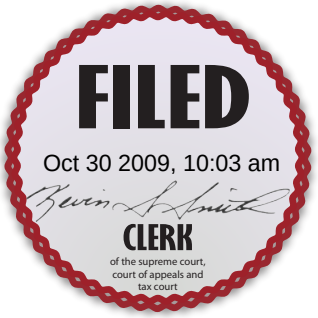

APPELLANT PRO SE:

GIDEON SAMID
Rockville, Maryland

ATTORNEY FOR APPELLEE:

DAVID M. SEITER
Garrison Law Firm, LLC
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

GIDEON SAMID,	)	
	)	
Appellant-Respondent,	)	
	)	
vs.	)	No. 06A01-0901-CV-45
	)	
VIRGINIA SPENCER,	)	
	)	
Appellee-Petitioner.	)	

APPEAL FROM THE BOONE SUPERIOR COURT
The Honorable Matthew C. Kincaid, Judge
Cause No. 06D01-0801-PO-33

October 30, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

CRONE, Judge

Case Summary

Gideon Samid appeals pro se from the trial court's denial of his motion to correct error and "Motion for Post-Hearing Discovery" following its rulings on his "Emergency Motion To Modify and Clarify Agreed Entry" and "Motion To Vacate and Set Aside The Agreed Entry, Rescind The Ex-Parte Protective Order, and to Assign This Matter For A Hearing and For Further Relief." Virginia Spencer, who obtained the protective order against Samid, asserts that he has pursued this appeal in bad faith and seeks an award of attorneys' fees pursuant to Indiana Appellate Rule 66(E). We affirm the trial court and remand for a determination of Spencer's appellate attorneys' fees.

Issues

We restate the issues as follows:

I. Did the trial court abuse its discretion in denying Samid's motion to correct error and "Motion for Post-Hearing Discovery"?

II. Is Spencer entitled to attorneys' fees pursuant to Appellate Rule 66(E)?

Facts and Procedural History

On January 18, 2008, Spencer filed a petition for a protective order against Samid. In the petition, Spencer averred that she was or had been a victim of domestic or family violence; that she and Samid were dating or had dated each other; and that Samid had placed

her in fear of physical harm.[1] Spencer requested, among other things, that the court prohibit Samid from "committing, or threatening to commit, acts of domestic or family violence, stalking, or sex offenses" against her and her three sons and from "harassing, annoying, telephoning, contacting, or directly or indirectly communicating" with her. Appellant's App. at 6. That same day, the trial court entered an ex parte protective order in which it found that Spencer had shown by a preponderance of the evidence that "domestic or family violence,

---

[1] Indiana Code Section 34-6-2-34.5 defines "domestic or family violence" in pertinent part as either "[a]ttempting to cause, threatening to cause, or causing physical harm to another family or household member[,]" "[p]lacing a family or household member in fear of physical harm[,]" or "stalking (as defined in IC 35-45-10-1)[.]" Indiana Code Section 35-45-10-1 defines "stalk" as

> a knowing or an intentional course of conduct involving repeated or continuing harassment of another person that would cause a reasonable person to feel terrorized, frightened, intimidated, or threatened and that actually causes the victim to feel terrorized, frightened, intimidated, or threatened. The term does not include statutorily or constitutionally protected activity.

Indiana Code Section 34-6-2-44.8(a) defines "family or household member" in pertinent part as an individual who "is dating or has dated the other person[.]" In the petition, Spencer described the "incident" that prompted her to file it as follows:

> — I tried to end the relationship several times over the past seven years, but whenever I tried to end the relationship Gideon would threaten me & intimidate me to the point that I feared for my safety & would end up staying with him.
>
> — I believe that he is tracking me by my cell phone – I have changed my phone number and Gideon gets the new number and calls me. He also listens in on my phone conversations.
>
> — I recently heard from him on Monday, Jan 14 – He said "Hello, Hello, you have a phone call from Israel" & then the phone went dead.
>
> This frightened me because I haven't heard from him since August & he would say "Are you going to do a winter on me" (referring to ending the relationship the winter of 2004-2005) He would always say I'll find you – I'll find a way to communicate with you.
>
> I need this protective order to keep me safe. I do not know what he is capable of doing & am very afraid of him.

