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ATTORNEY FOR APPELLEE
REBECCA L. LOCKARD:

STANLEY E. ROBISON, JR.
New Albany, Indiana

IN THE COURT OF APPEALS OF INDIANA

MATTHEW A. McHUGH, AND MINOR CHILD DAUGHTER By next friend MATTHEW A. McHUGH,	)	
Appellants-Plaintiffs,	)	
vs.	)	No. 22A01-0808-CV-368
REBECCA L. LOCKARD, LESLIE L. STUEDEMANN, E. LEIGH KUHN, PERSPECTIVES PERSONAL COUNSELING, and TAMARA PIERCE,[1]	)	
Appellees-Defendants.	)	

APPEAL FROM THE FLOYD CIRCUIT COURT
The Honorable J. Terrence Cody, Judge
Cause No. 22C01-0502-CT-100

October 24, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

[1] Stuedemann, Kuhn, Perspectives Personal Counseling, and Pierce have not filed briefs in this appeal. Pursuant to Indiana Appellate Rule 17(A), however, a party of record in the trial court is a party on appeal.

CRONE, Judge

Matthew A. McHugh ("Father") and minor daughter ("Daughter") by next friend Father (collectively referred to as "the McHughs"), appeal the amended order granting final summary judgment in favor of Rebecca L. Lockard. We address the following dispositive issue: whether the McHughs have waived their claims by failing to present a cogent argument on appeal. We dismiss.

On December 14, 1998, Leslie Stuedemann ("Mother") and Father had a child out of wedlock.[2] On September 22, 1999, Father established paternity in Clark Circuit Court. On March 26, 2001, the Clark Circuit Court granted Father full physical custody of Daughter. In our previous memorandum decision in this case, we noted the following facts:

> Shortly thereafter, Mother made the first of several allegations that Father or members of his family were sexually abusing the daughter.
>
> Lockard began representing the Clark County Office of Family and Children ("OFC") in October 1995. On October 2, 2002, Lockard entered an appearance for Mother in the custody case and filed a petition to modify custody. On September 27, 2002, the Clark County OFC opened an investigation of Mother because of her repeated molestation allegations. The investigation was closed on December 26, 2002, and no further action was taken. Lockard claimed she had no knowledge of the investigation.
>
> On February 21, 2003, Mother, by counsel Lockard, sought and was granted an emergency ex parte order suspending Father's parenting time. At a hearing on February 27, 2003, the ex parte order was rescinded and Father was granted extra parenting time to make up for the time that was lost due to the order. Sometime in February 2003, Father contacted Lockard and asked if she represented the Clark County OFC.
>
> On May 9, 2003, Father's attorney advised Lockard that the Clark County OFC had substantiated a charge of neglect against Mother for leaving the daughter home alone for an hour. On that same date, Lockard filed a motion to withdraw her appearance on behalf of Mother, citing a conflict of interest. On four occasions in May and June 2003, Father requested records from the Clark County OFC. The Clark County OFC contacted Lockard regarding the release of these records.

[2] Stuedemann was known as Leslie L. Edwards prior to September 2, 2003.

> On September 16, 2003, Father filed a grievance against Lockard with the Indiana Disciplinary Commission. Ultimately, the grievance was dismissed by the Disciplinary Commission because there is not reasonable cause to believe that Lockard is guilty of misconduct which would warrant disciplinary action.

McHugh v. Lockard, No. 22A04-0705-CV-264, slip op. at 2-3 (Ind. Ct. App. Dec. 28, 2007) ("*McHugh I*") (citation, quotations marks, and brackets omitted).

On February 18, 2005, Father filed a sixty-two page pro se complaint on behalf of himself and Daughter in Floyd Circuit Court against Mother and eight other defendants,[3] including Lockard, which included the following brief overview of the case:

> Clark Circuit Court granted [Father] full physical custody of his then 2-year-old Daughter on 3/26/01. Just 43 days later on 5/8/01 [Father] and his family became the targets of 8 different investigations by the Division of Family & Children – Child Protective Services (DCF-CPS). All 8 reports and allegations were unsubstantiated by investigative authorities. On 9/13/04 Clark Circuit Court once again granted [Father] sole care, custody, and control of [] Daughter. [Father] believes that the evidence shows that [Mother] intentionally and repeatedly made malicious and false reports of child sexual abuse against [Father] in an effort to gain an advantage in their custody dispute, and to wrestle custody and control of [] Daughter away from [McHugh]. Daughter was placed in foster care for 3 months and estranged from [McHugh] for 7 months. [Father] incurred legal and other costs exceeding $50,000 to defend himself and ultimately reunite with his Daughter. [Father] believes the evidence will also show that the Co-defendants aided and abetted [Mother] in her actions.

