

MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.



ATTORNEY FOR APPELLANT

Bryan H. Babb
Bose McKinney & Evans LLP
Indianapolis, Indiana

ATTORNEYS FOR APPELLEES

Arend J. Abel
Michael W. McBride
Brett B. Thomas
Cohen & Malad, LLP
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Erik Guthrie,
Appellant-Plaintiff,

v.

K.P. and A.G.,
Appellees-Defendants.

November 15, 2023

Court of Appeals Case No.
22A-CT-3081

Appeal from the Marion Superior
Court

The Honorable Linda E. Brown,
Judge

The Honorable Anne Flannelly,
Magistrate

Trial Court Cause No.
49D04-2201-CT-3173

Memorandum Decision by Judge Bailey
Judges Tavitas and Kenworthy concur.

Bailey, Judge.

Case Summary

- [1] Fifty-eight-year-old Erik Guthrie filed a forty-count civil complaint alleging, among other things, defamation, invasion of privacy, and assault claims against K.P. and A.G. (“Defendants”), who had become Guthrie’s sexual partners when K.P. and A.G. were minors. After a bench trial on thirty-seven of those counts, at which all parties appeared pro-se, the trial court entered judgment against Guthrie on all counts and awarded Defendants an aggregate sum of \$20,000 as a sanction for Guthrie’s pursuit of frivolous and abusive litigation.¹
- [2] Guthrie filed a motion to correct error, which was denied, and he attempted to perfect an appeal. Guthrie retained counsel who drafted appellate briefs. In his reply brief, Guthrie withdrew his request for a retrial on his claims, in light of criminal charges filed against him.² Ultimately, Guthrie challenges the order

¹ The trial court found that Guthrie had harassed and intimidated Defendants and that his motivation for engaging in the instant litigation was to retaliate for K.P.’s decision not to continue a sexual relationship initiated by Guthrie’s “grooming” of K.P. since he was fifteen years of age. (Appealed Order at 6.) Guthrie was ordered to destroy any nude or pornographic photographs of Defendants, and the trial court struck from the trial record any nude photographs proffered by Guthrie. The trial court also made a finding that “Guthrie’s inclusion of the Defendants’ names, phone numbers, home addresses, and email addresses in the caption of his pleadings was an attempt to harass or intimidate the Defendants by showing them that he knows where they are and how to reach them.” (*Id.*) We observe that, in Guthrie’s pro-se Notice of Appeal, he used full names of Defendants. This Court has entered an order, dated January 30, 2023, denying public access in this matter and requiring that Guthrie use initials to refer to the Defendants in any subsequent filing.

[1] ² Guthrie specified that “[he] is not asking this Court to reverse and enter judgment for him on those [civil assault] counts. He demonstrated, with citation to authority, that the trial court had abused its discretion when it applied the wrong legal standard.” Reply Brief at 25. Guthrie summarized his request for relief in pertinent part as follows: “It is Guthrie’s position that he could have proved some or all of his claims, and

for sanctions and requests declaratory relief for alleged error by the trial court in the adjudication of his claims. Concluding that we lack jurisdiction in this matter because Guthrie did not timely file his pro-se Notice of Appeal, we dismiss.

Issues

[3] Guthrie articulated two issues, which we restate, in light of his representation that he no longer seeks retrial, as the following:

- I. Whether the trial court's denial of Guthrie's request to depose K.P. and A.G.³ and requirement that he seek court permission to contact Defendants deprived Guthrie of a due process right to pursue a defense to the claim of abusive litigation; and
- II. Whether, although Guthrie has abandoned his intention to continue litigation of his claims, he is entitled to a declaration that the trial court misapprehended the law by considering touching to be an element of the tort of assault

successfully defended against the salacious allegations in the sanctions motion, if he had been allowed adequately to prepare his claims and defenses for trial. While Guthrie's opening brief did ask this Court to 'reverse and remand for a new trial,' (Appellant's Br. 18), that is no longer Guthrie's desire or position after consulting with his attorneys. This brief can serve as a judicial admission in any future proceeding that Guthrie commits to not pursuing the re-trial of any of the bona fide civil claims he brought in this lawsuit, regardless of [the] outcome here. That said, because the trial court did not provide him with 'sufficient due process,' ... Guthrie respectfully requests that this Court reverse and remand with a directive to vacate a bench trial order (including its \$20,000.00 sanction award) that also impacts and imperils his substantial rights in his ongoing criminal case, where he has not yet been adjudged guilty of any 'crimes and sexual misconduct involving children,' (Appellees' Br. 41), that Defendants nevertheless believe are 'support[ed]' by 'sufficient evidence in this regard,' ... which was unfairly procured." Appellant's Reply Brief at 27-28 (citations omitted.)

