

MEMORANDUM DECISION

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IN THE
Court of Appeals of Indiana

Sheila Ball,
Appellant-Defendant

v.

Robert G. Cook, as Personal Representative of the Estate of
Dale A. Hendrickson, Deceased, Larry Ruble, NorthStar
Advisors LLC, and Carolyn Sue Hendrickson,
Appellees-Plaintiffs

Sheila Ball,
Appellant-Interested Person

v.

In re the Estate of Dale A. Hendrickson, Deceased,
Appellee-Decedent

April 24, 2024
Court of Appeals Case No.
23A-PL-1465



Appeal from the Randolph Superior Court
The Honorable Marianne L. Vorhees, Special Judge

Trial Court Cause No.
68D01-2106-PL-000491
68C01-2101-ES-000001

Memorandum Decision by Judge Felix
Judges Bailey and May concur.

Felix, Judge.

Statement of the Case

[1] Dale Hendrickson died testate in 2020, and a dispute arose over the disbursement of his life insurance benefits. Robert Cook petitioned for the probate of Hendrickson’s will (the “Probate Case”) and served as the personal representative of Hendrickson’s estate (the “Estate”). Cook believed the Estate was the beneficiary of the life insurance policy. In contrast, Sheila Ball had worked as Hendrickson’s long-time administrative assistant and believed she was the rightful beneficiary of the life insurance policy. To settle the dispute, Cook initiated an interpleader suit (the “Interpleader Case”) on behalf of the Estate. Later, Ball admitted that the policy benefits should be awarded to the Estate, and Cook filed a motion for partial judgment on the pleadings in the Interpleader Case. Shortly after Cook filed the motion for partial judgment, Ball filed a claim against the Estate in the Probate Case seeking partial recovery of the policy benefits (the “Estate Claim”). In response to the Estate Claim, Cook filed a motion to dismiss and a motion to award trial attorneys’ fees in the

Probate Case. The trial court granted the motion for partial judgment on the pleadings in the Interpleader Case, granted the motion to dismiss in the Probate Case, and denied Cook's request for trial attorneys' fees.

[2] Ball presents two issues on appeal:

1. Whether the trial court erred in granting Cook's motion to dismiss; and
2. Whether the trial court erred in granting Cook's motion for partial judgment on the pleadings.

Cook cross-appeals, asking us to reverse the trial court's decision on trial attorneys' fees, and he asks us to award him appellate attorneys' fees.

[3] We affirm the trial court's decision in full and deny Cook's request for appellate attorneys' fees.

Facts and Procedural History

[4] Years prior to his death, Hendrickson had obtained a \$1,000,000 life insurance policy from United of Omaha Life Insurance Company ("United") through agent Larry Ruble. In 2016, Hendrickson designated Ball as the beneficiary of the policy. All parties agree that at the time of this original designation, Hendrickson wanted Ball, his decades-long administrative assistant, to use the funds to "pay off a line of credit with Old National Bank[,] and [Ball] would keep the balance, \$250,000, as her retirement benefit." Appellant's App. Vol. II at 29.

[5] Sometime later, around 2018, Hendrickson decided to change the beneficiary of the life insurance policy. Hendrickson named the Estate as the beneficiary of

the policy, and he directed Ball to obtain a change of beneficiary form from Ruble. On May 11, 2018, Ball sent Ruble an executed change of beneficiary form that designated the Estate as the beneficiary of the policy. On May 17, 2018, Ball followed up with Ruble to confirm receipt of the forms, and, the next day, Ruble asked Ball to send the forms a second time. That same day, Ball again sent the forms to Ruble, who later acknowledged receipt of the forms. Ball did not further confirm with either Ruble or United that the change of beneficiary had become effective.

[6] On December 29, 2020, Hendrickson died. On January 5, 2021, Cook, who was Hendrickson's longtime attorney, filed the Probate Case with the trial court in cause number 68C01-2101-ES-0001, and, on January 7, 2021, the trial court appointed Cook as personal representative of the Estate. On January 11, 2021, the trial court entered a Notice of Administration of the Estate that provided in relevant part:

All persons who have claims against this estate, whether or not now due, must file the claim in the office of the Clerk of this Court within three (3) months from the date of the first publication of this notice, or within nine (9) months after the decedent's death, whichever is earlier, or the claims will be forever barred.