Appellant's App. at 4, 5.

stalking, or a sex offense ha[d] occurred sufficient to justify the issuance of this Order." Appellee's App. at 7. The order was to expire on January 18, 2010. Samid was served with the order on January 20, 2008.[2]

On January 24, 2008, the trial court received an unsworn pro se response from Samid[3] and set a hearing for February 22, 2008. The hearing was continued to April 18, 2008, on which date the parties, both represented by counsel, signed and submitted a handwritten agreed entry in lieu of a hearing. The agreed entry reads in pertinent part as follows:

> Come now the parties, in person and by counsel and hereby agree to the following:
>
> 1. Petitioner has alleged that the Respondent made threats and committed psychological abuse against her as well as unwanted communications. The Respondent denies these allegations but stipulates to the issuance of a protective order that will be in effect for three (3) years terminating on April 18th, 2011 restraining the Respondent from direct or indirect contact with the Petitioner and her family.
>
> 2. Petitioner and Respondent stipulate that no acts of physical abuse occurred.

---

[2] The computer-generated cover sheet for the protective order contains a section with information regarding Samid, including his name, gender, date of birth, and address. Appellee's App. at 6. Two boxes in that section each contain a computer-generated checkmark indicating "Weapon Involved" and "Weapon Present on the property[.]" *Id.* The record before us does not disclose the basis for these checkmarks. Samid makes much ado about these checkmarks in his appellant's reply brief, but there is no indication that the protective order was granted based either in whole or in part on evidence that he possessed and/or threatened Spencer with a weapon, as he suggests.

[3] Samid's response reads in pertinent part as follows:

> Comes now the Respondent, Gideon Samid, and states that he has exerted no violence, and offered no threat of violence against the Petitioner. The Respondent is not, and never was, a family member of the Petitioner, nor a domestic partner, neither her date. **Her claims to the contrary were not substantiated by an affidavit from any other person, as required by law.** The Petitioner initiated her acquaintance with the Respondent, and developed a romantic obsession towards him, which was consistently rejected.

Appellant's App. at 59.

3. Petitioner asserts a right to attorney fees either as a result of contempt of the initial protective order or as a sanction for a frivolous defense by the Respondent.…

4. Respondent shall pay $1000.^{00}$ to Petitioner's attorney within one hundred & eighty days (180) of this order. The second payment of $1000.^{00}$ shall be due within one (1) year of this order. If Respondent pays the payments timely, Petitioner shall waive accrued interest.

5. Neither party shall publish or communicate to any third party any documents including but not limited to books, blogs, internet postings, pictures, or any other media that may be embarrassing and portray the other in a false light by a reasonable person standard.

6. Parties hereby waive and release any other claims that they may have against each other for any acts which have occurred before this date.

7. Respondent shall not attend religious services in Boone, Hamilton or Marion counties in the state of Indiana and shall not have any contact with the religious institutions attended by Petitioner in said counties.

8. Respondent shall have no contact with Petitioner's place of employment, VOLT, or its customer Lilly without court approval or stipulation of the parties.

9. Respondent shall not be Brady disqualified.

Appellant's App. at 11-14.

On June 2, 2008, Samid, who had retained new counsel, filed an unverified "Emergency Motion To Modify and Clarify Agreed Entry," which reads in pertinent part as follows:

1. On April 18, 2008, the parties entered into an Agreed Entry. Respondent is interested in having the Agreed Entry set aside because he feels it was entered into in a coercive manner. The undersigned is currently investigating and considering such an action. In the meantime, ¶8 of the Agreed Entry is particularly problematic.…

2. Respondent is a doctor of philosophy in chemical engineering. He has considerable experience and involvement with Eli Lilly & Company ("Lilly") on several different levels. Respondent regularly travels to Europe and Israel where he desires to have contact with Lilly employees and representatives. Respondent also meets with Lilly representatives in the United States, in person, over the telephone and by way of the internet. It would be a tremendous imposition and hardship for Respondent to seek Court approval every time there is a need to have contact with a Lilly representative or employee.