³ Guthrie argues that he was completely deprived of the opportunity to conduct any discovery; however, the discovery request that he made was for a deposition.

and by labeling Guthrie a pedophile absent articulation of a corresponding legal definition.

We sua sponte address the issue of whether we have jurisdiction over this matter.

Facts and Procedural History

- [4] Guthrie filed his pro-se complaint on January 31, 2022. On February 14, the Defendants, also appearing pro-se, filed their “Motion for Sanctions and Restrictions of Abusive Litigation Pursuant to Indiana Codes [sic] Title 34, Civil Laws and Procedure 34-51-1-1(3).” (App. Vol. II, pg. 2.) On February 28, Guthrie filed a Notice of Deposition. He also filed a Motion for a Protective Order, one applicable to each defendant. Dozens of motions followed, and, on June 28, the trial court conducted a hearing on all pending motions.
- [5] At that hearing, Guthrie advised the court that he was making claims that Defendants had engaged him in vehicle chases, damaged his property, caused him mental distress, and posted unauthorized imagery on a dating app known as Grindr. He further advised the court that there had been some small claims litigation between the parties and requests for ex parte protective orders. K.P. advised the court that he met Guthrie through Grindr; Guthrie had paid him for sexual activity; Guthrie introduced him to A.G.; he wanted to be with A.G. and not with Guthrie; and Guthrie continued to pursue K.P., even after he moved to another state.

- [6] The trial court ordered Guthrie to stay away from K.P.'s workplace and ordered that communication between opposing parties was not to take place without prior court authorization. The trial court stated that no additional discovery was necessary. Pursuant to a court order, any pleading to be served on K.P. was to be sent to the court for service, to protect the confidentiality of K.P.'s home address. Guthrie was granted two weeks in which to amend his complaint and the motion for sanctions was taken under advisement.
- [7] On July 12, Guthrie filed his amended complaint. On July 20, Defendants filed a motion to compel sanctions. Guthrie filed a Motion for Reconsideration of Discovery, requesting depositions of K.P. and A.G., to be conducted by the National Academy of Distinguished Neutrals, anticipated to be of more than eight hours duration. The motion was denied.
- [8] On September 26 and 27, the trial court conducted a bench trial. Each of the parties testified. Defendants claimed that Guthrie had subjected them to years of sexual exploitation, stalking, and harassment, and that Guthrie had contacted Defendants' family members and classmates to share private information. Guthrie claimed that he was the victim of the Defendants' tortious conduct. On October 27, judgment was entered against Guthrie on each of his claims. Guthrie was ordered to pay each of the Defendants \$10,000. The trial court's order provides in part: "Guthrie did not deny he met K.P. at the age of fifteen (15) years. Guthrie did not deny having sex with K.P. at the age of fifteen (15) years." Appealed Order at 4. The trial court specifically

found the “testimonies of Defendants K.P. and A.G. to be credible and trustworthy.” (*Id.*)

[9] Among the trial court’s factual findings were that Guthrie: engaged K.P. in sexual activity at age fifteen; engaged A.G. in sexual activity at age sixteen; used K.P. to meet with adults for sex so that Guthrie could meet the adults’ younger sexual partners; followed K.P. at his places of employment; went to A.G.’s place of employment causing A.G. to modify his routine; hid in a bush at an apartment complex where K.P. and A.G. were located; obtained K.P.’s out-of-state address and continued unwanted communications; threatened K.P. with lawsuits that Guthrie described as “costly and embarrassing”; harassed K.P.’s family; took sexual pictures of A.G. and sent them to his siblings and classmates; and displayed in his vehicle A.G.’s stolen work identification card. The trial court concluded that harassment of this type had continued for four years. And the trial court observed that Guthrie had filed in the trial court “multiple prurient photographs, depictions and images to harass and embarrass K.P. and A.G.” (*Id.* at 10.) Ultimately, the trial court determined that Guthrie’s litigation was “abusive and intentionally aimed to inflict emotional distress on both Defendants.” (*Id.*)

[10] On November 28, Guthrie filed a motion to correct error asserting, among other things, that the trial court had shown judicial bias; the defendants had lied; the trial court had stricken materials crucial to showing the defendants’ falsehoods; Guthrie had been “ambushed;” the trial court had rewarded “vigilantism;” sanctions had been awarded in error; erroneous factual findings

had been made; certain counts of the Complaint had been improperly dismissed; and Guthrie had newly discovered evidence. The trial court denied Guthrie's motion to correct error on November 29. On the same day, Guthrie filed a motion to reconsider; that motion was denied on December 2.

