MEMORANDUM DECISION

IN THE
Court of Appeals of Indiana

Vassil M. Marinov and Venetka V. Marinov,
Appellants-Defendants

v.

Wakerobin Estates II Homeowners Association, Inc.,
Appellee-Plaintiff

March 7, 2024

Court of Appeals Case No.
23A-SC-2010

Appeal from the Tippecanoe Superior Court

The Honorable Sarah M. Wyatt, Magistrate

Trial Court Cause No.
79D04-2209-SC-000482

Memorandum Decision by Judge Felix
Chief Judge Altice and Judge Bradford concur.

Felix, Judge.

Statement of the Case

[1] Wakerobin Estates II Homeowners Association, Inc. ("Wakerobin HOA") sued Vassil and Venetka Marinov (collectively, the "Marinovs") to collect $1,050 in overdue homeowners' association fees. Following an evidentiary hearing, the small claims court found in favor of Wakerobin HOA and ordered the Marinovs to pay the overdue fees, court costs, and Wakerobin HOA's attorneys' fees. The Marinovs now appeal the small claims court's decision and present five issues for our review, which we revise and restate as the following four issues:

1. Whether the small claims court erred by finding Wakerobin HOA sufficiently responded to the Marinovs' discovery requests;
2. Whether the small claims court erred by finding the Marinovs are members of Wakerobin HOA and thus responsible for paying fees assessed thereby;
3. Whether the small claims court erred by finding the Marinovs are responsible for paying Wakerobin HOA's attorneys' fees;
4. Whether the small claims court erred by finding the Marinovs' First Amendment rights were not violated by mandatory membership in Wakerobin HOA.

[2] We affirm.

Facts and Procedural History

[3] In 1998, G & L Development Co., Inc. owned real estate in Tippecanoe County, Indiana that was platted as Wakerobin Estates II Subdivision Phase I, Section Two (the "Subdivision"). On October 5, 1998, G & L Development

recorded Restrictive Covenants for the Subdivision in the Tippecanoe County Recorder's Office. The Restrictive Covenants run with the land and are binding on all parties claiming or owning an interest in the Subdivision or any lot therein.[1] Moreover, the Restrictive Covenants contemplate the formation of a homeowners' association or other similar organization and provide that each lot owner in the Subdivision "agrees to become a member thereof and to share in the expense of maintaining the landscape easement." Appellee's App. Vol. II at 4–5. The Restrictive Covenants also allow the recovery of attorney fees in the event suit is brought to enforce the restrictions, covenants, or conditions therein.

[4] Eventually, a homeowners' association—Wakerobin HOA—was established for the Subdivision.[2] Wakerobin HOA's bylaws empower its board of directors to assess and collect certain fees related to maintenance of certain common property within the Subdivision, including signs, landscaping, and storm water detention facilities not otherwise maintained by the county. Wakerobin HOA's

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[1] Pages seven and eight are missing from the copy of the Restrictive Covenants in Wakerobin HOA's appendix. Appellee's App. Vol. II at 56. The Marinovs do not supply their own copy of the recorded Restrictive Covenants. *See* Appellants' App. Vol. II at 1–29. Because Wakerobin HOA attached a complete copy of the Restrictive Covenants to its Notice of Claim, we take judicial notice thereof pursuant to Indiana Appellate Rule 27.

[2] Although Wakerobin HOA included a copy of its bylaws in its Appellee's Appendix, neither party included in their appendices Wakerobin HOA's articles of incorporation. Further, neither party addressed in their briefs when Wakerobin HOA was established, and a transcript of the evidentiary hearing in this matter was not included for our review. Because it is not evident that the parties dispute that Wakerobin HOA was established pursuant to Indiana law sometime after the Restrictive Covenants were recorded, we assume for purposes of this opinion that Wakerobin HOA was established prior to the Marinovs' purchase of their lot in the Subdivision.

bylaws also empower its board of directors to sue lot owners for failure to pay such fees.