Appellee's App. Vol. II at 5.

[7] Although the parties do not dispute that Hendrickson had intended to change the beneficiary of the life insurance policy, Ball claims that Hendrickson still intended to give her the same retirement benefit. Ball alleges that there was an

oral agreement between her and Hendrickson in which he promised her the remaining balance of the policy benefits after the Old National Bank debt had been paid. After Hendrickson's death, United informed Ball that she was still the listed beneficiary of the policy. On January 7, 2021, on behalf of the Estate, Cook submitted a rival policy claim to United in an effort to make the benefits payable to the Estate. United denied Cook's claim.

[8] On June 16, 2021, Cook initiated the Interpleader Case in cause number 68D01-2106-PL-0491. The Interpleader Case named Ball, Ruble, and United as defendants and sought, among other things, declaratory relief to (1) make the 2018 change of beneficiary forms effective and (2) order United to pay the policy benefits to the Estate. On July 28, 2021, Ball answered the complaint and filed a counterclaim asking the trial court to find her to be the beneficiary of the policy and award her the policy benefits. On August 13, 2021, United deposited the policy benefits with the trial court, and, as a result, the trial court dismissed all claims against United in the Interpleader Case.

[9] In discovery responses for the Interpleader Case, Ruble alleged that he had informed Ball that she still had an affirmative obligation to provide the change of beneficiary form to United. As a result, on October 10, 2022, Cook filed an amended complaint in the Interpleader Case to include claims of negligence and breach of fiduciary duty against Ball. Ball filed an answer to the amended complaint where she admitted (1) she owed a fiduciary duty to Hendrickson, (2) the Estate was authorized to pursue claims, and (3) "pursuant to the properly executed and supplied change of beneficiary form the Estate . . . is entitled to all

death benefits owing under the Policy, and accordingly the entirety of the Interpleaded Funds should be awarded to the Estate.” Appellant’s App. Vol. III at 41, 60.

[10] Several motions were filed in February and March in both causes. In the Interpleader Case, on February 13, 2023, Cook filed an Indiana Trial Rule 12(C) motion for partial judgment on the pleadings to have the policy benefits awarded to the Estate. On February 22, 2023, Ball sought leave from the trial court to file an amended counterclaim alleging that (1) Cook was aware of the oral agreement between Hendrickson and Ball and (2) Cook’s failure to pay Ball \$250,000 from the Estate amounted to constructive fraud. Cook filed a response in opposition to Ball’s request to amend her counterclaim. In Cook’s response, he argued that the constructive fraud claim was a “disguised breach of contract claim” against the Estate and the claim should be time-barred under the probate code. Appellant’s App. Vol. III at 139. On March 24, 2023, Ball filed a response to Cook’s Trial Rule 12(C) motion in which she again alleged that Cook had committed constructive fraud and provided designated evidence to support her claim that she was owed \$250,000 from the Estate.

[11] Meanwhile, in the Probate Case, on March 1, 2023, Ball filed her Estate Claim, which requested \$250,000 from the Estate and consisted mainly of a copy of the proposed amended counterclaim from the Interpleader Case. On March 27, 2023, Cook filed a Trial Rule 12(B)(6) motion to dismiss Ball’s Estate Claim, arguing that the Estate Claim was time-barred and, alternatively, that the constructive fraud claim failed as a matter of law.

- [12] On May 17, 2023, Cook filed a motion to award trial attorneys’ fees in the Probate Case, alleging that the Estate Claim subjected the Estate to frivolous litigation. On May 19, 2023, the trial court conducted a joint hearing on Cook’s Trial Rule 12(C) motion in the Interpleader Case and Trial Rule 12(B)(6) motion in the Probate Case (collectively the “Motions”). On June 6, 2023, the trial court granted the Motions¹ because it determined that Ball’s claims were claims against the Estate and were therefore time-barred. Ball now appeals.²
- [13] In its June 6 order in the Probate Case, the trial court denied Cook’s request for trial attorneys’ fees. Cook cross-appeals this denial and seeks the award of both trial and appellate attorneys’ fees.

