MEMORANDUM DECISION

APPELLANT PRO SE

Andrew Young
Wadsworth, Illinois

ATTORNEY FOR APPELLEE

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Gary, Indiana

IN THE COURT OF APPEALS OF INDIANA

Andrew Young,
Appellant-Defendant,

v.

City of Gary,
Appellee-Plaintiff

December 16, 2022

Court of Appeals Case No. 21A-OV-2375

Appeal from the Lake Superior Court

The Honorable Gina L. Jones, Judge

Trial Court Cause No. 45D10-1609-OV-5

Crone, Judge.

Case Summary

[1] Andrew Young appeals a ruling following a trial de novo concerning various ordinance violations. Finding no reversible error, we affirm.

Facts and Procedural History

[2] In June 2009, Fred Kinsey, a now-retired environmental inspector, along with another inspector, observed numerous alleged violations of the municipal code of the City of Gary (the City) at property located on West 9th Avenue (the Property). The City issued sixteen citations, which were assigned Cause Number 45H03-1002-OV-0155. Status conferences and continuances ensued over several years. The Gary City Court held a bench trial and issued an August 2016 judgment,[1] which found Young liable for nine violations. Each violation incurred a $2,500 fine, for a total of $22,500. Appellee's App. Vol. 2 at 3-4.

[3] Thereafter, Young requested a trial de novo regarding the following eight violations:

> Section 95.204(B): Not cleaning up spills observed on the soil beneath leaking vehicles.
>
> Section 95.203(B)(3): Fluid drainage and removal.
>
> Section 95.203(B)(7): All drums and storage must be marked with contents.

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[1] The August 2016 judgment states that the bench trial was had on June 12, 2015, and neither side states otherwise. While it does not affect our review, a scrivener's error might explain what looks like a fourteen-month delay between the bench trial and order of judgment.

> Section 95.203(B)(10): Batteries must be stored inside on an impervious surface, outside or inside in a leak proof container away from traffic areas.
>
> Section 95.203(B)(12): Store all used absorbents in closed, covered, leak-proof containers, and disposed of properly.
>
> Section 95.203(B)(13): Store all fluids containing potentially polluting substances or contaminants in tightly closed containers to prevent spills and evaporation.
>
> Section 95.203(B)(15): To prevent leaking, develop a maintenance plan for all facility equipment, such as crushers, forklifts. Clean equipment regularly by wiping off accumulated grease and oil to prevent runoff.
>
> Section 95.203(B)(16): Keep spill control equipment/absorbent materials on site and readily accessible to all employees.

Amended Ex. Vol. at 4-11; Appellant's App. Vol. 2 at 5, 6, 8-10, 12, 13. The Lake Superior Court assigned the eight violations a cause number of 45D10-1609-OV-5 (OV-5). The City had also filed a number of ordinance violations against related entities. Separate cause numbers were assigned, and we abbreviate them as follows: OV-1 and OV-2 filed against Andy's Truck and Equipment Co., Inc., OV-3 filed against Young for a different parcel, and OV-6 filed against D.A.Y. Investments, LLC. The matters were set for trial in 2018, but after various motions, the court dismissed the petition for trials de novo of OV-5 as well as OV-1, OV-2, OV-3, and OV-6. Young appealed.

[4] In an unpublished decision, another panel of this Court reversed the dismissal of the petition for trials de novo and remanded. *Andy's Truck & Equip. Co. v. City of Gary*, No. 18A-OV-1708, 2019 WL 3295086 (Ind. Ct. App. July 23, 2019). At a November 2020 status conference, the Lake Superior Court set the matters for trials to begin July 19, 2021. Although Young did not show up in court on the morning of July 19, 2021, his counsel appeared and argued a motion for change of venue. The court denied the motion, ended the hearing, and, when Young eventually arrived, commenced the trial regarding OV-5 at 1:49 p.m. During his testimony, Young blamed a tenant for the violations. The court also heard testimony from the original inspectors and received photographs depicting the Property.

[5] In September 2021, the Lake Superior Court issued a judgment regarding OV-5 and OV-3. As for OV-5, the court found that the City properly named Young as the defendant and that he violated the eight ordinances. The court awarded a $20,000[2] judgment against Young and ordered him to remediate the Property within ninety days. Appealed Order at 2-3. This appeal concerns solely OV-5.

Discussion and Decision

[6] At the outset, we note that Young has chosen to proceed pro se. It is well settled that pro se litigants are held to the same legal standards as licensed attorneys. *Twin Lakes Reg'l Sewer Dist. v. Teumer,* 992 N.E.2d 744, 747 (Ind. Ct.

