

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

In Re: The Trust of Lois Ann
Christlieb and Trust of John C.
Christlieb

Kristine Bellinger,
Appellant-Respondent,

v.

Michael Christlieb and Patricia
Snyder,
Appellees-Co-Trustees.

December 13, 2023

Court of Appeals Case No.
23A-TR-1353

Appeal from the DeKalb Superior
Court

The Honorable Monte L. Brown,
Judge

Trial Court Cause No.
17D02-2107-TR-5

Memorandum Decision by Judge Mathias
Judges Riley and Crone concur.

Mathias, Judge.

- [1] Kristine Bellinger appeals the DeKalb Superior Court’s order granting summary judgment for Michael Christlieb (“Michael”) and Patricia Snyder (“Patricia”) (collectively, “the Trustees”) on Bellinger’s objection to the court’s approval of the final accounting filed by the Trustees in this matter. Bellinger presents a single issue for our review, namely, whether the trial court erred when it entered summary judgment for the Trustees.
- [2] On cross-appeal, the Trustees request appellate attorney’s fees.
- [3] We affirm the entry of summary judgment and decline the Trustees’ request for appellate attorney’s fees.

Facts and Procedural History

- [4] Lois Ann Christlieb (“Lois”) died testate on October 14, 2020. The Trustees were named co-personal representatives of Lois’s estate, and the trial court authorized them to administer the estate without supervision. On January 4, 2022, the Trustees filed a closing statement to close the estate. On April 27, the trial court approved the closing statement.
- [5] Lois’s will included a pour-over provision whereby the residue of her estate went into a trust managed by the Trustees. Bellinger and several others were named beneficiaries to the trust.
- [6] Some of Lois’s assets were payable on her death to Michael and/or Patricia, including a Lake City Bank CD (“the LCB CD”) payable to Michael upon

Lois' death. The Trustees gifted a total of \$238,236.65 from CD accounts payable to one or both of them upon Lois's death to the trust, excluding the LCB CD, which Michael retained for himself as a gift from Lois. In the end, the Trustees distributed more than \$1,600,000 in assets to the beneficiaries, including \$140,000 to Bellinger.

[7] On May 24, Bellinger filed an objection to the trust accounting filed by the Trustees. In her objection, Bellinger alleged in relevant part that the Trustees had "failed to take possession of all the property of the trust" and had failed to adequately search for all of the property of the trust. Appellant's App. Vol. 2, p. 53. Bellinger alleged that Lois had kept a ring in a lock box at a bank, and the Trustees had not accounted for that ring. In addition, Bellinger alleged that the Trustees had "failed to explain" the circumstances behind the LCB CD being payable on Lois's death to Michael. *Id.* at 54.

[8] The Trustees filed a response to the objection and denied each of Bellinger's allegations. And on October 17, the Trustees filed a motion for summary judgment. In support of that motion, the Trustees argued that Bellinger was required to raise the issues asserted in her objection "within the procedural context of the Probate Estate" and that her failure to do so was "fatal to her claim." *Id.* at 82. The Trustees also argued that Bellinger's objection was time-barred under [Indiana Code Section 29-1-7.5-6](#), which requires that claims against a personal representative be filed "within three (3) months after the filing of the closing statement." Finally, the Trustees submitted evidence,

including Michael's affidavit, refuting Bellinger's substantive claims. Bellinger did not file a response to the summary judgment motion.

[9] During a hearing on the Trustees' summary judgment motion, Bellinger argued that several assertions in Michael's affidavit were not made on personal knowledge and could not support summary judgment. Bellinger did not address the Trustees' argument that her objection was time-barred under [Indiana Code Section 29-1-7.5-6](#) or that it was otherwise invalid for her failure to bring it within the context of the estate proceeding. The trial court entered summary judgment for the Trustees and found and concluded in relevant part as follows:

Bellinger's Objections to Evidence

1. Bellinger did not move to strike any of the Co-Trustees' evidence but made a general argument at the hearing that evidence in the affidavit was hearsay and lacked a showing of personal knowledge.

