
collateral estoppel, or the law of the
case.

APPELLANT PRO SE:

DARYL SCHULTZ
Rensselaer, Indiana



**IN THE
COURT OF APPEALS OF INDIANA**

IN THE MATTER OF THE UNSUPERVISED)
ESTATE OF DARWIN L. SCHULTZ,)

DARYL SCHULTZ,)
Appellant,)

vs.)

JUDGE ROBERT M. HALL, DONALD W.)
SHELMON, NED J. TONNER, THOMAS)
E. FRITTS, and ROBERT J. GABRIELSE,)
Appellees.)

No. 37A03-0907-CV-343

APPEAL FROM THE JASPER SUPERIOR COURT
The Honorable James Ahler, Judge
Cause No. 37D01-0507-EU-294

February 8, 2010

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

Daryl Schultz (“Schultz”), an heir of the Estate of Darwin Schultz (“the Estate”), filed pro se in Jackson Superior Court a “Verified Petition for Relief from Frauds, Illegalities and Wrongfully Intending Perpetrated In Connection with the Estate of Darwin L. Schultz” against Judge Robert Hall, Ned Tonner, Donald Shelmon, Robert Gabrielse, and Thomas Fritts (collectively “the Respondents”). After concluding that Shultz lacked standing to assert the claims raised in his petition, the court dismissed all claims pending against the Respondents. Schultz pro se appeals the trial court’s finding that he lacked standing to raise the claims set forth in his petition. We affirm.

Facts and Procedural History

On July 28, 2005, the Estate was opened in Jackson Superior Court, and Marlene Mattocks (“Mattocks”) was appointed personal representative of the unsupervised Estate. Mattocks and Schultz are the decedent’s siblings and both were named heirs of the Estate. On April 29, 2009, Schultz filed pro se a “Verified Petition for Relief from Frauds, Illegalities and Wrongfully Intending Perpetrated in Connection with the Estate of Darwin L.Schultz.” The Respondents named were Judge Robert Hall and several attorneys or individuals either directly or indirectly involved in estate matters.

The allegations in the petition include:

2. That said frauds, illegalities and wrongfully intending placed [Mattocks] under duress and threatened to hold [Mattocks] individually liable for doing her lawful duty in collecting Estate assets, that such threat is and was a fraud and circumvented the purpose of the Probate Code and I.C. 29-1-13-3.
3. That said duress and threat caused by said frauds, illegalities and wrongfully intending caused Estate assets not to be collected 2 lots by KVH School or \$40,000 and \$2,754.50 of Estate assets to Robert J. Gabrielse.

4. That said frauds, illegalities and wrongfully intending caused the provisions and purposes of the Probate Code to be avoided and circumvented, and Daryl Schultz a heir is injured by said frauds and entitled to obtain appropriate relief against the Respondents benefiting from said frauds.

Appellant's App. p. 9. On May 1, 2009, Schultz amended his petition to include the following additional allegation:

5. That no final nor appealable judgment nor orders were entered, pursuant to T.R. 54, in Cause No. 37D01-0701-MI-003, and as such the sum of \$325,852.05 should be in the office of the Clerk of the Jasper Superior Court. That said sum represents the net sale proceeds for 2 lots by KVH School, but by fraud said sum is disbursed to Respondent Mr. Fritts.

Id. at 11.

The Respondents moved to dismiss Schultz's petition. On May 22, 2009, the trial court issued an order finding that Schultz lacked standing to assert the claims set forth in his petition. Therefore, the court dismissed all pending claims against the Respondents. Id. at 17. Shortly thereafter, Schultz requested a hearing on his petition. The court treated Schultz's request as a motion to correct error, and a hearing was held on June 30, 2009. The court denied the motion to correct error and Schultz now appeals pro se.

Discussion and Decision

Initially, we observe that the Respondents failed to file an Appellee's brief. Consequently, we will reverse the trial court if the appellant presents a case of prima facie error. Fifth Third Bank v. PNC Bank, 885 N.E.2d 52, 54 (Ind. Ct. App. 2008). Prima facie error means at first sight, on first appearance, or on the face of it. Id. If an appellant does not meet this burden, we will affirm. Id.

Next, we note that pro se litigants “are held to the same standard as trained counsel and are required to follow procedural rules.” Evans v. State, 809 N.E.2d 338, 344 (Ind. Ct. App. 2004), trans. denied. “This has consistently been the standard applied to pro se litigants, and the courts of this State have never held that a trial court is required to guide pro se litigants through the judicial system.” Id. Further, a party generally waives an issue raised on appeal “where the party fails to develop a cogent argument or provide adequate citation to authority and portions of the record.” Smith v. State, 822 N.E.2d 193, 202-03 (Ind. Ct. App. 2005), trans. denied; see also Ind. Appellate Rule 46(A)(8)(a).

Schultz failed to include in the record any of the pleadings and documents that are necessary to resolve the issues he has raised in his brief. Schultz claims that the Respondents’ motions to dismiss his petition “failed to meet the notice requirements of our Probate Code.” Appellant’s Br. at 4. Yet, Schultz failed to include copies of those motions and in his appendix. Also, Schultz has not developed a cogent argument and has not provided adequate citation to authority. Concerning the issue of standing, Schultz merely states, “[t]hat Daryl Schultz did establish standing and the entry of May 22, 2009 is in error of law, as the [Respondents] did not first carry any burden of proof upon their motion to dismiss.” Id. For these reasons, we conclude that Schultz has waived the issues presented in this appeal.

Waiver notwithstanding, the trial court properly found that Schultz lacked standing to assert the claims set forth in his petition. The personal representative, i.e. Mattocks, has “complete authority to maintain any suit for any demand due the decedent or the estate.” See Inlow v. Henderson, Daily, Withrow & DeVoe, 787 N.E.2d 385, 391

(Ind. Ct. App. 2003), trans. denied (“[T]he entire Probate Code--except provisions that permit dispensing with an administration altogether--considers the personal representative the focal point for overseeing claims on behalf of the estate. This duty arises from the personal representative’s general responsibility to collect and manage the estate's assets until the estate is closed.”). Moreover, “the Probate Code establishes the personal representative’s authority to maintain any suit ‘for any demand of whatever nature due the decedent or his estate.’” Id. at 392 (citing Ind. Code § 29-1-13-3). “It makes clear that any claim arising before or after the decedent’s death is left to the personal representative to bring. No such authority is given to heirs or creditors.” Id.

For all of these reasons, we affirm the trial court’s dismissal of Schultz’s “Verified Petition for Relief from Frauds, Illegalities and Wrongfully Intending Perpetrated in Connection with the Estate of Darwin L. Schultz.”

Affirmed.

BARNES, J., and BROWN, J., concur.