MEMORANDUM DECISION

APPELLANT PRO SE

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IN THE COURT OF APPEALS OF INDIANA

Thomas A. DeCola,
Appellant-Plaintiff,

v.

Starke County Council,
Appellee-Defendant

July 28, 2021

Court of Appeals Case No. 21A-MI-120

Appeal from the Starke Circuit Court

The Honorable Dean A. Colvin, Judge

Trial Court Cause No. 50D02-2005-MI-36

May, Judge.

[1] Thomas A. DeCola appeals following the trial court's order dismissing his amended complaint. We affirm.

Facts and Procedural History

[2] In November 2018, DeCola won election to the Starke County Council. On December 7, 2018, DeCola swore and filed with the Clerk of the Starke Circuit Court an oath of office, which provided:

> I, [DeCola], do solemnly swear (or affirm) that I will support the Constitution of the United States and the Constitution of the State of Indiana, and that I will faithfully, impartially, and diligently discharge the duties of the office of County Council Member 4th District of this County, according to law and to the best of my ability.

(App. Vol. II at 127.) On December 12, 2018, DeCola attended the Association of Indiana Counties ("AIC") conference in Indianapolis.

[3] On January 1, 2019, DeCola's term began, and he attended the first Council meeting of the year on January 22, 2019. At the meeting, the Council discussed and approved a motion to further investigate questions about DeCola's residency, and Starke County Commissioner Kathy Norem came before the Council and asked that they address DeCola's behavior at the AIC conference. She presented the Council with two witness statements and a police report. According to the witness statements, DeCola approached a table of individuals at the conference and introduced himself as a councilman from Starke County. DeCola joined the group at the table, and in the course of conversation, "[h]e made the statement that he was an active member of the Aryan Brotherhood and that now 'n[*****]s and Jews' were no longer going to be allowed in Starke County. He went on to describe how he used to torture and abuse 'n[*****]s

and Jews' in an underground bunker." (App. Vol. III at 94.) The other individuals at the table moved to a different table. DeCola followed them to the new table and continued talking "about [how] 'n[*****]s and Jews' after January 1st, will not be allowed into Starke County." (*Id.*) The Council then passed a motion for DeCola to address the allegations by the next Council meeting.

[4] At the Council's next meeting on February 18, 2019, the Council continued its consideration and discussion of DeCola's behavior at the AIC conference. DeCola did not specifically deny the allegations, but he did state "that his best response is to follow the rules of procedure and that is all he has to say." (App. Vol. II at 174.) Council President Dave Pearman repeatedly asked DeCola if he preferred for the Council to schedule another hearing to address what actions the Council should take regarding DeCola's behavior at the AIC conference, but DeCola refused to answer. Councilman Brad Hazelton moved to have a separate hearing regarding the allegations against DeCola, but the motion failed. The county attorney then asked DeCola again if he wanted a hearing, and DeCola did not request a hearing. Councilman Robert Sims moved to expel DeCola from the Council, and the motion passed with five votes in favor and one vote opposed.

[5] On April 2, 2019, DeCola filed a complaint against the Council in the Starke Circuit Court. Following multiple changes of venue and changes of judge, the case was transferred to Marshall Superior Court. On June 24, 2020, DeCola filed an amended complaint. The amended complaint alleged "the cause of

action of wrongful expulsion" and sought "reinstatement of [DeCola's] council office, compensatory reimbursement for the costs of this litigation and lost salary, and punitive damages as relief." (*Id*. at 121.) The Council then filed a motion to dismiss DeCola's complaint pursuant to Trial Rule 12(B)(6). The Council argued Indiana does not recognize a private cause of action for damages related to expulsion from a county council seat and DeCola failed to state a claim for any violation of his due process rights.

[6] On September 28, 2020, the trial court issued an order granting the Council's motion to dismiss in part and denying it in part. The trial court concluded that DeCola could proceed on his claim for "wrongful expulsion" but DeCola did not state a claim for violation of his right to due process because he did not accept the Council's invitations for a hearing. (App. Vol. III at 6.) The Council then filed a motion to reconsider challenging the trial court's conclusion with regard to DeCola's claim for wrongful expulsion. On December 22, 2020, the trial court granted the Council's motion to reconsider and rescinded the portion of its September 28, 2020, order denying the Council's motion to dismiss. The trial court then granted the Council's motion to dismiss.

Discussion and Decision

[7] Initially, we note that DeCola represented himself before the trial court and proceeds pro se on appeal. "It is well settled that pro se litigants are held to the same legal standards as licensed attorneys. 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." *Basic v. Amouri*, 58 N.E.3d 980, 983-84 (Ind. Ct. App. 2016) (internal citation omitted), *reh'g denied*. Indiana Appellate Rule 46 states:

> **A. Appellant's Brief.** The appellant's brief shall contain the following sections under separate headings and in the following order:
>
> * * * * *
>
> (8) *Argument*. This section shall contain the appellant's contentions why the trial court or Administrative Agency committed reversible error.
>
> > (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.

(Emphases in original). This Rule is meant "to aid and expedite review and to relieve the appellate court of the burden of searching the record and briefing the case." *Thacker v. Wentzel*, 797 N.E.2d 342, 345 (Ind. Ct. App. 2003). "It is well settled that we will not consider an appellant's assertion on appeal when he has not presented cogent argument supported by authority and references to the record as required by the rules." *Id*.

[8] DeCola's appellant brief falls far short of Appellate Rule 46's requirements. DeCola's issue statement questions whether the trial court erred in granting the

Council's motion to reconsider and dismissing his amended complaint, but DeCola spends most of his brief addressing whether the trial court's September 28, 2020, order---which preceded the trial court's order on the Council's motion to reconsider and was later rescinded by the trial court---amounts to an appealable order. Nonetheless, we cannot make sense of his argument on appeal. For instance, DeCola writes in the argument section of his brief:

> DeCola states herein that the "magic language" doctrine determining whether an order is a final appealable order, as found in *Snyder*, 62 N.E.3d at 459, obstructs the common-sense merit-based approach of plenary logic and determinative discretionary process required to achieve the flexibility required for quickly resolving priority seeking administrative appeals involving election and office holding issues. Trial Court tact in eschewing the "magic language" can be used to deprive the relief seeking litigant of precious time only for the sole purpose of damaging them politically. The principles of equity far outweigh the "magic language" doctrine in determining whether an order is a final appealable order concerning election and office holding administrative appeals on appeal.

(Appellant's Br. at 8) (errors in original). This excerpt and like statements leave DeCola's brief incomprehensible. Even though DeCola cites opinions of this court and our Indiana Supreme Court, he does not explain how those opinions support his contentions on appeal, as required by Appellate Rule 46. *See In re Moeder*, 27 N.E.3d 1089, 1103 (Ind. Ct. App. 2015) (holding party waived argument for appellate review by failing to identify and explain authorities in support of her argument), *reh'g denied*, *trans. denied*. Consequently, we hold DeCola waived all arguments on appeal. *See Martin v. Hunt*, 130 N.E.3d 135,

137-38 (Ind. Ct. App. 2019) (holding appellant's claims were waived because he did not present a cogent argument).

Conclusion

[9] DeCola failed to support his arguments on appeal with cogent reasoning and citations to authority as required by Appellate Rule 46. Therefore, his arguments are waived, and we affirm the trial court.

[10] Affirmed.

Bailey, J., and Robb, J., concur.