Appellants' App at 8. The only issues before us relate to the claims against Lockard, which include negligence against Father and Daughter, interference with Father's custody of Daughter, intentional infliction of emotional distress against Father and Daughter, and a request for punitive damages. *Id*. at 52-60.

On October 10, 2006, Lockard filed a motion for summary judgment, designated evidence, and supporting brief. On November 6, 2006, the McHughs filed a motion to deny summary judgment, designated evidence, and supporting brief. On April 5, 2007, a hearing on Lockard's summary judgment motion was held, and the trial court entered a general judgment granting her motion on April 11, 2007. The McHughs appealed. In a memorandum decision, we dismissed the McHughs' appeal because the summary judgment order was not certified as a final judgment and was not properly appealable as an interlocutory order. *McHugh I*, slip op. at 5-6. On July 1, 2008, the trial court certified its previous summary judgment order.

On appeal, the McHughs argue that some of Lockard's designated evidence was inadmissible, that the trial court erred in granting Lockard's summary judgment motion, that the trial court was biased, and that the trial court erred in denying their motion to compel discovery. However, the McHughs' brief is deficient in several ways. Their statement of facts is woefully inadequate. *See* Indiana Appellate Rule 46(A)(6) (governing statement of facts).[4] In addition, the McHughs fail to provide the relevant standards of review other than the basic standard of review in summary judgment cases. *See* Indiana Appellate Rule 46 (A)(8) (governing argument). Regarding their argument that the trial court erred in granting Lockard's summary judgment motion, they fail to provide any relevant principles of law to support their theories of recovery. *See id*. While they vigorously dispute the facts, they fail

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[3] On May 3, 2006, default judgment was entered against codefendant Eric Stuedemann on the McHughs' claim for interference with custody. On March 20, 2008, codefendants Clark County CASA Inc. and Norma Cantrell entered into an agreed order of dismissal with the McHughs.

[4] Lockard's appellee's brief is also inadequate in this regard.

to put those facts in the context of the essential elements that they are required to prove to succeed on their claims.[5] Finally, in their thirty-seven-page appellant's brief, they only once cite a case in support of an argument. *See* Appellant's App. at 18-19. Their reply brief fails to rectify these shortcomings.

> 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. The purpose of the appellate rules, especially Ind. Appellate Rule 46, is to aid and expedite review, as well as to relieve the appellate court of the burden of searching the record and briefing the case. Ind. Appellate Rule 46(A)(8)(a) states that the argument section of an appellant's brief "must contain the contentions of the appellant on the issues presented, supported by cogent reasoning. Each contention must be supported by citations to the authorities, statutes, and the Appendix or parts of the Record on Appeal relied on...." It is well settled that we will not consider an appellant's assertion on appeal when he has failed to present cogent argument supported by authority and references to the record as required by the rules. If we were to address such arguments, we would be forced to abdicate our role as an impartial tribunal and would instead become an advocate for one of the parties. This, clearly, we cannot do.

Shepherd v. Truex, 819 N.E.2d 457, 463 (Ind. Ct. App. 2004) (citations and some quotation marks omitted); *see also 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.").

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[5] The McHughs' complaint alleges negligence, intentional infliction of emotional distress, and interference with custody. To succeed on a negligence claim, a plaintiff must prove three elements: (1) a duty owed to the plaintiff, (2) a breach of duty by the defendant, and (3) damages proximately caused by the breach. *Reed v. Beachy Constr. Corp.*, 781 N.E.2d 1145, 1148 (Ind. Ct. App. 2002), *trans. denied*. Regarding intentional infliction of emotional distress, a plaintiff is required to prove that defendant (1) engaged in "extreme and outrageous" conduct that (2) intentionally or recklessly (3) caused (4) severe emotional distress. *Doe v. Methodist Hosp.*, 690 N.E.2d 681, 691 (Ind. 1997). Father's claim for interference with custody is based on Indiana Code Section 35-42-3-4, which defines interference with custody, and Indiana Code Section 34-24-3-1, which allows treble damages in certain civil actions by crime victims.

The McHughs simply do not provide a sufficient basis for appellate review of their claims. It is well settled that pro se litigants are held to the same standard as licensed lawyers and must comply with the appellate rules to have their appeal determined on the merits. *Gentry v. State*, 586 N.E.2d 860, 860 (Ind. Ct. App. 1992). The McHughs have failed to do so, and therefore the issues raised in the their brief are waived for lack of cogent argument. *See id*. (finding that failure to substantially follow the appellate rules, specifically the briefing rules, the court will dismiss the appeal).

Dismissed.

KIRSCH, J., and VAIDIK, J., concur.