MEMORANDUM DECISION

APPELLANT *PRO SE*

Calvin Z. Jackson
Washington, Indiana

ATTORNEYS FOR APPELLEES

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IN THE COURT OF APPEALS OF INDIANA

Calvin Z. Jackson,
Appellant / Defendant / Counter-Plaintiff,

v.

Washington Municipal Utilities
Appellees / Plaintiffs / Counter-Defendants.

November 9, 2021

Court of Appeals Case No. 21A-CC-308

Appeal from the Daviess Circuit Court

The Honorable Gregory A. Smith, Judge
The Honorable Michael D. Chestnut, Referee

Trial Court Cause Nos.
14C01-1910-CC-566
14C01-1907-SC-360

Bradford, Chief Judge.

Case Summary

[1] Washington Municipal Utilities ("Washington Utilities) filed a debt collection action in the small claims court, alleging that Calvin Jackson had an outstanding balance on his water bill of $374.42. Jackson responded by filing a counterclaim against Washington Utilities, the City of Washington, and the Washington Street Department,[1] requesting $1.9 million dollars in damages and a jury trial. The matter was transferred to the trial court, which, on January 21, 2021, granted the Appellees' motion for judgment on the pleadings.

[2] Jackson appealed, filing a deficient appendix and an appellate brief that fails to comply with two different appellate rules. Given that the deficiencies in Jackson's appellate brief and appendix are so great that they impede our ability to review the merits of Jackson's appellate claims, we conclude that Jackson has waived his claims of trial court error. We therefore affirm.

Facts and Procedural History

[3] On July 30, 2019, Washington Utilities filed a small claims action, attempting to collect $374.42 from Jackson. On August 9, 2019, Jackson filed a counterclaim and jury request against "Washington Municipal Utility/Street

[1] While we acknowledge that there are questions regarding whether Jackson properly served either the City of Washington or the Washington Street Department and Appellees' counsel frames most of their arguments as relating to Washington Utilities, counsel noted that the arguments attributed to Washington Utilities "apply equally" to the City and the Street Department. Appellees' Br. p. 10. As such, where appropriate, we will refer to Washington Utilities, the City, and the Street Department collectively as Appellees.

City of Washington." Appellees' App. Vol. II p. 7. In his counterclaim, Jackson alleged that Washington Utilities had overcharged him by billing him for utilities and water that were never used. Specifically, he argued that Washington Utilities "is believed to have rigged or altered their systems in an attempt to [c]harge [him] for [s]ervices not rendered." Appellees' App. Vol. II p. 8. Jackson also claimed that the City and the Street Department had engaged in conversion and deception by improperly installing two street signs on his property.

[4] In addition to his counterclaim, Jackson filed a motion to transfer the case to the trial court, claiming that the small claims court "does not have the [a]uthority to oversee said case due to amount Counter Complainant is seeking and Federal Claims filed." Appellees' App. Vol. II p. 10. On August 15, 2019, the small claims court noted that Jackson's counterclaim "is in excess of small claims jurisdiction of $6,000.00" and gave Jackson ten days "to file a consent in writing to be bound by small claims jurisdiction amount and limited to only $6,000.00 as a possible recovery or cause will be transferred to Plenary docket with [Jackson] to pay Court Costs." Appellant's App. Vol. II p. 6. Jackson did not adhere to the deadline.

[5] On October 8, 2019, the small claims court conducted a hearing at the conclusion of which it found that Jackson's jury demand was timely filed and that the case "may be transferred to the Plenary docket." Appellant's App. Vol. II p. 7. The small claims court gave Jackson until October 15, 2019, to pay the transfer fee and indicated that "[f]ailure to pay transfer fee by October 15, 2019

will result in [Jackson] being bound by small claims jurisdiction." Appellant's App. Vol. II p. 7. On October 15, 2019, Jackson paid the transfer fee. The case was thereafter transferred to the trial court and the small claims action was closed.

[6] On November 4, 2019, twenty days after Jackson's counterclaim was docketed in the trial court, the law firm of Kightlinger & Gray appeared for "Washington Municipal Utilities/City of Washington, Indiana"[2] and requested a thirty-day enlargement of time to respond to Jackson's claims. Appellees' App. Vol. II p. 12. The trial court granted the request and Appellees filed their answer on December 4, 2019. On December 13, 2019, Jackson moved to disqualify Kightlinger & Gray from representing the Appellees. The trial court subsequently denied Jackson's motion to disqualify.