3. Petitioner is an employee with Volt, a company with [sic] which in turn has a tangential relationship with Lilly. Given the breadth and scope of the Lilly enterprise, ¶8 of the Agreed Entry is actually punitive, rather than remedial or protective.

4. The Agreed Entry was written in haste in the Courthouse immediately prior to a hearing. On its face, the Agreed Entry is handwritten. It was conceived, negotiated and executed without meaningful forethought or consideration.

5. The original Protective Order is silent on the issue of Lilly and Volt. This casts further doubt as to whether ¶8 is a necessary component of the Agreed Entry. Although there may have been lack of clarity or understanding on the part of Respondent regarding indirect communication with Petitioner between the time of the issuance of the Protective Order and the execution of the Agreed Entry, in light of the recent initiation of criminal charges, Respondent has no misapprehension or misunderstanding that indirect contact is prohibited.

6. Lilly employs in excess of 40,000 individuals who are located throughout the world in over fifty countries. Applying the prohibitions of the Agreed Entry to Lilly is, therefore, overly broad and simply unnecessary.

7. An immediate modification and clarification is necessary so that Dr. Samid can move forward with his employment and educational endeavors without further impediment.

Id. at 15-16 (italics omitted).

On June 9, 2008, the trial court set a hearing for July 10, 2008. Also on that date, Spencer filed an objection to Samid's motion, which contains the following statement:

> The Respondent has presented no evidence that he has active business with Lilly or that Lilly desires to do business with *him*. In fact, Lilly security was notified when the Respondent previously gave the Petitioner a wireless computer mouse as a "gift" given the Respondent's vast experience in encryption technology and ties to the Israeli military.

Id. at 19. On June 26, 2008, Samid, by counsel, filed a motion for continuance. The trial court reset the hearing for August 22, 2008. On August 13, 2008, Samid filed another motion for continuance. The trial court reset the hearing for October 31, 2008.

The day before the hearing, Samid, who again had retained new counsel, filed a "Motion To Vacate and Set Aside The Agreed Entry, Rescind The Ex-Parte Protective Order, and to Assign This Matter For A Hearing and For Further Relief." This motion contains numerous allegations impugning Spencer's sanity and veracity and requests a deposition of Spencer, with a hearing to follow.[4] The motion also requests, among other things, vacating and setting aside both the protective order and the agreed entry. Furthermore, the motion challenges the factual basis for the protective order and contains the following account of the events leading up to Samid's signing of the agreed entry:

[4] Samid attached several exhibits to this motion, including numerous emails from Spencer, a transcript of numerous voice mail messages from Spencer, and a handwritten statement from Spencer dated April 15, 2005. The statement indicates that Spencer reported Samid to Zionsville police at the urging of her then-dating companion, who had told her that she and her children were "in mortal danger owing to [her] relationship with Dr. Samid." Appellant's App. at 31. The statement characterizes the companion's warnings as "ill-conceived" and concludes in pertinent part as follows: "To the best of knowledge, Dr. Gideon Samid is an honorable person, and I wish to cancel and void any allegations or inferences one might draw about Dr. Samid's character and conduct as a result of this sorry episode." *Id*. at 32, 33. It is not true, as Samid claims, that Spencer reported him to the FBI. Appellant's Br. at 7. This was done by a third party without Spencer's knowledge. *See* Appellant's App. at 33 ("I found out that attorney John Hoover has taken the initiative to talk to an acquaintance of his who in turn talked to the FBI. This action might cast Dr. Samid in a negative light he does not deserve."). The record does not disclose the purpose for which Spencer drafted the statement or to whom the statement was given.

