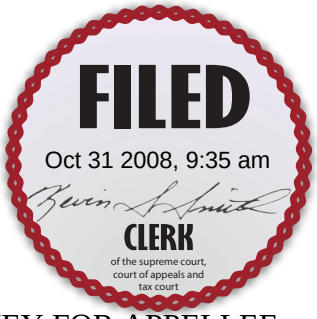

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IN THE
COURT OF APPEALS OF INDIANA

MAURICE BROWN,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 45A03-0712-CV-590
	)	
JPMORGAN CHASE BANK,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE LAKE SUPERIOR COURT
The Honorable Jeffrey J. Dywan, Judge
Cause No. 45D11-0610-MF-625

October 31, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

BROWN, Judge

Maurice Brown appeals the trial court's denial of his motion for a continuance and motion to vacate the trial court's grant of summary judgment to JPMorgan Chase Bank ("JPMorgan") on its foreclosure complaint. Brown raises three issues, which we revise and restate as:

I. Whether the trial court abused its discretion by denying Brown's motion for continuance; and

II. Whether the trial court abused its discretion by denying Brown's motion for relief from judgment.

Brown also raises the issue of "[d]id the lower courts give Brown a remedy to due coarse [sic] under the Indiana Constitution?" Appellant's Brief at 3. Brown argues that the Indiana Constitution allows him discovery to "fend-off judgment" and cites Article 1, Section 12 of the Indiana Constitution, but does not cite to authority or develop this argument. Consequently, Brown has waived this argument. See, e.g., Loomis v. Ameritech Corp., 764 N.E.2d 658, 668 (Ind. Ct. App. 2002) (holding argument waived for failure to cite authority or provide cogent argument), reh'g denied, trans. denied.

We affirm.

Ind. Appellate Rule 46(A)(8) requires that:

(a) The argument 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, in accordance with Rule 22.

(b) The 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. In addition, the argument must include a brief statement of the procedural and substantive facts necessary for consideration of the issues presented on appeal, including a statement of how the issues relevant to the appeal were raised and resolved by any Administrative Agency or trial court.

In his appellant's brief, Brown stated, "For issues A; B; C and D; Brown suggests the court review de novo or just not agree with the trial court's findings." Appellant's Brief at 9. The arguments presented in Brown's brief were extremely difficult to follow. "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." Wright v. Elston, 701 N.E.2d 1227, 1231 (Ind. Ct. App. 1998), trans. denied. When no cogent argument is presented, our consideration of the issue is waived. Id. We remind Brown that the fact he is proceeding without an attorney does not excuse him from following our appellate rules. Id. A litigant who chooses to proceed pro se will be held to the same established rules of procedure as trained legal counsel. Id. We will attempt to address Brown's more cogent arguments.

The relevant facts follow. On July 11, 2002, Brown executed a promissory note to First NLC Financial Services, LLC ("First NLC"), in which Brown promised to pay $111,900. That same day, Brown executed a mortgage with First NLC for the property located at 7509 White Oak Avenue (the "Real Estate") in Hammond, Indiana. First NLC assigned its interest in the promissory note and mortgage to JPMorgan. Brown defaulted under the terms of his promissory note and mortgage.

At some point, JPMorgan filed a complaint against Brown and First NLC to foreclose the mortgage on Brown's Real Estate under cause number 45D05-0404-MF-85 ("Cause No. 85") in the Lake Superior Court.[1] On July 29, 2005, Brown filed a Chapter 13 bankruptcy petition, which was dismissed on August 31, 2006 by the bankruptcy court. On August 1, 2005, the trial court in Cause No. 85 entered a judgment and decree of foreclosure. On March 12, 2007, JPMorgan filed a petition to vacate and set aside this decree. JPMorgan argued that it "ha[d] just discovered that at the time its said Decree of Foreclosure was entered, a Chapter 13 Bankruptcy Case was filed July 29, 2005 for the defendant, Maurice C. Brown, as Case #05-64100 in the Northern District of Indiana, and since the automatic stay was in effect on August 1, 2005 when said Decree was entered, said Decree should be vacated and set aside." Appellant's Brief at 22. The next day the trial court in Cause No. 85 vacated the decree of foreclosure.

On October 23, 2006, JPMorgan filed a complaint against Brown to foreclose its mortgage on the Real Estate under cause number 45D11-0610-MF-625 ("Cause No. 625") in the Lake Superior Court. On November 13, 2006, JPMorgan filed an amended complaint and named First NLC as a defendant in addition to Brown. On December 4, 2006, Brown filed a motion for extension of time to file a responsive pleading. On December 12, 2006, the trial court granted Brown an additional sixty days to file an

[1] Brown does not include a copy of this complaint in his appellant's appendix. Rather, Brown included the first page of this complaint in his appellant's brief, and we are unable to read the date that this complaint was filed. See Appellant's Brief at 17. We remind Brown that Ind. Appellate Rule 50(A)(2) requires the appellant to include in his appendix the "pleadings and other documents from the Clerk's Record in chronological order that are necessary for resolution of the issues raised on appeal."

answer. On February 9, 2007, JPMorgan filed a motion for summary judgment. On February 14, 2007, the trial court set a hearing on JPMorgan's motion for summary judgment for April 20, 2007. On March 1, 2007, Brown filed a motion to continue the hearing,[2] and the trial court rescheduled the hearing for June 15, 2007. On April 17, 2007, Brown filed a motion to "adjust time to file response."[3] Appellant's Appendix at 8. The trial court granted Brown until May 9, 2007, to file his response. On May 9, 2007, Brown filed his response to JPMorgan's motion for summary judgment. On June 1, 2007, Brown filed another motion for continuance and argued that JPMorgan did not attach a promissory note to its complaint or motion for summary judgment.