[7] On August 14, 2020, more than eight months after Appellees had filed their answer, Jackson filed a motion for a change of venue, claiming that he was unable to receive a fair trial "due to local prejudice and prejudice within [the] Daviess County Court system." Appellant's App. Vol. III p. 6. The Appellees filed a response to Jackson's motion on August 24, 2020, in which they claimed that (1) the motion was untimely and unverified, (2) Jackson failed to properly serve his motion, (3) Jackson failed to establish that he is unlikely to receive a fair trial, and (4) the fact that a city, which happens to be a party, is located in

[2] While the appearance form referred to Appellees as the defendants rather than the courter-claim defendants, it is clear from the appearance form on whose behalf the attorneys were filing their appearance.

the county is not grounds for a change of venue. The trial court denied Jackson's motion for a change of venue on August 26, 2020.

[8] On November 3, 2020, Appellees filed a motion for judgment on the pleadings, arguing that Jackson's claims failed as a matter of law. On December 4, 2020, Jackson moved to dismiss his complaint without prejudice, stating that the wrong entity was sued. Appellees objected to the "without prejudice" portion of Jackson's motion, arguing that Jackson's motion appears to have been filed "solely for the purpose of avoiding [Appellees] Motion for Judgment on the Pleadings" and asserting that Appellees "would suffer significant prejudice if the Court dismissed Jackson's Counter-Claim without prejudice before ruling on [its] Motion for Judgment on the Pleadings." Appellees' App. Vol. II p. 44. The trial court denied Jackson's motion to dismiss on December 16, 2020.

[9] On January 19, 2021, Jackson filed a motion for default judgment, arguing, in relevant part, that (1) Appellees' answer was untimely because it was filed several months after the counterclaim was first filed in the small claims court and (2) Kightlinger & Gray's appearance, motion for extension of time, and answer were filed on his behalf because they generally referred to "defendant" and not "counter-defendant." On January 21, 2021, the trial court denied Jackson's motion for a default judgment and granted Appellees' motion for judgment on the pleadings.

Discussion and Decision

[10] Jackson has chosen to proceed pro se. "It is well settled that pro se litigants are held to the same legal standards as licensed attorneys." *Lowrance v. State*, 64 N.E.3d 935, 938 (Ind. Ct. App. 2016), *trans. denied*. "This means that pro se litigants are bound to follow the established rules of procedure and must be prepared to accept the consequences of their failure to do so." *Id.* "These consequences include waiver for failure to present cogent argument on appeal." *Basic v. Amouri*, 58 N.E.3d 980, 984 (Ind. Ct. App. 2016). "While we prefer to decide issues on the merits, where the appellant's noncompliance with appellate rules is so substantial as to impede our consideration of the issues, we may deem the alleged errors waived." *Id.* Further, we will not become an "advocate for a party, or address arguments that are inappropriate or too poorly developed or expressed to be understood." *Perry v. Anonymous Physician 1*, 25 N.E.3d 103, 105 n.1 (Ind. Ct. App. 2014), *trans. denied*.

A. Deficiencies in Jackson's Appellate Brief

[11] Appellate Rule 43(E) provides that all text in an appellate brief "shall be double-spaced except that footnotes, tables, charts, or similar material and text that is blocked and indented shall be single-spaced." Jackson's entire appellate brief does not conform with this rule as the entire brief is single-spaced.

[12] Appellate Rule 46(A) requires that an appellant's brief contain, *inter alia*, a statement of the issues, a statement of the case, a statement of facts, a summary of the appellant's argument, and the appellant's argument. Each of the above-named sections of Jackson's appellate brief are deficient to varying degrees.

[13] The statement of the issues "shall concisely and particularly describe each issue presented for review." App. R. 46(A)(4). We agree with Appellees that Jackson's statement of the issues does "not concisely or particularly describe" the issues which he raises on appeal. Appellees' Br. p. 23. Additionally, the lengthy statement is rife with typographical errors and incomplete sentences, to the point that some of Jackson's statements are difficult to follow.

[14] The statement of the case "shall briefly describe the nature of the case, the course of the proceedings relevant to the issues presented for review, and the dispositions of these issues by the trial court" and shall include citation to relevant portions of the record. App. R. 46(A)(5). "The statement of the case is intended to assist this court by setting forth the procedural posture of the case." *Nehi Beverage Co. of Indpls. v. Petri*, 537 N.E.2d 78, 81 (Ind. Ct. App. 1989), *trans. denied*. Jackson's statement of the case does not include any citation to relevant portions of the record and contains a number of unsupported statements that do not appear to be relevant to the apparent issues before the court on appeal. It also includes an argumentative tone that is inappropriate for the section. *See In re Garrard*, 985 N.E.2d 1097, 1103 (Ind. Ct. App. 2013) (finding appellant's statement of the case did not comply with the Appellate Rules because it was argumentative in nature and did not contain any reference to the course of the summary judgment proceedings or disposition of the issues relevant to appeal), *trans. denied*.