[2] Like the Gary City Court, the court entered $2,500 judgments on each of the eight violations.

App. 2013). 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. *Shepherd v. Truex,* 819 N.E.2d 457, 463 (Ind. Ct. App. 2004). These consequences include waiver for failure to present cogent argument on appeal. *Id.* 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. *Perry v. Anonymous Physician 1,* 25 N.E.3d 103, 105 n.1 (Ind. Ct. App. 2014), *trans. denied* (2015), *cert. denied* (2015). We will not become an "advocate for a party, or address arguments that are inappropriate or too poorly developed or expressed to be understood." *Id.*

Section 1 - Young has waived his claim that the court should have dismissed the matter for failure to name the real party in interest.

[7] Young asserts that the judgment "should be vacated" because the City should have cited Surplus Management Systems LLC (SMS[3]), rather than Young, for any ordinance violation. Appellant's Br. at 7. However, his one-paragraph argument is devoid of any citations to legal authority,[4] rules, the appendix, the transcript, or any other portion of the appellate record.

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[3] Young claimed that he used SMS to purchase the Property at a tax sale in 2000.

[4] Within his statement of issues, Young cites *Miller v. Danz*, 36 N.E.3d 455 (Ind. 2015), for the proposition that "Interpretation of our Trial Rules is also a question of law that we review *de novo*." He does not elaborate within his argument section as to how he thinks this general statement might apply.

[8] Appellate Rule 46(A)(8) lists the requirements for the argument section of an appellant's brief, stating:

> *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.
>
> (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.

Appellate Rule 46(A)(8) requires far more than Young has provided. As the party with the burden of establishing error on appeal, Young must cite pertinent authority and develop reasoned arguments supporting his own allegations. His failure to do so results in waiver of this issue. *See Basic v. Amouri*, 58 N.E.3d 980, 984-85 (Ind. Ct. App. 2016). Regardless, Young raises a similar issue in his second argument, which we address below.

Section 2 - The court did not err in finding Young personally liable for the ordinance violations.

[9] Young asserts that he should not be personally liable for the violations of a tenant absent evidence that he personally directed the operations that led to the offenses. He contends that the City provided no evidence that he "participated in the affairs conducted" at the Property or that he knew of the violations prior to the 2009 citations. Appellant's Br. at 8. Alternatively, he maintains that he should not be liable under the responsible corporate officer doctrine. *Id*. at 7-9.

[10] Regarding a standard of review, in his statement of the issues (although not in in his argument), Young states that Trial Rule 52(A) "provides that the court shall not set aside findings on appeal unless they are clearly erroneous." *Id*. at 3. The City offers no standard of review, and neither party mentions whether findings were requested. We normally review a finding of an ordinance violation as a general judgment. *See Jewell v. City of Indianapolis*, 950 N.E.2d 773, 776 (Ind. Ct. App. 2011).

[11] In the judgment here, the trial court did not include specific findings, per se, although it did include a detailed recitation of the proceedings as well as an explanation of its decision. Where the trial court issues findings of fact and conclusions thereon sua sponte, the findings control our review and the judgment only as to the issues covered in the findings. *Estate of Henry v. Woods*, 77 N.E.3d 1200, 1204 (Ind. Ct. App. 2017). For issues not covered in the findings, we apply a general judgment standard and may affirm on any legal theory supported by the evidence adduced during the trial. *Id*. We apply a two-

tiered standard of review to the sua sponte findings and conclusions, determining first whether the evidence supports the findings and second whether the findings support the judgment. *Id.* We will set them aside only if they are clearly erroneous, which means that the record contains no facts or inferences supporting them. *Id*. In conducting our review, we neither reweigh evidence nor reassess witness credibility; rather, we consider only the evidence and reasonable inferences most favorable to the judgment. *Id.* Unchallenged findings stand as proven. *Winters v. Pike*, 171 N.E.3d 690, 698 (Ind. Ct. App. 2021).

[12] In determining that the City properly named Young as the defendant in OV-5 thus making him potentially liable, the court explained:

> In direct testimony, [Young] acknowledged that he is the only shareholder, there are no other employees, he is the registered agent, and the intention was to hold the property as an LLC for general liability purposes. [Young] testified that there was a tenant on the property, there was no lease, no liability agreement; only a casual agreement to which [Young] proposes should remove his responsibility for the property. The Court disagrees. The purchase of property using an LLC does not eliminate concerns where environmental liability exist[s]. Similarly, when a member of an LLC makes a contract in the member's own name, the member's contractual obligations are outside the shield of the LLC. In this case, [Young], NOT [SMS] had a verbal agreement with the alleged tenant.

Appealed Order at 2.

