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APPELLANT PRO SE:

MICHELE MICHAYLO
Fort Wayne, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

MICHELE MICHAYLO and)
PAUL MICHAYLO,)
)
Appellants-Defendants,)
)
vs.) No. 02A04-1007-SC-432
)
EVENT EXPERTS,)
)
Appellee-Plaintiff.)

APPEAL FROM THE ALLEN SUPERIOR COURT
The Honorable Brian D. Cook, Magistrate
Cause No. 02D01-1002-SC-3395

November 17, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Judge

Case Summary and Issues

Michele Michaylo, pro se, appeals a small claims court's judgment, after a bench trial, against her and in favor of Event Experts for \$5,800. She raises two issues for our review, which we restate as: whether Event Experts was prohibited from instituting the current action because it is a foreign corporation that has not complied with statutory filing requirements, and whether Michaylo could be personally liable. Concluding Michaylo has not presented a prima facie case of error as to either issue, we affirm.

Facts and Procedural History

The record on appeal does not contain a transcript or exhibits from the trial, an appendix from either party, or an appellee's brief. Therefore, to describe the facts and procedural history, we look exclusively to the small claims court's order, which states:¹

1. [Michaylo] signed a corporate sponsorship agreement on or about December 28, 2009. The cost of the sponsorship was \$5,000.00. The sponsorship was for the Food Expo and Women's Show at the War Memorial Coliseum on February 13th and 14th, 2010.
2. [Event Experts] asserts [Michaylo] was contacted to pay the sponsorship fee of \$5,000.00. [Michaylo] refused stating that she did not receive the specific advertising that she had bargained for.
3. Michele Michaylo signed the sponsorship agreement and filled out the portion of the agreement stating that the corporate sponsor would be Allstate. [Michaylo] listed Paul Michaylo, Michele Michaylo and Darren Vogt as contacts. She communicated to [Event Expert]'s salesman that her agency and Mr. Vogt's agency would be the only Allstate agencies participating this year. The previous year four (4) agencies had participated through the Allstate Corporate Co-op. Mrs. Michaylo did not fill out the company name as the Smith-Mitchell Agency or the Vogt Agency. Further, the agreement is clearly for a sponsorship and not for specific advertising. The agreement also provided for booth space at the expo where Mrs. Michaylo could specifically advertise her agency and any other agencies that were part of the sponsorship agreement. Mrs. Michaylo

¹ We discuss other repercussions of this lack of record below.

- chose not to attend the expo and advertise her specific agency. [Event Experts] provided the booth space which remained empty during the expo.
4. [Event Experts] provided the exact sponsorship information that it had provided the year before showing Allstate on the newspaper advertising, admission tickets and in the radio spots. Nothing more was requested or bargained for by the parties. [Michaylo] owes the \$5,000.00 sponsorship fee.
 5. Pursuant to the parties' written agreement [Michaylo] is liable for attorney fees in the amount of \$800.00.
 6. Michele Michaylo signed the corporate sponsorship agreement in her individual capacity. She is the only liable party.
- Judgment for [Event Experts] and against . . . Michaylo in the amount of \$5,800.00. Costs to [Michaylo].

Brief of Appellant at 17-18. At the bench trial in the Allen County Circuit and Superior Courts Small Claims Division, Event Experts appeared by counsel and Michaylo appeared pro se. Michaylo now appeals.

Discussion and Decision

I. Preliminary Issues and Standard of Review

This case includes several preliminary issues of note. First, Michaylo is appealing pro se. It is well-established that under Indiana law, pro se litigants are held to the same standard as trained legal counsel and are required to follow procedural rules. JSV, Inc. v. Hene Meat Co., Inc., 794 N.E.2d 555, 558-59 (Ind. Ct. App. 2003). Consequently, and second, we do not excuse Michaylo's failure to timely and correctly file an appendix to her appellate brief.²

Third, there is no transcript available in this matter. Pursuant to Indiana Appellate Rule 31(A), "If no Transcript of all or part of the evidence is available, a party or the party's attorney may prepare a verified statement of the evidence from the best available sources,

² Michaylo initially timely filed an appendix but it lacked a certificate of service and was returned to her with a notice of defect. She did not refile it.

which may include the party's or the attorney's recollection." Although a party's statement of evidence is optional, because neither Michaylo nor Event Experts submitted a statement of the evidence we have no record other than the small claims court's final order upon which to base our review. We review the small claims court's order and Michaylo's appellate brief with care, but also acknowledge: "Where there is no transcript or statement of the evidence and proceedings and where the appellant's challenge depends upon the evidence, this court is generally given no means by which it can review the question raised by the appellant – and must therefore affirm." Hughes v. Hughes, 171 Ind. App. 255, 259, 356 N.E.2d 225, 228 (1976).

Fourth, Event Experts did not file an appellee's brief. When an appellee fails to file a brief, we need not undertake the burden of developing an argument for the appellee. Trinity Homes, LLC v. Fang, 848 N.E.2d 1065, 1068 (Ind. 2006). Rather, we will reverse the trial court's judgment if the appellant presents a case of prima facie error. Id.; see Penrod v. Car Co., 832 N.E.2d 1020 (Ind. Ct. App. 2005) (applying this standard on appeal of a small claims court's decision). "Prima facie error in this context is defined as, at first sight, on first appearance, or on the face of it." Trinity Homes, 848 N.E.2d at 1068 (quotation omitted). Where an appellant does not meet this burden, we will affirm. Id.