2. "To avoid waiver, a party in summary judgment proceedings who believes that the opposing party has filed a problematic affidavit has a duty to direct the trial court's attention to the allegedly defective affidavit." [A House Mechanics, Inc. v. Massey](#), 124 N.E.3d 1257, 1265 (Ind. Ct. App. 2019).

3. The Court would be within its discretion to find that Bellinger waived any objection to the affidavit testimony but prefers to resolve this issue on the merits as the affidavit testimony is admissible.

* * *

17. In sum, the Court finds that the Affidavit of Mike Christlieb, in its entirety, is admissible and should be considered for purposes of summary judgment.

Findings and Conclusions of Law

1. The issues Bellinger raises in her objection relate to whether certain assets should have been assets of the Probate Estate. While the Trust is funded by Probate Estate assets, none of the assets at issue were titled to the Trust, so Bellinger's substantive position is (or must be) that the assets (the ring and Lake City CD) should have been Probate Estate assets that then poured over into the Trust.
2. The problem with Bellinger's position (even assuming for the sake of argument that she is correct) is that she has brought this argument in the wrong case and after the time to do so has passed.
3. [Indiana Code § 29-1-7.5-6](#) provides a deadline of three months after a closing statement in an estate proceeding is filed for beneficiaries to object.
4. [Indiana Code § 29-1-7.5-6](#) is a statute of repose which operates as an absolute bar to claimants, heirs, and devisees after the applicable time periods have expired. See *McNabb v. Dennis (In re McNabb)*, 744 N.E.2d 569, 573 (Ind. App. 2001).
5. The Court of Appeals has held that this statute bars not merely the remedy, but also the right of recovery, and operates notwithstanding any deficiencies in the closing statement or a lack of notice. *Id.*
6. The statutory deadline for Bellinger to object came and went on April 4, 2022, before Bellinger filed her objection in this matter. Therefore, even if Bellinger's objection was filed in the right case (which it was not), it was filed too late.

7. *Bellinger's objection also fails on substantive grounds.* The undisputed evidence shows that the assets of which Bellinger complains were not Probate Estate assets and therefore were not Trust assets. In the case of the Lake City CD, this was a non-probate asset as a matter of law. In the case of the ring, it was simply not found and Bellinger has designated no evidence rebutting the prima facie evidence on this point.

8. Bellinger's speculation and accusations that are not supported by designated evidence cannot create a question of fact. . . .

Id. at 13-16 (emphasis added). Bellinger filed a motion to correct error, which the trial court denied. This appeal ensued.

Discussion and Decision

A. Bellinger's Appeal

[10] Bellinger contends that the trial court erred when it entered summary judgment for the Trustees. Our standard of review is well settled:

When this Court reviews a grant or denial of a motion for summary judgment, we “stand in the shoes of the trial court.” *Burton v. Benner*, 140 N.E.3d 848, 851 (Ind. 2020) (quoting *Murray v. Indianapolis Public Schools*, 128 N.E.3d 450, 452 (Ind. 2019)). Summary judgment is appropriate “if the designated evidentiary matter shows that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” *Campbell Hausfeld/Scott Fetzer Co. v. Johnson*, 109 N.E.3d 953, 955-56 (Ind. 2018) (quoting Ind. Trial Rule 56(C)). We will draw all reasonable inferences in favor of the non-moving party. *Ryan v. TCI Architects/Engineers/Contractors, Inc.*, 72 N.E.3d 908, 912-13 (Ind. 2017). We review summary

judgment de novo. *Hughley v. State*, 15 N.E.3d 1000, 1003 (Ind. 2014).

Arrendale v. Am. Imaging & MRI, LLC, 183 N.E.3d 1064, 1067-68 (Ind. 2022).

