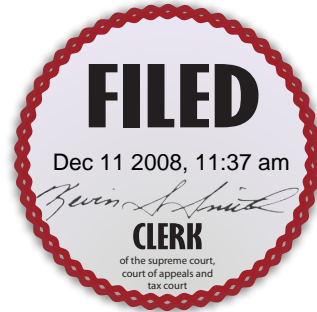


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT:

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**IN THE  
COURT OF APPEALS OF INDIANA**

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CARMEN PRICKETT, )  
 )  
Appellant-Defendant, )  
 )  
vs. ) No. 85A02-0806-CV-504  
 )  
WANDA PRICKETT, )  
 )  
Appellee-Plaintiff. )

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APPEAL FROM THE WABASH CIRCUIT COURT  
The Honorable Robert R. McCallen, III, Judge  
Cause No. 85C01-0709-PO-487

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**December 11, 2008**

**MEMORANDUM DECISION – NOT FOR PUBLICATION**

**MATHIAS, Judge**

Carmen Prickett (“Carmen”) filed a protective order in Wabash Circuit Court. Following a discovery dispute, the trial court denied Carmen’s motion to quash Wanda Prickett’s (“Wanda”) motion to compel discovery and ordered Carmen to pay Wanda’s attorney fees. Carmen appeals and argues that the trial court abused its discretion when it denied her motion to quash and awarded attorney fees for the alleged abuse of the discovery process.

We affirm.

### **Facts and Procedural History**

On September 10, 2007, Carmen filed an Order for Protection and Request for a Hearing. Carmen kept a number of dogs in a trailer on her brother’s property. The trailer was kept air conditioned using a window unit. The window unit received its power through a number of extension cords from a nearby tool shed. Carmen alleged that Wanda came on the property and unplugged the air conditioner causing seven dogs in the trailer to die of heat exhaustion. An ex parte order was entered granting the protective order on that same day. Attorneys for both sides subsequently entered their appearances.

On December 19, 2007, Wanda sent a letter to Carmen seeking to inspect the trailer with an electrician. The letter also noted that if Carmen would not agree then Wanda would proceed pursuant to Trial Rule 34(C). On January 3, 2008, Wanda sent a file marked copy of a motion for order compelling answer to discovery. The trial court

granted said motion on the same day ordering Carmen to provide answers to Wanda's discovery by February 29, 2008.<sup>1</sup>

On January 15, 2008, Wanda sent Carmen a letter memorializing an agreement to answer discovery on or before January 18, 2008. The letter again included a request to view the trailer and extension cord. In a letter dated February 4, 2008, Wanda acknowledged Carmen's offer to inspect the window air conditioner and extension cord but still asked to view the trailer. On February 7, 2008, Carmen responded and notified Wanda that she would not agree to such a request but would provide other information that would hopefully be sufficient. On February 12, 2008, Wanda again asked to view the inside of the trailer and noted that one of Carmen's claims was that seven dogs died inside the trailer. On February 19, 2008, Carmen responded and again denied Wanda access to the trailer.

On February 20, 2008, Carmen filed a motion to quash Wanda's discovery request because the scope of the request was too broad and would not result in any relevant or admissible evidence. That same day, Carmen's brother filed a motion to quash Wanda's discovery request as it related to his property alleging it to be unduly burdensome and because Wanda had already inspected the property on September 5, 2007.<sup>2</sup> On February 21, 2008, Wanda filed her third motion compelling requests for discovery which the trial

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<sup>1</sup> The Chronological Case Summary included in the Appellant's Appendix is missing page 3 which includes entries for the dates between January 3, 2008 and February 25, 2008. This encompasses a number of the filings related to the discovery dispute.

<sup>2</sup> Carmen's brother does not appeal the trial court's decision; therefore, as to the trial court's order relating to the non-party, any issue is waived.

court granted that same day.<sup>3</sup> The trial court also ordered that the issue of attorney fees for the filing of Wanda's motions to compel would be addressed at trial.

On February 25, 2008, Carmen responded seeking a hearing on the discovery motions and asking that rulings on the pending discovery motions be made prior to the entering of any order to compel discovery. On February 26, 2008, Wanda filed her "fourth" motion for order compelling discovery. On March 10, 2008, Carmen filed her response and filed her motion to vacate order. The trial court vacated its prior order pending the hearing set for March 14, 2008.

Following a number of delays, a hearing was held on April 15, 2008, as to the discovery issues. On April 16, 2008, the trial court denied Carmen's motion to quash Wanda's discovery request, granted Wanda's motion to compel discovery and ordered Carmen to pay Wanda's attorney fees related to the discovery dispute. Carmen appeals.

### **Standard of Review**

At the outset, we note the Wanda did not submit an appellee's brief. In such a situation, we do not undertake the burden of developing arguments for the appellee. Applying a less stringent standard of review with respect to showings of reversible error, we may reverse the lower court if the appellant can establish prima facie error. AmRhein v. Eden, 779 N.E.2d 1197, 1205 (Ind. Ct. App. 2002). Prima facie is defined in this context as "at first sight, on first appearance, or on the face of it." Id. at 1205-06. The purpose of this rule is not to benefit the appellant. Rather, the intent is to relieve this court of the burden of controverting the arguments advanced for reversal where that

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<sup>3</sup> We note that while Carmen claimed in her motion that Wanda's "third" motion to compel is really the first, Carmen has failed to include the second page of the trial court's chronological case summary which would hopefully have shed some light on the procedural posture of this case.

burden rests with the appellee. Id. at 1206. Where an appellant is unable to meet that burden, we will affirm. Id.