On June 12, 2007, Brown filed a notice of serving discovery requests. The trial court rejected and returned Brown's notice because "discovery documents are not to be filed with the court pursuant to Trial Rule 5(E)(2)." Id. at 7. On June 15, 2007, the trial court held a hearing on Brown's motion for continuance and denied the motion. At the same hearing, the trial court heard argument on JPMorgan's motion for summary judgment and took the matter under advisement. On June 22, 2007, the trial court granted JPMorgan's motion for summary judgment.

On June 29, 2007, Brown filed a motion to correct error.[4] On July 16, 2007, Brown filed a motion to vacate judgment and argued that res judicata applied because

[2] A copy of this motion is not contained in the record.

[3] A copy of this motion is not contained in the record.

[4] It is unclear what Brown's argument is in his motion to correct error. Brown stated, in part:

JPMorgan had already obtained a decree of foreclosure in a different court. On October 12, 2007, the trial court held a hearing on Brown's motions. The trial court told Brown that he had waived his objection to this lawsuit by not raising the fact that there was already a pending action in Cause No. 85. The trial court denied Brown's motions.

I.

The first issue is whether the trial court abused its discretion by denying Brown's June 1, 2007 motion for a continuance. The decision to grant or deny a motion for a continuance is within the sound discretion of the trial court. Litherland v. McDonnell, 796 N.E.2d 1237, 1240 (Ind. Ct. App. 2003), trans. denied. We will reverse the trial court only for an abuse of that discretion. Id. "An abuse of discretion may be found on the denial of a motion for a continuance when the moving party has shown good cause for granting the motion." Rowlett v. Vanderburgh County Office of Family & Children, 841 N.E.2d 615, 619 (Ind. Ct. App. 2006), trans. denied. No abuse of discretion will be found when the moving party has not shown that he was prejudiced by the denial. Id.

Brown's motion for continuance, which he filed on June 1, 2007, alleged that "JP Morgan did not attach any promissory notes to its complaint or motion for summary

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> The June 15th-order . . . was erroneous because it accused [JPMorgan] of filing discovery-documents, and construed my premise. Then after denying me discovery, the court held my trial; listened to both parties argue; and rested. Afterwards I was mailed a second-order, granting [JPMorgan] judgment. The second-order was written by [JPMorgan] who did not allow me to review it before the court-endorsed the pages. I now claim the order from [JPMorgan] contains uncertainties. And by signing an ambiguous-order the court never resolved all the issues, thus making them unclear.

Appellant's Appendix at 33.

judgment." Appellant's Appendix at 16. Brown also alleged that he was preparing discovery documents.

At the June 15, 2007 hearing on Brown's motion for a continuance, the following exchange occurred:

> THE COURT: . . . [W]hen did you serve this discovery?
>
> MR. BROWN: I served it on the 12th. I have all the documents.
>
> THE COURT: The 12th of June?
>
> MR. BROWN: Yes, I did. And they received it yesterday. I have the –
>
> THE COURT: Well, Mr. Brown, I mean this case was filed back in October of 2006, and you then appeared. It appears like December 4th you made your first filing in this case, and, you know, asking for some additional time to answer.
>
> MR. BROWN: And they –
>
> THE COURT: So you've had more than six months to file – to request discovery.

Transcript of June 15, 2007 Hearing at 9. In denying Brown's motion for a continuance, the trial court said, "You've had – you had more than enough time, with seven months since the filing of your appearance in the case. You had enough time to file the discovery that you wanted to file. So I'm going to deny the Motion to Continue." Id. at 11-12.

Brown argues that he was entitled to a continuance to finish discovery. However, Brown does not develop this argument or cite to authority. Thus, Brown has waived this

argument. See, e.g., Loomis, 764 N.E.2d at 668 (holding argument waived for failure to cite authority or provide cogent argument).

Waiver notwithstanding, we will attempt to address Brown's argument. To the extent that Brown argues that JPMorgan did not attach any promissory notes to its complaint or motion for summary judgment, the record reveals that JPMorgan designated the promissory note in support of its motion for summary judgment and attached a copy of the note to its amended complaint. See Appellee's Appendix at 31-35, 68. Brown delayed in serving discovery requests for seven months. Moreover, on appeal, Brown does not establish how he was prejudiced by the denial of his motion for a continuance. We conclude that the trial court did not abuse its discretion by denying Brown's motion to continue because Brown has failed to show any prejudice. See J.M. v. Marion County Office of Family & Children, 802 N.E.2d 40, 44-45 (Ind. Ct. App. 2004) (holding that the trial court did not abuse its discretion by denying mother's motion for continuance because mother failed to show that she was prejudiced by the trial court's refusal to grant the motion for continuance), trans. denied.