[11] With regard to Guthrie's attempt to perfect an appeal, the following events ensued. On December 28, twenty-nine days after the denial of the motion to correct error, Guthrie tendered to the Clerk of this Court two documents which were marked "received" as of that date. The document captioned Motion for Belated Appeal was marked "filed" as of December 29. Therein, Guthrie asserted that he had tried to file his motion "along with the Notice of Appeal," but had encountered technical difficulties that were eventually resolved. (Motion for Belated Appeal, pg. 1.) He requested that he be granted "authorization to file this appeal." (*Id.* at 3.)

[12] On January 4, 2023, the Chief Judge of this Court issued an order stating that Guthrie had previously "tendered" a Notice of Appeal and had filed a Motion for Belated Appeal. The Clerk was directed to file, as of January 4, 2023, the Notice of Appeal. The Motion for a Belated Appeal was denied as moot. Guthrie subsequently obtained legal counsel and filed an appellant's brief.

Discussion and Decision

[13] Guthrie does not argue that Defendants failed to satisfy their burden of proof to justify sanctions for abusive litigation. Rather, Guthrie challenges the order for

sanctions on grounds that he was denied due process and thus denied his ability to marshal a defense. That is, he appears to argue that additional discovery would have shed greater light upon his subjective motives for engaging in the litigation he initiated.⁴

[14] He also presents arguments on two aspects of the trial court’s order. According to Guthrie, the order indicates that the trial court was persuaded that touching is an element of the tort of assault. Also, Guthrie takes issue with any reference to himself as a pedophile, absent a specific legal definition. He observes that the Defendants were not young children and claims: “someone is not a pedophile who is intimate with someone they reasonably believe has reached the age of consent in Indiana.” Reply Brief at 25. Having abandoned any intention to proceed with his civil claims, Guthrie nevertheless asks that we reverse the trial court’s order. In effect, Guthrie seeks an advisory judgment to inform the trial court of alleged error.

[15] This Court has a duty to ensure we possess jurisdiction over the matters presented to us. *Cohen v. Indianapolis Machinery Co., Inc.*, 339 N.E.2d 612, 613

⁴ Guthrie was presumably familiar with the merits of his own contentions. It is unclear what defense Guthrie hoped to marshal. Our Indiana Supreme Court has explained:

Every resource that courts devote to an abusive litigant is a resource denied to other legitimate cases with good-faith litigants. See *Sumbry v. Boklund*, 836 N.E.2d 430, 432 (Ind. 2005). There is no right to engage in abusive litigation, and the state has a legitimate interest in the preservation of valuable judicial and administrative resources. See *Parks v. Madison Cnty.*, 783 N.E.2d 711, 724 (Ind. Ct. App. 2002), *trans. denied*.

Zavodnik v. Harper, 17 N.E.3d 259, 264 (Ind. 2014).

(Ind. Ct. App. 1976). “Whether a jurisdictional defect is raised by a party or discovered by the Court and acted upon sua sponte, is of no consequence.” *Id.*

[16] Appellate Rule 9A.(1) provides:

A party initiates an appeal by filing a Notice of Appeal with the Clerk (as defined in Rule 2(D)) within thirty (30) days after the entry of a Final Judgment is noted in the Chronological Case Summary. However, if any party files a timely motion to correct error, a Notice of Appeal must be filed within thirty (30) days after the court’s ruling on such motion is noted in the Chronological Case Summary or thirty (30) days after the motion is deemed denied under Trial Rule 53.3, whichever occurs first.

[17] The trial court denied Guthrie’s motion to correct error on November 29, 2022. Thus, had Guthrie filed his Notice of Appeal on December 28, his appeal would have been timely. But Guthrie – apparently misapprehending the law – instead requested permission to file his Notice of Appeal and awaited a ruling on his superfluous motion. Ultimately, his Notice of Appeal was filed, but it was then untimely. Pro se litigants are held to the same legal standards as licensed attorneys. *Spainhower v. Smart & Kessler, LLC*, 176 N.E.3d 258, 263 (Ind. Ct. App. 2021), *trans. denied*. Guthrie’s Notice of Appeal was untimely.

Conclusion

[18] Because Guthrie did not file a timely Notice of Appeal, we dismiss the purported appeal.

[19] Dismissed.

Tavitas, J., and Kenworthy, J., concur.