The rules of discovery are designed to “allow a liberal discovery process, the purposes of which are to provide parties with information essential to litigation of the issues, to eliminate surprise, and to promote settlement.” Hatfield v. Edward J. DeBartolo Corp., 676 N.E.2d 395, 399 (Ind. Ct. App. 1997), trans. denied. The trial court has broad discretion in ruling on issues of discovery and we will reverse only when the trial court has abused its discretion. Id. An abuse of discretion occurs when the trial court's decision is clearly against the logic and effect of the facts and circumstances before the court or when the trial court has misinterpreted the law. Trs. of Purdue Univ. v. Hagerman Constr. Corp., 736 N.E.2d 819, 820 (Ind. Ct. App. 2000), trans. denied. Although discovery is intended to require “little, if any, supervision or assistance by the trial court,” when the goals of this system break down, Indiana Trial Rule 37 provides the trial court with tools to enforce compliance. Hatfield, 676 N.E.2d at 399.

Pursuant to Indiana Trial Rule 37(A)(4), “[i]f the motion [to compel] is granted, the court shall, after opportunity for hearing, require the party or deponent whose conduct necessitated the motion or the party or attorney advising such conduct or both of them to pay to the moving party the reasonable expenses incurred in obtaining the order, including attorney's fees, unless the court finds that the opposition to the motion was substantially justified or that other circumstances make an award of expenses unjust.” (emphasis added).

When a discovery protective order, such as one in response to a motion to quash, is either entered or denied during discovery, a presumption arises that the trial court will also order reimbursement of the prevailing party's reasonable expenses pursuant to Trial Rule 37. Munsell v. Hambright, 776 N.E.2d 1272, 1277 (Ind. Ct. App. 2002) (citing Penn Cent. Corp. v. Buchanan, 712 N.E.2d 508, 511 (Ind. Ct. App. 1999)), trans. denied. This award of fees is mandatory, subject only to a showing that the losing party's conduct was substantially justified or that other circumstances make an award of expenses unjust. Munsell, 776 N.E.2d at 1277. “A person is ‘substantially justified’ in seeking to compel or in resisting discovery, for purposes of avoiding the sanctions provided by Trial Rule 37(A)(4), if reasonable persons could conclude that a genuine issue existed as to whether a person was bound to comply with the requested discovery.” Penn Cent., 712 N.E.2d at 513.

### **Discussion and Decision**

Carmen claims that the trial court abused its discretion when it denied the motions to quash and when it awarded attorney fees that Wanda incurred in addressing Carmen’s efforts to quash Wanda’s motion for discovery as it related to the trailer, air conditioner, and electrical supply to the trailer.

Carmen argues that her motion was based on sound reasoning and valid authority. Carmen alleges that Wanda’s request for production and request for entry upon the land were overly broad. However, Carmen does not explain how a request to view the location alleged in a protective order application is a “shotgun approach request.” Wanda’s request does not ask that she be allowed to simply go onto the property or rifle

about in the trailer but specifies the buildings to be examined, how those buildings will be examined, and for what purpose.

Carmen alleges that Wanda entered upon Carmen's brother's property, unplugged an extension cord running from a tool shed to a window air conditioner in a trailer, and that unplugging the air conditioner caused the temperature in the trailer to increase to such an extent that the seven dogs being housed therein died. An investigation related to the trailer and the outbuildings does not appear to be an overly onerous request. The trial court did not abuse its discretion when it denied Carmen's motion to quash.

As noted above, a presumption arises that the trial court will order reimbursement of the prevailing party's reasonable expenses. *Id.* at 511. However, the losing party may avoid such a sanction if the conduct was "substantially justified." *Id.*

Carmen claims that her objections to Wanda's discovery request were substantially justified because Wanda knew what the area looked like and should not need to view the area again. However, our liberal discovery process affords parties the opportunity to gain the information reasonably necessary for the prosecution or defense of their cases. Carmen argues that she has valid objections, states that Wanda's requests were too broad, and not specific enough, but she does not explain how those objections substantially justified her refusal to comply with Wanda's discovery request. Carmen's unilateral and unsupported assertions do not show that her refusal to comply with Wanda's discovery request was based on a genuine issue and was substantially justified.

The trial court heard argument from Wanda about why an in-person inspection was necessary. The trial court determined that such an inspection was merited and that

Carmen did not have a substantially justifiable reason for withholding permission. Under these facts and circumstances, the trial court did not abuse its discretion when it awarded Wanda attorney fees related to the discovery dispute.

### **Conclusion**

The trial court did not abuse its discretion when it denied Carmen's motions to quash and when it awarded Wanda attorney fees related to the discovery dispute.

We affirm.

BAKER, C.J., and BROWN, J., concur.