II.

The next issue is whether the trial court abused its discretion by denying Brown's motion for relief from judgment.[5] A grant of equitable relief under Ind. Trial Rule 60 is

[5] Brown did not label his motion as a motion for relief from judgment pursuant to Ind. Trial Rule 60. However, he mentions Ind. Trial Rule 60 in his appellate briefs, and we treat his motion to vacate judgment as a motion for relief from judgment. See Hric v. Hamilton, 165 Ind. App. 562, 565-566, 333 N.E.2d 322, 323-324 (1975) (treating party's motion to vacate judgment as a motion pursuant to Ind. Trial Rule 60).

within the discretion of the trial court. Outback Steakhouse of Florida, Inc. v. Markley, 856 N.E.2d 65, 72 (Ind. 2006). Accordingly, we review a trial court's ruling on Rule 60 motions for abuse of discretion. Id. "An abuse of discretion occurs when the trial court's judgment is clearly against the logic and effect of the facts and inferences supporting the judgment for relief." Ford Motor Co. v. Ammerman, 705 N.E.2d 539, 558 (Ind. Ct. App. 1999), reh'g denied, trans. denied, cert. denied, 529 U.S. 1021, 120 S. Ct. 1424 (2000).

In Brown's motion to vacate judgment, he argued that JPMorgan had already obtained a "decree-of-foreclosure on August 1, 2005 in [Cause No. 85] in the Lake County Ct. of Hammond IN." Appellant's Appendix at 36. Brown argued that "because this finality installed res judicata upon this instant case. And contend if this court had known about [JPMorgan]'s first-decree they would have not entered judgment against [him]." Id.

On appeal, Brown appears to argue that the trial court's order in Cause No. 85 precludes JPMorgan from seeking foreclosure on his property. "For principles of res judicata to apply, there must have been a final judgment on the merits and that judgment must have been entered by a court of competent jurisdiction." Matter of Sheaffer, 655 N.E.2d 1214, 1217 (Ind. 1995). We first discuss whether the trial court's foreclosure decree in Cause No. 85 constitutes a final judgment. In the context of res judicata, Indiana courts have discussed the definition of a final judgment. "Final judgments dispose the subject matter of the litigation as to the parties so far as the court in which the action is pending has the power to dispose of it." Adams v. Marion County Office of

Family & Children, 659 N.E.2d 202, 205 (Ind. Ct. App. 1995). Ind. Trial Rule 54 defines a "judgment" as "a decree and any order from which an appeal lies."

Here, Brown filed a Chapter 13 bankruptcy petition on July 29, 2005. On August 1, 2005, the trial court in Cause No. 85 entered a judgment and decree of foreclosure. The trial court's entry of a decree of foreclosure was an action taken in violation of the automatic stay provision of the Bankruptcy Code, 11 U.S.C. § 362, and was void and without effect. See Dempsey v. Auditor of Marion County, 871 N.E.2d 1031, 1035-1038 (Ind. Ct. App. 2007) (holding that an action taken in violation of the stay is void and without effect), reh'g denied, trans. denied. Further, after the trial court in Cause No. 85 issued its initial order, the trial court vacated that order on March 13, 2007, and Brown does not challenge the trial court's authority to vacate its earlier order.[6] In light of the facts that the initial foreclosure decree was void and the trial court vacated this decree, we cannot say that this order constituted a final judgment. Accordingly, res judicata does not apply. We conclude that the trial court did not abuse its discretion by denying Brown's motion for relief from judgment. See McIntyre v. Baker, 703 N.E.2d 172, 175 (Ind. Ct. App. 1998) (affirming the trial court's denial of McIntyre's motion for relief from judgment); Exide Corp. v. Millwright Riggers, Inc., 727 N.E.2d 473, 478 (Ind. Ct. App.

[6] In the section of his brief in which Brown argued that he was entitled to a continuance, Brown also argues that the denial of his motion "caused Brown to be unprepared at trial because on June 15th 2007 he did not know the [trial court in Cause No. 85] vacated the first-decree on 3/13/07. In fact the vacating was a total surprise to Brown until he obtained the order from the clerk's office on June 25, 2007." Appellant's Brief at 8. Brown suggests that this surprise was prohibited by Ind. Trial Rule 60(B). However, Brown fails to develop this argument or cite to authority. Consequently, Brown has waived this argument. See, e.g., Loomis, 764 N.E.2d at 668 (holding argument waived for failure to cite authority or provide cogent argument).

2000) (holding that the trial court properly declined to grant preclusive effect to the circuit court's order and consequently, appellant was not collaterally estopped from raising claims because the prior decision was not final and was subject to change), trans. denied.

For the foregoing reasons, we affirm the trial court's denial of Brown's motion for a continuance and motion to vacate the judgment.

Affirmed.

BAKER, C. J. and MATHIAS, J. concur