9.8 In mid or early 2008, Petitioner falsely and maliciously represented to the security officers at Eli Lilly & Co., a client of her employer, that the Respondent is an international spy, and gave her a computer mouse which she alleged to be a high-tech device to steal Lilly's secrets on behalf of the government of Israel. While it is true that Respondent gave the Petitioner a computer mouse, it is utterly false that this computer mouse was some sort of high tech spying device. This ridiculous accusation was designed by the Petitioner to perpetrate a fraud upon this Court, to damage Respondent's business prospects with Eli Lilly & Co., specifically, and to damage the good name and reputation of the Respondent in the business community generally.…

….

13. On the eve of the scheduled April 2008 hearing on the Protective Order, the attorney representing Respondent at that time, contrary to his advice given to Respondent in advance of the hearing, counseled the Respondent that in the present political climate in Boone County, Respondent had no chance to prevail in his attempt to obtain a dismissal of the Ex Parte Protective Order, regardless of the truthful facts of the matter, and that the best practical choice was for the Respondent and the Petitioner to consent to an Agreed Entry in lieu of a hearing.

14. The negotiations of the Agreed Entry took place in a humiliating and coercive situation, where the Respondent believed that he was portrayed as the undisputed villain, and the Petitioner as a vulnerable "lamb." The Respondent was physically forced out to the Courtroom stairwell, and did not participate in the negotiations between Petitioner and the two lawyers for the parties. While the Respondent waited in the Courtroom stairwell, every so often Respondent's lawyer would emerge from the Court to the staircase, and pressure the Respondent to sign the hastily hand-written agreement, composed inside, adding what Respondent believed were threats of a much worse outcome, if the Agreed Entry was not signed forthwith.

15. Respondent, who had not previously met his counsel prior to the date of the hearing on the Protective Order, had flown the night before the hearing to Indiana from Maryland, his place of residence, and in reliance upon advice he had received from his counsel, expected the Protective Order to be dismissed as false, frivolous and without merit. His attorney had further assured him that the Petitioner, a well-off former wife of a physician, would even be ordered to pay Respondent's Court costs for having filed a meritless, frivolous, false and scandalous Petition for Protective Order. Upon arriving at Court,

> Respondent's counsel flipped on his advice and presented to Respondent the oppressive Agreed Entry that was present to the Respondent as his most favorable option, given the prevailing leaning of the Court to side with the fragile looking woman and against the robust looking man.
>
> 16. At the hearing, despite heart-felt disgust and resentment, Respondent, upon the advice of counsel, and without the opportunity to have the Judge advise him of the rights he was waiving, consented to the Agreed Entry. The reason for this consent was the Respondent's clear memory of false accusations that the Petitioner had made in 2005 where she falsely alleged that the Respondent planned to murder the Petitioner and her children, and the fear that this psychologically unstable woman would drum up much more serious accusations of physical and sexual violence. The Respondent recognized that the shameful Agreed Entry had, however, one redeeming clause: the Petitioner stipulated no physical abuse of her by the Respondent. Upon the advice of counsel at the time, and because it was clear from the stipulation that there had been no physical abuse, the Respondent agreed to the terms of the Agreed Entry, believing that the Respondent could seek relief from the Agreed Entry at a later day.

Id. at 24-27.

At the beginning of the October 31 hearing, Samid's counsel stated, "[W]e would prefer just to litigate the modification issue that is a very narrow issue today and I believe as the other counsel indicated that there may be some discovery that is required prior to hearing the issues related to the motion to vacate." Tr. at 2. The trial court replied, "Then the Court will hear solely the issue of whether or not the agreed entry entered in April of 2008 ought to be modified or not and whether or not the protective order itself will be set aside will be set off for another day *if necessary*." *Id*. at 2-3 (emphasis added). The trial court announced its ruling from the bench at the conclusion of the hearing and issued the following written order on November 5, 2008:

The Court FINDS that the parties were engaged in a dating relationship which began on the internet, included romantic in person contact and which devolved into one which was generally toxic.