Discussion and Decision

1. The Trial Court Did Not Err in Granting the Motions

- [14] In response to Cook’s Trial Rule 12(C) motion, Ball designated evidence to the trial court.

Under Trial Rule 12, if “matters outside the pleading[s] are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56”. T.R. 12(B), 12(C). A trial court converts a

¹ Ball’s Appendix omitted pages of the trial court’s order on Cook’s Trial Rule 12(B)(6) motion. “Any party’s failure to include any item in an Appendix shall not waive any issue or argument,” Ind. Appellate Rule 49(B), so, regardless of the omission, we address Ball’s Trial Rule 12(B)(6) claim.

² On July 6, 2023, Ball filed a motion to consolidate her appeals of the trial court’s orders on the Motions, (**Mot. Consolidate at 1**), and we granted the motion on July 31, 2023, (**Order Mot. Consolidate at 1**).

Rule 12 motion to a motion for summary judgment “by its consideration of extraneous matters” regardless of whether the court converts the motion to one for summary judgment expressly. *Milestone Contractors, L.P. v. Ind. Bell Tel. Co.*, 739 N.E.2d 174, 176 (Ind. Ct. App. 2000).

Davidson v. State, 211 N.E.3d 914, 925 (Ind. 2023). In its order on the Trial Rule 12(C) motion, the trial court noted its consideration of Ball’s designated evidence and converted the Trial Rule 12(C) motion into a motion for summary judgment. We review summary judgment decisions de novo and “apply ‘the same standard as the trial court.’” *Korakis v. Mem’l Hosp. of South Bend*, 225 N.E.3d 760, 764 (Ind. 2024) (quoting *Miller v. Patel*, 212 N.E.3d 639, 644 (Ind. 2023)). Similarly, we review a grant of a Trial Rule 12(B)(6) motion to dismiss de novo, and we may affirm a dismissal “if it is sustainable on any basis in the record.” *Ward v. Carter*, 90 N.E.3d 660, 662 (Ind. 2018) (quoting *Thornton v. State*, 43 N.E.3d 585, 587 (Ind. 2015)).

[15] At issue for Ball’s appeal is whether her causes of action are claims against the Estate. Indiana’s probate code defines claims as “liabilities of a decedent which survive, whether arising in contract or in tort or otherwise, expenses of administration, and all taxes imposed by reason of the person’s death.” Ind. Code 29-1-1-3(a)(2). Claims are subject to time limitations:

Except as provided in IC 29-1-7-7, all claims against a decedent’s estate . . . whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract or otherwise, shall be forever barred against the estate . . . unless filed with the court in which such estate is being administered within:

(1) three (3) months after the date of the first published notice to creditors; or

(2) three (3) months after the court has revoked probate of a will, in accordance with IC 29-1-7-21, if the claimant was named as a beneficiary in that revoked will;

whichever is later.

I.C. § 29-1-14-1(a). A breach of contract claim against a decedent is a liability that survives the death of the decedent, *see Markey v. Estate of Markey*, 38 N.E.3d 1003, 1008 (Ind. 2015), and, thus, any breach of contract claim Ball has against the Estate would be subject to the probate code's time limitations.

[16] Although Ball is ultimately seeking funds she is allegedly owed pursuant to the oral agreement, she provides two theories as to why her claim is not a breach of contract claim. First, Ball argues that she is not seeking to enforce a contract against the Estate, but rather she is attempting to enforce a pledge against the Estate. The time limitations that apply to claims against an estate do not apply to pledges against an estate. I.C. § 29-1-14-1(e). Ball argues that a pledge exists here because she has “[i.] a valid debt; (ii) an offer of property to secure the debt; and (iii) a transfer of property from the debtor to the creditor.”

Appellant's Br. at 35 (citing 19 Williston on Contracts § 53:49 (4th ed. 2023)). Ball claims that she secured a debt against the Estate by promising to pay off the Old National Bank debt with the life insurance proceeds. But this arrangement was abandoned when Hendrickson directed Ball to change beneficiary on the

United policy, and the parties agreed that the policy benefits should be awarded to the Estate. Thus, Ball does not have a pledge against the Estate.