[5] In 2004, the Marinovs purchased the real estate commonly known as 2315 Archer Court, West Lafayette, Indiana 47906. The Marinovs' real estate is also identified as Lot 113 in the Subdivision. From 2018 to early fall 2022, pursuant to its bylaws, Wakerobin HOA assessed fees against the Marinovs totaling $1,050. The Marinovs failed to pay these fees. On September 12, 2022, Wakerobin HOA filed a Notice of Claim in small claims court seeking to collect the Marinovs' unpaid fees. The Marinovs contended that their real estate was not in a section of the Subdivision governed by Wakerobin HOA, that they did not have actual notice of Wakerobin HOA or its fees, and that mandatory membership in Wakerobin HOA violated the Marinovs' rights to freedom of association and freedom of religion.

[6] On May 15, 2023, after several months of discovery disputes, the small claims court held a final hearing. The small claims court found in favor of Wakerobin HOA and ordered the Marinovs to pay Wakerobin HOA the $1,050 in outstanding assessed fees and $2,500 in attorneys' fees plus $115 in court costs. The Marinovs subsequently filed a motion to correct error, which the small claims court denied. This appeal ensued.

Discussion and Decision

[7] The Marinovs raise several issues on appeal regarding whether the Restrictive Covenants applied to them and any obligations they may have thereunder.

However, we cannot address those claims due to the Marinovs' significant noncompliance with Indiana Appellate Rule 46. Although we have a well-established preference for deciding cases on their merits rather than on procedural grounds like waiver, *Pierce v. State*, 29 N.E.3d 1258, 1267 (Ind. 2015) (quoting *Roberts v. Cmty. Hosps. of Ind., Inc.*, 897 N.E.2d 458, 469 (Ind. 2008)), if a party's failure to comply with the Appellate Rules is "sufficiently substantial to impede our consideration of the issue raised," we will not address the merits of that issue, *id.* (quoting *Guardiola v. State*, 375 N.E.2d 1105, 1107 (Ind. 1978)).

[8] The purpose of our appellate rules—especially Appellate Rule 46 governing the content of briefs—"is to aid and expedite review and *to relieve the appellate court of the burden of searching the record and briefing the case*." *Miller v. Patel*, 212 N.E.3d 639, 657 (Ind. 2023) (emphasis added) (quoting *Dridi v. Cole Kline LLC*, 172 N.E.3d 361, 364 (Ind. Ct. App. 2021)). For instance, a party must provide the applicable standard of review. Ind. Appellate Rule 46(A)(8)(b). A party's analysis of an issue on appeal must be supported in relevant part by cogent reasoning and by citations to authorities and statutes upon which the party relies. *Id.* 46(A)(8)(a). "We will not step in the shoes of the advocate and fashion arguments on his behalf, 'nor will we address arguments' that are 'too poorly developed or improperly expressed to be understood.'" *Miller*, 212 N.E.3d at 657 (quoting *Dridi*, 172 N.E.3d at 364).

[9] We initially observe that the Marinovs have chosen to proceed pro se on appeal; this choice does not loosen the requirements of Appellate Rule 46 for the Marinovs. *See Zavodnik v. Harper*, 17 N.E.3d 259, 266 (Ind. 2014) (citing *In*

re G.P., 4 N.E.3d 1158 (Ind. 2014)) ("A pro se litigant is held to the same standards as a trained attorney and is afforded no inherent leniency simply by virtue of being self-represented."). In their one-and-a-half pages of argument, the Marinovs fail to set forth the applicable standards of review for any of the issues they raise, and they provide no citations to authorities or statues in support of their claims. Appellants' Br. at 9–11. Thus, the Marinovs have waived appellate review of all their claims.

[10] Nevertheless, we may exercise our discretion to decide the merits of waived claims. *Pierce*, 29 N.E.3d at 1267. Due to the Marinovs' failure to provide the applicable standard of review and to support their arguments with relevant legal citations, addressing the merits of the Marinovs' claims would require us to essentially brief the case and fashion arguments on behalf of the Marinovs. We will not do so. *See Miller*, 212 N.E.3d at 657 (quoting *Dridi*, 172 N.E.3d at 364). The Marinovs' noncompliance with Appellate Rule 46 therefore substantially impedes our review of their claims, and we will not exercise our discretion to address the merits of those claims. As such, we affirm the small claims court on all issues raised.

[11] Affirmed.

Altice, C.J., and Bradford, J., concur.

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