The Court FINDS that Petitioner wants nothing to do with Respondent and is afraid of him due to bizarre correspondence sent by him.[5]

The Court FINDS that the correspondence is threatening insofar as it suggests reprisals from Respondent towards Petitioner if she is unwilling to communicate further with him.

The Court FINDS that Respondent wishes to teach an on-line course that he thinks that Eli Lilly employees may want to attend.

The Court FINDS that Respondent wishes to be able to market his services and products to Eli Lilly and its research department.

The Court FINDS that Respondent's proffered interest in Eli Lilly for commercial purposes – he shows comparatively little interest in marketing to any other large pharmaceutical companies – is largely, if not completely, a pretext for continued engagement with and pursuit of Petitioner.

The Court FINDS that there is no showing that Eli Lilly, Petitioner's employer, is particularly interested in hearing what Respondent has to say.

---

[5] One postcard that Samid sent to Spencer reads as follows:

Non-Communication is a Non-Solution
Non-Communication is a guilty's choice
Non-Communication is the coward's escape
Non-Communication engenders negativity.
Non-Communication is not a positive foundation
Non-Communication has an instant cure.
If imposed by a third party
it's the worst

Petitioner's Ex. B. Another postcard bears a photo of Samid and Spencer and reads, "Sealed on the Potomac Celebrated in Kalorama Third-Dimension in 2004 Too big to ignore. Shall we go back to emails?" Petitioner's Ex. C. A third postcard contains a photo of Samid in a military uniform with the caption, "Duty Done. Ready. 3rd D." Petitioner's Ex. D. The reverse side contains a list of geographic locations, including Kalorama, Washington, and Zionsville, as well as a hand-drawn figure standing above the word "BELIEVE!" *Id*. A fourth postcard reads, "My phones have changed. I stand by. Just in case the 'encapsulation' fails and 'Houdini' climbs up!" Petitioner's Ex. E.

The Court FINDS that the Agreed Entry, extensively negotiated by the parties with the assistance of counsel and approved by the Court, should stand except insofar as paragraph 8, is modified by this ORDER.

The Court FINDS that Respondent's request to seek a modification of the terms of paragraph 8 of the entry, as is his right to do under paragraph 8, is meritorious only in part and should be GRANTED in part and DENIED in part.

It is ORDERED that the Respondent may advertise a web-based online course to Eli Lilly and its employees, as well as other pharmaceutical companies, and that he further may teach the course. In so doing, Respondent is not prohibited from teaching the course to Eli Lilly employees who may sign up for the course.

It is further ORDERED that the Respondent may communicate with a person – another woman – who is incidentally employed by Lilly, formerly by ImClone, to whom the Respondent was formerly married.

It is further ORDERED that Respondent may market tools, products, methodology services and other commercial applications to pharmaceutical companies who may be in joint ventures with Eli Lilly but who are separate legal entities from Eli Lilly. The possibility, for example, that Pfizer may be collaborating with Eli Lilly on some project does not prohibit the Respondent from marketing his services, tools, products, methodology services and other commercial applications to Pfizer, or any other pharmaceutical companies who might be communicating with Eli Lilly. Respondent may not, however, directly contact Volt.

It is further ORDERED that Respondent's request to market directly to Eli Lilly's Research Department is DENIED at this time in as much as Petitioner is employed in the Research Department and it has not been shown at this time that Respondent has a viable commercial opportunity with Eli Lilly.

It is further ORDERED that upon a showing by an affidavit of a corporate representative of Eli Lilly that Eli Lilly wishes to discuss business opportunities with Respondent, the Court would consider further modification to allow the Respondent to pursue bona fide business opportunities with Eli Lilly.

> It is further ORDERED that all other provisions of the Agreed Entry including but not limited to paragraph five shall remain in effect.
>
> During the course of the hearing the Court heard adequate testimony and argument to be fully apprised of the motion filed by Respondent on October 30, 2008 and being now duly advised in all premises the Court FINDS that the same should be and now is DENIED in its entirety.

Appellant's Br. at 24-26.