[13] At the July 19, 2021 trial de novo of OV-5, the City called both original inspectors and introduced photographs. The inspectors testified as to the state of the Property when they issued the original citations in 2009 as compared with how it appeared in photographs taken in 2014, noting very few differences. The Property was essentially unchanged, still showing evidence of the listed violations. The inspectors testified that other persons were present when the alleged violations were observed and that the persons stated "they were working for Mr. Young, representing Mr. Young, Andy Young." Tr. Vol. 2 at 96.

[14] Young testified that he is the registered agent for "several LLCs" in Indiana, including SMS. *Id.* at 107. Young stated that SMS "owns property" and has "no employees." *Id.* Young confirmed that he is the only shareholder in SMS, that SMS has just one corporate officer (a CEO), and that he is the CEO. Young claimed that he used SMS to purchase the Property at a tax sale in 2000 for a price he could not recall. He claimed that the Property was used for storage. Of note, Young stated that he leased it to "Tony Luna." *Id.* at 116. Young produced no written lease, no ledger, and no canceled checks. Young "decided against" calling "Tony Luna" as a witness. *Id.* at 112. No lessee testified. Young admitted that he was aware of issues at the Property and claimed that he "had discussion" with his lessee before the June 2009 violations and then had a "firm discussion" after the violations. *Id.* at 119.

[15] To say that conflicting evidence and inferences were presented in this case would be an understatement. To reiterate, the court heard that SMS had no employees except Young, that individuals at the Property worked for Young,

that Young entered into a lease of the Property, that no lease existed, that individuals at the Property worked for the lessee, that Young did not know of the problems on the Property, that Young had addressed problems with the Property with his lessee, and on and on. In light of the conflicting evidence and absent a written lease documenting an agreement between specific parties, we cannot conclude that the court erred in determining that if there was an agreement with a tenant, Young had entered into it personally.

[16] Young counters that if the lease was between him and a lessee, he should not be liable for the misdeeds of his tenant. For support, he cites *Broad Ripple Property Group, LLC v. City of Indianapolis*, 87 N.E.3d 1112 (Ind. Ct. App. 2017). We find that case easily distinguishable because the landlord, BRPG, "had no knowledge of the ordinance violations being committed by Tenant." *Broad Ripple Property Group,* 87 N.E.3d at 1118. Here, Young testified that he was aware of issues at the Property and claimed that he "had discussion" with his lessee before the June 2009 violations. Tr. Vol. 2 at 119. Because Young had actual knowledge of the problems at the Property, he had the ability to affect change and address them. *See Neal v. Cure*, 937 N.E.2d 1227, 1232-33 (Ind. Ct. App. 2010), *trans. denied* (2011). His choice not to do so opened him to liability in the form of a judgment. *See id*. at 1233. Without reweighing evidence or attempting to judge witness credibility from our far-removed vantage point, we

cannot say the court erred in determining that the City properly named Young for liability purposes.[5]

Section 3 - The court did not err in denying Young's motion to dismiss, which alleged untimely refiling of citations in the de novo proceeding.

[17] Young argues that the court should have dismissed the case because the City "failed to re-file the charges for nearly seven (7) months after the deadline imposed by the Supreme Court Rules of Trial De Novo." Appellant's Br. at 3, 9. He claims that the City's delay "stripped the court of subject-matter jurisdiction" and was prejudicial. *Id*. at 10.

[18] "Our supreme court has promulgated the Indiana Trial *De Novo* rules which specifically govern the procedural requirements after a party has elected a Trial *De Novo* appeal as permitted by statute." *City of Hammond v. Rostankovski*, 119 N.E.3d 113, 115 (Ind. Ct. App. 2019). Specifically, we look to Indiana Trial De Novo Rule 2(E), which provides:

> Notice to Prosecutor or Municipal Counsel of Trial de Novo. *Promptly after the Request for Trial de novo is filed, the clerk of the circuit court shall send notice of the Request to the prosecuting attorney or*

[5] Having concluded that the court did not err in determining that Young rather than SMS had the agreement with the alleged tenant, we need not decide whether the responsible corporate officer doctrine might have applied in this situation. *See Comm'r, Dep't of Env't Mgmt. v. RLG, Inc.*, 755 N.E.2d 556, 561 (Ind. 2001) (applying three-part test to find corporate officer personally liable for corporation's violations of Indiana Environmental Management Act); *see also Comm'r, Dep't of Env't Mgmt. v. Roland*, 775 N.E.2d 1188, 1193-94 (Ind. Ct. App. 2002) (finding doctrine applies where individual is in position of responsibility to influence corporate policies or activities, nexus exists between individual's position and violation, and individual's actions or inactions facilitated violations), *trans. denied*.