[17] Second, Ball asserts that she is seeking relief under a claim of constructive fraud.

The five elements of constructive fraud are: (i) a duty owing by the party to be charged to the complaining party due to their relationship; (ii) violation of that duty by the making of deceptive material misrepresentations of past or existing facts or remaining silent when a duty to speak exists; (iii) reliance thereon by the complaining party; (iv) injury to the complaining party as a proximate result thereof; and (v) the gaining of an advantage by the party to be charged at the expense of the complaining party.

Sri Shirdi Saibaba Sansthan of Tri State, Inc. v. Farmers State Bank of Alto Pass, Ill., 194 N.E.3d 55 (Ind. Ct. App. 2022) (quoting *Rice v. Strunk*, 670 N.E.2d 1280, 1284 (Ind. 1996)), *trans. denied sub nom.*, *Satoor v. Farmers State Bank of Alto Pass, Ill.*, 205 N.E.3d 189 (Ind. 2023). In her brief, Ball has not identified these elements nor has she demonstrated that these elements exist in the record on appeal. Her constructive fraud claim is merely an attempt to enforce the alleged oral agreement she had with Hendrickson. Since Ball's constructive fraud claim is a repackaged breach of contract claim, we will not address its merits. *See Sheaff Brock Inv. Advisors, LLC v. Morton*, 7 N.E.3d 278, 288 (Ind. Ct. App. 2014) (determining that an analysis of the constructive fraud elements is unnecessary when the constructive fraud claim is “merely a repackaging of his breach of contract claim”).

[18] Therefore, despite her characterizations, Ball is making a breach of contract claim against the Estate, and such a claim is subject to the probate code's time limitations. The Notice of Administration of the Estate was posted on January 11, 2021. Ball filed her claims against the Estate seeking enforcement of the oral agreement in March 2023—well outside of the three-month limitation period set forth in the probate code. *See* I.C. § 29-1-14-1(a)(2). Thus, Ball's claims were time-barred, so we need not address their merits.

2. The Trial Court Did Not Abuse Its Discretion by Denying Cook's Request for Attorneys' Fees, and We Deny Cook's Request for Appellate Attorneys' Fees

[19] On appeal, Cook asks us to both reverse the trial court's denial of his request for trial attorneys' fees in the Probate Case and award appellate attorneys' fees. Cook has failed to demonstrate that the trial court abused its discretion in denying his request for trial attorneys' fees and that appellate attorneys' fees are appropriate.

[20] We will reverse a trial court's decision on attorneys' fees only for an abuse of discretion. *River Ridge Dev. Auth. v. Outfront Media, LLC*, 146 N.E.3d 906, 912 (Ind. 2020) (citing *Purcell v. Old Nat'l Bank*, 972 N.E.2d 835, 843 (Ind. 2012)). "An abuse of discretion occurs when the court's decision either clearly contravenes the logic and effect of the facts and circumstances or misinterprets the law." *Id.*

a. Trial Attorneys' Fees

[21] Cook asks us to reverse the trial court's denial of his request for attorneys' fees.

We note that Ball's reply brief does not address the cross-appeal or the issue of attorneys' fees. Because Ball did not submit a cross-appellee brief, we "need not develop an argument for the appellee[] but instead will 'reverse the trial court's judgment if the appellant's brief presents a case of prima facie error.'" *Sayler v. Washington Regular Baptist Church Cemetery*, 141 N.E.3d 384, 386 (Ind. 2020) (quoting *Front Row Motors, LLC v. Jones*, 5 N.E.3d 753, 758 (Ind. 2014)). We define a prima facie error as "at first sight, on first appearance, or on the face of it." *Id.* (quoting *Front Row Motors*, 5 N.E.3d at 758).

[22] Cook argues that he deserves trial attorneys' fees because the Estate Claim in the Probate Case was frivolous. The General Recovery Rule "allows a court '[i]n any civil action' to award attorney's fees 'as part of the cost to the prevailing party' if another party '(1) brought the action or defense on a claim or defense that is frivolous, unreasonable, or groundless; [or] (2) continued to litigate the action or defense after the party's claim or defense became frivolous, unreasonable, or groundless.'" *River Ridge Dev. Auth.*, 146 N.E.3d at 913 (quoting I.C. § 34-52-1-1(b)).