On December 4, 2008, Samid, by counsel, filed a "Motion to Reconsider and Correct Errors" and a "Motion for Post-Hearing Discovery." On December 29, 2008, the trial court denied both motions. Samid now appeals pro se.

Discussion and Decision

I. Trial Court Rulings on Samid's Motions

Samid's brief fails to recite the applicable standard for our review of the trial court's denial of his motion to correct error, which is but one of his numerous failures to comply with the Indiana Rules of Appellate Procedure that we describe in more detail below. *See* Ind. Appellate Rule 46(A)(8)(b) ("The [appellant's] argument must include for each issue a concise statement of the applicable standard of review; this statement may appear in the discussion of each issue or under a separate heading placed before the discussion of the issues."). "It is well settled that pro se litigants are held to the same standard as are licensed lawyers." *Goossens v. Goossens*, 829 N.E.2d 36, 42 (Ind. Ct. App. 2005).

We review a trial court's ruling on a motion to correct error for an abuse of discretion. *Knowledge A-Z, Inc. v. Sentry Ins.*, 891 N.E.2d 581, 584 (Ind. Ct. App. 2008), *trans. denied.*

"An abuse of discretion occurs when the decision is against the logic and effect of the facts and circumstances before the court, and inferences that may be drawn therefrom." *Id*.

Although not designated as such, the motions that Samid filed prior to the motion to correct error are properly characterized as motions for relief from judgment or order pursuant to Indiana Trial Rule 60(B).[6] The movant bears the burden of showing sufficient grounds for relief. *Morequity, Inc. v. Keybank, N.A.*, 773 N.E.2d 308, 313 (Ind. Ct. App. 2002), *trans. denied*. Such motions are entrusted to the trial court's sound discretion. *Bowman v. Smoot*, 806 N.E.2d 811, 815 (Ind. Ct. App. 2004). When considering a motion for relief from judgment,

> the trial court must weigh the alleged inequity that would result by allowing a judgment to stand against the interests of the prevailing party in its judgment, as well as those of society at large in the finality of litigation in general. On review, we neither reweigh the evidence nor substitute our judgment for that of the trial court. We will reverse the trial court's decision only if it is squarely opposed by the logic and effect of the facts and circumstances.

Id. (citations omitted).

Trial Rule 60(B) specifies eight bases for relief from a trial court's judgment or order, none of which are identified in Samid's motions. From what we can discern, Samid sought relief pursuant to Trial Rule 60(B)(3) for Spencer's alleged misrepresentations to the trial court in obtaining the original protective order and pursuant to the catchall provision of Trial

[6] We note that "[a] motion for relief from judgment pursuant to Trial Rule 60(B) may not be used as a substitute for a direct appeal. Rather, Trial Rule 60(B) affords relief in extraordinary circumstances which are not the result of any fault or negligence on the part of the movant." *Dillard v. Dillard*, 889 N.E.2d 28, 34 (Ind. Ct. App. 2008) (citations and quotation marks omitted).

Rule 60(B)(8) for the alleged coercion that compelled him to sign the agreed entry.[7] The trial court heard Samid's testimony regarding the alleged coercion and was entitled to disbelieve his self-serving claims in this regard. As such, we find no basis for setting aside the agreed entry (as modified by the trial court's November 5, 2008 order) in any respect; this includes the restrictions on Samid's attendance of religious services, which he addresses on page 16 of his brief. Pursuant to the agreed entry, Samid acquiesced to the issuance of a protective order effective until April 18, 2011. As such, we find no basis for granting relief based on any alleged misrepresentations made by Spencer in obtaining the original protective order.[8]

Regarding the trial court's denial of Samid's "Motion for Post-Hearing Discovery," we note that "[o]ur review of discovery matters is limited to determining whether the trial court abused its discretion. An abuse of discretion may occur if the trial court's decision is clearly against the logic and effect of the facts and circumstances before the court, or if the trial court has misinterpreted the law." *Bridgestone Americas Holding, Inc. v. Mayberry*, 878 N.E.2d 189, 191 (Ind. 2007) (citation and quotation marks omitted). On appeal, the only

---

[7] Trial Rule 60(B) provides in pertinent part that a motion for relief

> shall be filed within a reasonable time for reasons (5), (6), (7), and (8), and not more than one year after the judgment, order or proceeding was entered or taken for reasons (1), (2), (3), and (4). A movant filing a motion for reasons (1), (2), (3), (4), and (8) must allege a meritorious claim or defense.