[15] The statement of the facts "shall describe the facts relevant to the issues presented for review" and "shall be supported" by citation to relevant portions

of the record. App. R. 46(A)(6). "A statement of facts should be a concise narrative of facts stated in a light most favorable to the judgment. It should not be argumentative." *Nehi Beverage Co.*, 537 N.E.2d at 82. Jackson's statement of the facts is deficient in that it is wholly devoid of any relevant record citations and, at times, is improperly argumentative.

[16] An appellate brief must also include a summary of the argument, which "should contain a succinct, clear, and accurate statement of the arguments made in the body of the brief." App. R. 46(A)(7). Like his statement of the issues, Jackson's summary of his argument does not clearly, concisely, or succinctly describe his arguments.

[17] The argument section "shall contain the appellant's contentions why the trial court … committed reversible error;" must contain a concise statement of the applicable standard of review; must be supported by cogent reasoning and citations to relevant authorities, statutes, or parts of the record; and each individual argument "shall have an argument heading." App. R. 46(A)(8). "The purpose of the rule is to relieve courts of the burden of searching the record and stating a party's case for h[im]. Although failure to comply with the appellate rules does not necessarily result in waiver of an issue, it is appropriate where noncompliance impedes our review." *In re Moeder*, 27 N.E.3d 1089, 1097 n.4 (Ind. Ct. App. 2015) (internal citations omitted), *trans. denied*. Jackson's first heading improperly lists numerous different arguments in violation of the rule. Jackson's brief also does not include the appropriate

standard of review. It largely lacks cogent argument[3] and citations to *relevant* authorities or parts of the record. Jackson's argument section also includes confusing and nonsensical statements.

B. Deficiencies in Jackson's Appendix

[18] In addition to the deficiencies in his brief, Jackson also failed to include a number of documents relevant to his arguments on appeal in his appendix. For instance, Jackson failed to provide the court with a full copy of his counterclaim, including only the first page in his appendix. He also failed to include the following documents, all of which were relevant to his claims on appeal: (1) Appellees' memorandum and reply in support of their motion for judgment on the pleadings, (2) his motion to disqualify Kightlinger & Gray and to suppress filings, (3) Appellees' response to his motion to change venue, (4) the trial court's order denying the requested change of venue, (5) his motion to dismiss, (6) Appellees' response to his motion to dismiss, (7) the trial court's order denying Jackson's motion to dismiss, (8) Kightlinger & Gray's appearance filed on November 4, 2019, (9) Appellees' motion for an extension of time to answer Jackson's counterclaim, and (10) his motion for default

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[3] The one claim that Jackson could possibly be said to have supported with a cogent argument is his claim that the trial court erred by sending the case back to the small claims court after it was transferred to the trial court. However, while the matter was initially transferred back to the small claims court due to confusion between Jackson and the Clerk regarding payment of the transfer fee, the issue was corrected, and the matter was transferred back to the trial court. Furthermore, the orders from which Jackson appeals were issued by the trial court, not the small claims court, so any initial confusion regarding which court the case belonged in has been resolved and the case was properly decided by the trial court. Jackson's claim of error is therefore moot.

judgment. He also failed to include a complete copy of his memorandum in support of default judgment, including a copy that omitted two pages.

[19] While Jackson's failure to include the above-mentioned documents in his appendix does not, in and of itself, waive his claims relating to these documents, *see* App. R. 49(B), we have held that dismissal may be warranted if our review is impeded by an appellant's failure to include documents relevant to his appellate claims. *See generally, Hughes v. King*, 808 N.E.2d 146, 148 (Ind. Ct. App. 2004) (dismissing the appeal because Hughes's failure to include copies of the designated evidence that the trial court considered in ruling on the challenged summary judgment issues left the court with no basis upon which to review the merits of the substantive issue raised by Hughes). Further, although Appellees, out of an abundance of caution and a desire to fully protect its interests on appeal, filed an appendix that contained the omitted documents, the burden to present "a record adequate for intelligent appellate review" fell on Jackson. *Bambi's Roofing, Inc. v. Moriarty*, 859 N.E.2d 347, 352 (Ind. Ct. App. 2006). Jackson failed to meet this burden.

Conclusion

[20] While we generally prefer to decide cases on their merits, in this case, the deficiencies in Jackson's appellate brief and appendix are so great that his failure to comply with the appellate rules impedes our review. He has therefore waived his claims of trial court error. *See Basic*, 58 N.E.3d at 984.

[21] The judgment of the trial court is affirmed.

Robb, J., and Altice, J., concur.