A claim is "frivolous" if it is made primarily to harass or maliciously injure another; if counsel is unable to make a good faith and rational argument on the merits of the action; or if counsel is unable to support the action by a good faith and rational argument for extension, modification, or reversal of existing law.

Dunno v. Rasmussen, 980 N.E.2d 846, 850–51 (Ind. Ct. App. 2012) (citing *Am.’s Directories Inc. v. Stellhorn One Hour Photo, Inc.*, 833 N.E.2d 1059, 1070–71 (Ind. Ct. App. 2005)).

[23] Cook has not demonstrated a case of prima facie error in his brief on cross-appeal. Cook does not specify the grounds on which the Estate Claim was frivolous nor does he point to supporting law that indicates the Estate Claim was frivolous. The trial court found no basis for attorneys’ fees because the issues were complicated, the matter was significant, and it did not find the claim was made in bad faith. Cook has not persuaded us otherwise; therefore, we conclude that the trial court did not abuse its discretion in denying Cook’s request for trial attorneys’ fees.

b. Appellate Attorneys’ Fees

[24] Cook also asks us to award appellate attorneys’ fees. “The 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. The Court shall remand the case for execution.” Ind. Appellate Rule 66(E). “Our court’s discretion to award Rule 66(E) appellate attorney’s fees is limited to circumstances where the appeal is ‘permeated with meritlessness, bad faith, frivolity, harassment, vexatiousness, or purpose of delay.’” *Duncan v. Yocum*, 179 N.E.3d 988, 1005 (Ind. Ct. App. 2021) (quoting *Thacker v. Wentzel*, 797 N.E.2d 342, 346 (Ind. Ct. App. 2003)). We exercise “caution in awarding appellate attorney’s fees because of the ‘potentially chilling effect the award may have upon the exercise of the right to appeal.’” *Id.* (quoting *Holland v.*

Steele, 961 N.E.2d 516, 529 (Ind. Ct. App. 2012), *trans. denied*). Thus, we do not invoke Rule 66(E) to punish a lack of merit; rather we use this rule when faced with “something more egregious.” *Id.* (quoting *Troyer v. Troyer*, 987 N.E.2d 1130, 1148 (Ind. Ct. App. 2013), *trans. denied*).

[25] There are two categories of claims for appellate attorneys’ fees: (1) substantive bad faith claims and (2) procedural bad faith claims. *Duncan*, 179 N.E.3d at 1005 (citing *Boczar v. Meridian Street Found.*, 749 N.E.2d 87, 95 (Ind. Ct. App. 2001)).

To prevail on a substantive bad faith claim, the party must show that the appellant’s contentions are utterly devoid of all plausibility. Procedural bad faith, on the other hand, 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. Even if the appellant’s conduct falls short of that which is deliberate or by design, procedural bad faith can still be found.

Id. (internal citations and quotation marks omitted).

[26] Cook does not allege that Ball’s appeal was pursued in bad faith. Rather, Cook relies on his argument that Ball’s trial court claims were frivolous. In short, Cook argues that appellant attorneys’ fees should be awarded because trial attorneys’ fees should have been awarded. But we have already rejected Cook’s argument that the trial court abused its discretion in denying his request for trial attorneys’ fees. Regardless, had we concluded that Ball’s trial court claims were

frivolous, this determination alone could not be grounds for concluding that the appellate claims also lacked merit. *See Gillock v. City of New Castle*, 999 N.E.2d 1043, 1047 (Ind. Ct. App. 2013). Cook has not shown that Ball’s appeal was pursued in bad faith, so we deny Cook’s request for appellate attorneys’ fees.³

Conclusion

- [27] For the foregoing reasons, we affirm the trial court’s decision and deny Cook’s request for appellate attorney’s fees.
- [28] Affirmed.

Bailey, J., and May, J., concur.

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³ Although we do not award appellate attorneys’ fees, we note that Ball failed to comply with our rules of appellate procedure. In her brief, Ball violated the Indiana Appellate Rules by failing to include the correct standard of review, citations to the record in her argument, and proper citation format. *See* App. R. 22(c), 46(A)(8)(a)–(b).

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