To summarize, we base our review entirely on Indiana law and the facts set forth in the small claims court's order. We will reverse the judgment if Michaylo has presented a case of prima facie error. If she has not done so, we must affirm.

II. Event Experts as a Foreign Entity

Michaylo first argues that “[a]t the time the contract was solicited and formed,” Brief of Appellant at 8, Event Experts was prohibited from maintaining a court proceeding in Indiana because it was a foreign corporation “transacting business” in Indiana and did not comply with Indiana filing requirements. Indiana Code sections 23-1-49-1 and 23-1-49-2 generally prohibit such conduct until the organization obtains a certificate of authority.³ Michaylo asserts, “[p]er inquiries to the Secretary of State in Indiana, Event Experts was not a registered business entity in Indiana at the time the contract was signed” Br. of Appellant at 7. As a result, Michaylo argues, the small claims court erred by allowing Event Experts to bring an action and its judgment is therefore clearly erroneous.

However, Michaylo presents no evidence and makes no direct assertion that Event Experts did not become a registered foreign business entity after formation of the contract. Notwithstanding our lack of Michaylo’s appendix, which may or may not have included documentation that Event Experts was not a registered entity “[a]t the time the contract was solicited and formed,” *id.* at 8, she does not assert Event Experts still is not in compliance or was not in compliance at any time after formation of the contract. The pertinent statute prohibits an unauthorized corporation from maintaining an Indiana court proceeding only

³ A foreign corporation that has not obtained a certificate of authority may not “transact business” in Indiana or maintain a court proceeding in Indiana, and is civilly liable for a penalty of not more than \$10,000 if it does so. Ind. Code §§ 23-1-49-1 & 23-1-49-2(a) & (d). However, “the failure . . . to obtain a certificate of authority does not impair the validity of its corporate acts or prevent it from defending any proceeding in Indiana.” Ind. Code § 23-1-49-2(e). In addition:

A foreign corporation with a valid certificate of authority has the same but no greater rights and has the same but no greater privileges as, and except as otherwise provided by this article is subject to the same duties, restrictions, penalties, and liabilities now or later imposed on, a domestic corporation of like character.

“until it obtains a certificate of authority.” Ind. Code § 23-1-49-2(a) & (c) (“A court may stay a proceeding commenced by a foreign corporation . . . until the foreign corporation . . . obtains the certificate.”); see Charles W. Smith & Sons Excavating, Inc. v. Lichtefeld-Massaró, Inc., 477 N.E.2d 308, 310 (Ind. Ct. App. 1985) (“Our review reveals that historically the appellate courts have held that the language of the statute is not to operate as a bar to action once commenced but merely means to suspend further legal proceedings until such time as the statutory provisions have been complied with.”).

Therefore, without evidence to support Michaylo’s assertion that Event Experts has not timely fulfilled this statutory requirement, we cannot conclude she has presented a prima facie case of error on this issue.

III. Michaylo’s Personal Liability

Michaylo next argues she cannot be held personally liable because she did not sign the corporate sponsorship agreement in her individual capacity. However, the small claims court found that “Michele Michaylo signed the corporate sponsorship agreement in her individual capacity.” Br. of Appellant at 17. Without the actual agreement, a transcript or statement of the evidence, or other evidence before us that suggests the contrary, we cannot conclude she has presented a prima facie error in the judgment. Hughes, 171 Ind. App. at 259, 356 N.E.2d at 229.

Similarly, although the small claims judgment and Michaylo assert the agreement was signed in the name of Allstate, which could implicate the small claims court’s personal

Ind. Code § 23-1-49-5(b).

jurisdiction over Michaylo, we have no evidence to suggest such and therefore do not find a prima facie error in the judgment as to this issue.

Finally, we dismiss the potential argument that Event Experts could not seek recovery on this agreement because it did not include “Inc.” or some other similar indication of its corporate status in accordance with Indiana Code section 23-1-23-1. In Parker v. Rod Johnson Farm Service, Inc., 179 Ind. App. 190, 384 N.E.2d 1129 (1979), we faced the same argument, and also similar to here, no evidence that the corporation had complied with the pertinent statute. We explained the “statute is designed to protect the public from fraud and imposition by preventing a corporate entity from concealing its identity.” Id. at 192, 384 N.E.2d at 1131. And “[f]or that reason, it has been held not to invalidate contracts entered into in violation of its terms.” Id. Because the opposing party in Parker had no question regarding the identity of the corporation, we declined to preclude the corporation from enforcing the contract. To the extent any argument of such name confusion exists here, we rule similar to Parker, declining to preclude Event Experts from enforcing a written agreement.

Conclusion

With little to review, we conclude Michaylo has not presented evidence that Event Experts failed to satisfy the statutory filing requirement to enable it to maintain this judicial proceeding. Michaylo also has not presented evidence that she did not sign the agreement in

her individual capacity. Therefore, we must affirm the judgment of the small claims court as to both issues.

Affirmed.

MAY, J., and VAIDIK, J., concur.