> *the municipal counsel with an order from the trial de novo court that the prosecuting attorney or municipal counsel file a duplicate infraction or ordinance complaint and summons with the clerk of the circuit court charging the infraction or ordinance violation as originally filed with the city or town court. Upon receiving the notice of the Request, the prosecutor or municipal counsel shall within fifteen (15) days file the duplicate summons and complaint* or, in the prosecutor's or municipal counsel's discretion, notify the clerk in writing that no proceeding will be filed. If the clerk is notified that no proceeding will be filed, the clerk shall bring the case to the attention of the judge who shall issue an order of dismissal.

(Emphasis added.)

[19] In the argument section of his brief, Young alleges that he timely filed a request for trial de novo on February 26, 2016,[6] and then faults the City for not reissuing the ordinance violations charge until September 27, 2016. Appellant's Br. at 10. Yet, in Young's statement of the case, he asserts that he timely filed a request for trial de novo on September 9, 2016, and that the City reissued its charge on September 27, 2016. *Id*. at 4. The City maintains that it "never received clerk's notice or order." Appellee's Br. at 20 n.9.

[20] Per the chronological case summary submitted on appeal by the City, it appears that Young filed his request for trial de novo in September 2016 rather than in February 2016. Appellee's App. Vol. 2 at 12. The first notation mentioning the City shows that on September 19, 2016, copies of an order scheduling a status

[6] This portion of Young's brief may be an excerpt from another document.

conference for October 11, 2016, were mailed to the City's attorney (as well as to Young's attorney). *Id*. A September 20, 2016 case summary notation states that a request for trial de novo was "filed in clerks office on 9/9/16." *Id*. A September 28, 2016 case summary notation states: "Mail Received Interoffice on 9-28-16. Filed in the Clerks office on 9-27-16. Plaintiff State of Indiana by counsel files Citations previously served upon defendant's counsel Renee Babcock with certificate of service." *Id*. We do not find, and Young does not direct us to, a notation showing that the City was sent notice of his request for trial de novo. Absent any indication that such a notice was sent to or received by the City, Trial De Novo Rule 2(E)'s fifteen-day period, during which the City needed to refile its charge of ordinance violations, did not commence.

[21] If we assume that the City received the status conference notice, which was mailed September 19, 2016, and, for argument's sake, that such notice would constitute a notice triggering Trial De Novo Rule 2(E)'s timeline, then the City had fifteen days from that date during which to refile its ordinance violations. Having filed the ordinance violations with the clerk on September 27, 2016, the City did file within fifteen days of what appears to have been its first notice of Young's request for trial de novo. Given the record provided to us on appeal, we conclude that the City substantially complied with the requirements of Trial De Novo Rule 2(E).

[22] We briefly turn to Young's prejudice claim. On the one hand he contends that the City's delay was prejudicial because the judgments "allowed for 'continuous violation' fines." Appellant's Br. at 10. On the other hand, Young states: "It is

important to note that the [City] did not charge, and the Court did not find, a continuing violation in this matter[.]" *Id.* at 9 n.2. We are flummoxed at his contradictory positions. The judgment clearly provides $2,500 fines for each of eight violations for a total judgment of $20,000 with no mention of continuing violations. Thus, Young's prejudice argument rings hollow.

Section 4 - Young has not demonstrated reversible error in the denial of his motion to dismiss, which challenged the appointment of the judge who presided over the matter in the Gary City Court.

[23] Although difficult to comprehend,[7] Young's next contention involves the judge who presided over the Gary City Court and issued the August 2016 order of judgment. He takes issue with "the appointment of Carrie L. Castro as 'Temporary Judge'" and asserts that the Lake Superior Court erred in not vacating the judgment of the Gary City Court. *Id.* at 10-11. Young is mistaken.

[24] Pursuant to Indiana Code Section 33-35-2-3, a city court has "jurisdiction of all violations of the ordinances of the city." Indiana Code Section 33-35-5-9(a)

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[7] We include one example of Young's confusingly worded submission, this one from page 11 of his appellant's brief:

> While the City Court (Motion Renewing Objection to Appointment of Special Judge Carrie Castro in the Municipal Court Below and for Dismissal Pursuant to Trial Rule 41(E)). While, the Municipal Court record consists primarily of some barely legible scribbled notes[], Young took additional step of filing a complaint regarding the appointment with the Indiana Commission on Judicial Qualifications during the pendency of the City Court proceedings.

provides that "an appeal from a judgment of a city court may be taken to the circuit, superior, or probate court of the county and tried de novo." *See also* Ind. Trial De Novo Rule 2(A)(1) ("A defendant who has a statutory right to an appeal after a trial for an infraction or ordinance violation in a city or town court may request and shall receive the trial de novo as provided in this rule.").