We need not address whether Samid filed his motion "within a reasonable time" for purposes of the rule.

[8] To the extent Samid complains that Spencer failed to present any evidence of "domestic or family violence" in seeking the original protective order and that the agreed entry contradicts the order because it stipulates that no acts of physical abuse occurred, we reiterate that the phrase "domestic or family violence" applies not only to acts of physical abuse but also to"[p]lacing a family or household member in fear of physical harm" and stalking. Ind. Code § 34-6-2-34.5.

issue for which Samid claims discovery is necessary is Spencer's statement regarding the report made to Lilly about the wireless computer mouse that he gave her as a gift.[9]

Samid claims that this statement violates paragraph 5 of the agreed entry and quotes Article 1, Section 12 of the Indiana Constitution for the proposition that "'[a]ll Courts shall be open; and every person, for injury done to him in his person, property, or reputation, shall have remedy by due course of law.'" Appellant's Br. at 17 (emphasis his). To reiterate, paragraph 5 of the agreed entry provides, "Neither party shall publish or communicate to any third party any documents including but not limited to books, blogs, internet postings, pictures, or any other media that may be embarrassing and portray the other in a false light by a reasonable person standard." Appellant's App. at 12-13. In his motion, Samid characterized Spencer's statement as an allegation that he "is an international spy and that he gave her a computer mouse which allegedly was a high tech device to steal Lilly's secrets on behalf of the government of Israel." *Id*. at 54. Samid argued that he "requires the ability to conduct discovery of [Spencer] and Lilly security officers to confirm the timing and nature of the spy allegations." *Id*. at 55. On appeal, Samid claims that discovery "should lead to Court order to Lilly to scrub all that bogus negative allegations against [him]. The requested discovery will unearth any other people or institutions to which Spencer alleged her fantastic lies of international spying, so that the damage can be curtailed and reversed." Appellant's Br. at 19.

[9] In his motion, Samid also requested discovery "of [Spencer] to determine the specific religious institutions she attends in Boone, Hamilton, and Marion counties." Appellant's App. at 55.

We conclude that the trial court did not abuse its discretion in denying Samid's motion to conduct discovery on this issue. Even assuming for argument's sake that Spencer made such allegations and that they constitute a violation of the agreed entry,[10] the trial court is powerless to award Samid the relief he seeks. If Samid truly believes that he has been defamed, then he may initiate a defamation action and conduct discovery in that proceeding.

As a final consideration, Spencer states in her appellee's brief that she "left her employment with Volt and therefore Eli Lilly after Samid filed his notice of appeal. Therefore, [she] feels that Samid is permitted by stipulation to seek relief from paragraph 8 [of the agreed entry] once jurisdiction is returned to the Trial Court." Appellee's Br. at 22. We agree with Spencer that any issues regarding the restrictions on Samid's contacts with Volt and Eli Lilly are now moot and that Samid may seek relief from paragraph 8 of the agreed entry on remand. In sum, we find no abuse of discretion in the trial court's denial of Samid's motion to correct error and affirm its rulings on his other motions in all respects.

II. Attorneys' Fees

Spencer requests an award of attorneys' fees pursuant to Appellate Rule 66(E), which states, "The Court may assess damages if an appeal, petition, or motion, or response, is frivolous or in bad faith. Damages shall be in the Court's discretion and may include attorneys' fees. The Court shall remand the case for execution." In *Thacker v. Wentzel*, 797

[10] We note that the agreed entry prohibits the publication or communication of defamatory "documents," as opposed to speech.