- [11] A trial court’s findings and conclusions on summary judgment are helpful in clarifying its rationale, but they are not binding on this Court. *Whitley Cty. Teachers Ass’n v. Bauer*, 718 N.E.2d 1181, 1186 (Ind. Ct. App. 1999), *trans. denied*. Further, we may affirm a grant of summary judgment on any theory supported by the designated evidence. *Manley v. Sherer*, 992 N.E.2d 670, 673 (Ind. 2013). And the party who lost in the trial court has the burden of persuading us that the trial court erred. *City of Bloomington v. Underwood*, 995 N.E.2d 640, 644 (Ind. Ct. App. 2013), *trans. denied*.
- [12] Here, the Trustees argued in part that Bellinger’s objection should have been brought within the context of the estate proceeding and that it was time-barred under [Indiana Code Section 29-1-7.5-6](#), which requires that all claims against a personal representative “are barred unless a proceeding to assert the same is commenced within three (3) months after the filing of the closing statement.” The trial court agreed and concluded that Bellinger’s objection, filed more than three months after the closing statement was filed, was time-barred under the statute. In the alternative, the trial court concluded that Bellinger’s objection failed on substantive grounds.
- [13] On appeal, Bellinger does not make any argument regarding [Indiana Code Section 29-1-7.5-6](#), which was an independent basis for the trial court’s entry of

summary judgment.¹ Rather, Bellinger only addresses the trial court’s conclusion in the alternative, namely, that her objection failed on substantive grounds. Bellinger has failed to satisfy her burden on appeal to show that the trial court erred when it concluded that her objection was time-barred. Thus, we cannot say that the trial court erred when it granted the Trustees’ summary judgment motion on that independent basis.

B. The Trustees’ Cross-appeal

[14] The Trustees request an award of appellate attorneys’ fees pursuant to [Appellate Rule 66\(E\)](#). As we have explained:

[Ind. Appellate Rule 66\(E\)](#) provides that this Court “may assess damages if an appeal, petition, or motion, or response, is frivolous or in bad faith. Damages shall be in the Court’s discretion and may include attorneys’ fees.” Our discretion to award attorney fees under [Ind. Appellate Rule 66\(E\)](#) is limited to instances when “an appeal is permeated with meritlessness, bad faith, frivolity, harassment, vexatiousness, or purpose of delay.” [Thacker v. Wentzel, 797 N.E.2d 342, 346 \(Ind. Ct. App. 2003\)](#). To prevail on a substantive bad faith claim, a party must show that the appellant’s contentions and arguments are utterly devoid of all plausibility. *Id.* Procedural bad faith occurs when a party flagrantly disregards the form and content requirements of the rules of appellate procedure, omits and misstates relevant facts appearing in the record, and files briefs written in a manner calculated to require the maximum expenditure of time both by the opposing party and the reviewing court. *Id. at 346-347.*

¹ Notably, Bellinger even failed to address this issue in her reply brief.

Staff Source, LLC v. Wallace, 143 N.E.3d 996, 1012 (Ind. Ct. App. 2020). While we have the authority to award damages and fees on appeal, “we must use extreme restraint when exercising this power because of the potential chilling effect upon the exercise of the right to appeal.” *Thacker*, 797 N.E.2d at 346.

[15] The Trustees argue that Bellinger’s failure to address the trial court’s dispositive conclusion under [Indiana Code Section 29-1-7.5-6](#) in her brief on appeal renders her appeal frivolous. Likewise, they argue that her “baseless evidentiary objections” are frivolous. Appellees’ Br. at 31. Finally, the Trustees point out that Bellinger’s appeal has resulted in dissipated assets available to other trust beneficiaries. But the Trustees do not allege that Bellinger has brought this appeal in bad faith.

[16] We cannot say that Bellinger’s admittedly weak arguments rose to the extraordinary level of bad faith under [Rule 66\(E\)](#). We therefore decline the Trustees’ request for an award of appellate attorneys’ fees.

[17] Affirmed.

Riley, J., and Crone, J., concur.