[25] We recently explained the concept of trial de novo as follows:

> As long ago as 1872, [our supreme court] held that an appeal from a justice-of-the-peace court to a circuit court had the effect of vacating the judgment of the justice of the peace and "brought the case into the circuit court for re-trial, **as if it had not been before tried**." *Britton v. Fox*, 39 Ind. 369 (1872) (emphasis added). A century later, the Court invoked that passage from *Britton* in holding that "'[a]ppeals' from justice of peace courts and city courts to the circuit or superior courts have been recognized as not strictly appeals or a review of the proceedings before the lower courts. They are, in fact, a trial de novo." *Hensley v. State*, 251 Ind. 633, 635, 244 N.E.2d 225, 226 (1969). *See also State v. Rehborg*, 396 N.E.2d 953, 955 (Ind. Ct. App. 1979) (citing *Hensley* for the proposition that "[a] trial de novo is a trial from the beginning and is a trial had as if no action whatever had been instituted in the lower court"), *reh'g denied*.

Taylor v. State, 120 N.E.3d 635, 638 (Ind. Ct. App. 2019) (comparing trial de novo to "fresh start" and citing Black's Law Dictionary (10th ed. 2014) for its definition of trial de novo: "[a] new trial on the entire case – that is, on both questions of fact and issues of law – conducted as if there had been no trial in the first instance").

[26] Applied here, even if Young had articulated a legitimate issue as to the judge who presided more than six years ago over the ordinance violations in the Gary City Court, Young received a "fresh start" via the trial de novo that he requested. Accordingly, as the Lake Superior Court judge reminded the parties during the 2021 trial de novo of OV-5, she was not privy to what occurred previously. The 2021 OV-5 trial was a new trial on questions of fact and issues of law conducted as if there had been no prior trial. Thus, a trial de novo, in effect, does vacate a prior judgment. As such, we can posit no rationale whereby the Lake Superior Court, which was proceeding from the beginning of the 2021 trial as if no action whatever had been instituted in the Gary City Court, would have erred by not somehow officially vacating the Gary City Court's judgment. Young has provided no authority and demonstrated no error in this regard.

Section 5 - Young has not demonstrated error in having his counsel represent him at the July 19, 2021 trial.

[27] In his statement of issues, Young contends that the court erred in not allowing him "to dismiss his attorney and proceed as a self-represented individual[.]" Appellant's Br. at 3. Young provides no legal citations to support his argument. Moreover, his citations to the transcript are not to the transcript that was submitted with this appeal of the OV-5 violations heard on July 19, 2021. Rather, he seems to be citing the transcript of proceedings from a different hearing day when the OV-3 violations were heard. Indeed, it appears that this entire section of Young's brief was copied and pasted from a brief he filed in a

separate appeal concerning OV-3.[8] Consequently, Young has waived this argument. *See Perry*, 25 N.E.3d at 105 n.1.

[28] Waiver notwithstanding, we have sifted through the entire transcript and see that Young expressed confusion about the extent to which he would be permitted to participate in the OV-5 trial, that is, whether he would be allowed to speak and/or cross-examine witnesses. The court clarified that Young could testify and that his counsel would represent him. The court explained:

> Let's … make this clear. I am not, not allowing you to represent yourself. I am telling you that you have an attorney on record and that attorney is the person that is going to run the case. If you no longer want an attorney, that's something that we should have discussed before today. But I'm not going to release her at this point, in the middle of the trial, because this trial has already started. [The City's] already given [its] opening. I – I would be committing error if I released an attorney in the middle of a trial that has already begun.

[8] *See City of Gary v. Young*, 21A-OV-2368 (appeal of 45D10-1608-OV-3), pending. The judgment states: "On the morning of July 20, 2021, before the trial for OV3 was set to begin, Andrew Young moved to terminate his relationship with his Attorney and to proceed as a self-represented individual." Appealed Order at 1. Because we address the appeal of the OV-5 matter (not the OV-3 matter), we do not have the transcript for the OV-3 matter.

Tr. at 34. The OV-5 trial concluded by the end of that day. Even if Young had not waived this issue, he has not, in this appeal, alleged error or prejudice in how his attorney represented him during the OV-5 matter.[9]

[29] Affirmed.

May, J., and Weissmann, J., concur.

[9] Young makes vague references to displeasure, breakdown in relationship, and ineffective assistance, but offers no indication as to different strategies he might have employed if he had represented himself.