N.E.2d 342 (Ind. Ct. App. 2003), we explained that our discretion to award attorneys' fees pursuant to Appellate Rule 66(E) is limited to

> instances when an appeal is permeated with meritlessness, bad faith, frivolity, harassment, vexatiousness, or purpose of delay. Additionally, while Indiana Appellate Rule 66(E) provides this Court with discretionary authority to award damages on appeal, we must use extreme restraint when exercising this power because of the potential chilling effect upon the exercise of the right to appeal.
>
> Indiana appellate courts have formally categorized claims for appellate attorney fees into "substantive" and "procedural" bad faith claims. To prevail on a substantive bad faith claim, the party must show that the appellant's contentions and arguments are utterly devoid of all plausibility. Procedural bad faith, on the other hand, occurs when a party flagrantly disregards the form and content requirements of the rules of appellate procedure, omits and misstates relevant facts appearing in the record, and files briefs written in a manner calculated to require the maximum expenditure of time both by the opposing party and the reviewing court. Even if the appellant's conduct falls short of that which is deliberate or by design, procedural bad faith can still be found. Finally, we note that even pro se litigants are liable for attorney's fees when they disregard the rules of procedure in bad faith.

Id. at 346-47 (citations and some quotation marks omitted); *see also Watson v. Thibodeau*, 559 N.E.2d 1205, 1211 (Ind. Ct. App. 1990) ("[W]e can cut the [appellants] no slack simply because they have no formal legal training.").

We agree with Spencer that Samid's numerous and flagrant violations of the Appellate Rules constitute procedural bad faith.[11] His statement of the case is inappropriately rife with argument and fails to "briefly describe the nature of the case, the course of the proceedings relevant to the issues presented for review, and the disposition of these issues by the trial court" as required by Appellate Rule 46(A)(5). His statement of facts is likewise inappropriately argumentative and contains numerous irrelevant facts not "stated in

[11] Consequently, we need not address Spencer's substantive bad faith claim.

accordance with the standard of review appropriate to the judgment or order being appealed" as required by Appellate Rule 46(A)(6)(b).

Samid's summary of argument does not contain a "succinct, clear, and accurate statement of the arguments made in the body of the brief" as required by Appellate Rule 46(A)(7), but instead contains a diatribe against Spencer and the trial court. *See, e.g.*, Appellant's Br. at 8 (characterizing Spencer as "scorned and enraged" and claiming that the trial court "ignored evidence that Petitioner Spencer is an habitual false complainer"). As noted above, the argument section of Samid's brief does not contain a "concise statement of the applicable standard of review" as required by Appellate Rule 46(A)(8)(b). Samid's arguments are rambling, often incoherent, and inflammatory and thus lack the "cogent reasoning" required by Appellate Rule 46(A)(8)(a). His few citations to authority consist largely of language taken out of context and fail to support his arguments.

Samid's appellant's appendix does not contain a chronological case summary as required by Appellate Rule 49(A)(2)(a), nor does it contain "the appealed judgment or order" as required by Appellate Rule 49(A)(2)(b) or "the portion of the Transcript that contains the rationale of decision" as required by Appellate Rule 49(A)(2)(d). Also, as Spencer points out, it appears that Samid has intentionally omitted from his appendix relevant pleadings and other documents that are "harmful to his position[.]" Appellee's Br. at 30.[12]

[12] After this case was fully briefed, the parties engaged in a furious volley of motions to strike and motions for sanctions. Given that the most serious accusations therein are based on matters outside the record and that we have no jurisdiction in disciplinary matters, we deny all motions by separate order.

In short, Samid's appellate briefs and appendix are permeated with bad faith, harassment, and vexatiousness and are written in a manner calculated to require the maximum expenditure of time both by Spencer and this Court. For these reasons, we affirm the trial court in all respects and remand for a determination of appellate attorneys' fees to which Spencer may be entitled pursuant to Appellate Rule 66(E).

Affirmed and remanded.

MAY, J., and BROWN, J., concur.