APPELLANT PRO SE:

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IN THE
COURT OF APPEALS OF INDIANA

JOHN SHELTON,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A05-1009-CT-606
	)	
DANIEL KEITH HOFFMAN, GUARDIAN OF THE ESTATE OF MOLLY DATTILO,	)	
	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable David J. Dreyer, Judge
Cause No. 49D10-0710-CT-042788

OCTOBER 24, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARTEAU, Senior Judge

STATEMENT OF THE CASE

Defendant-Appellant John Shelton appeals the default judgment entered against him by the trial court.

We affirm.

ISSUES

Shelton raises three issues, which we consolidate and restate as: whether the trial court erred by entering a default judgment against him.

On cross-appeal, Hoffman raises one issue, which we restate as: whether Shelton's appeal should be dismissed due to the untimely filing of his notice of appeal.

FACTS AND PROCEDURAL HISTORY

In July 2004, Molly Dattilo was reported missing, and Shelton was a suspect in her disappearance. Dattilo's body was never found. On October 9, 2007, Hoffman, as guardian of Dattilo, filed a complaint against Shelton alleging that he committed a battery on Dattilo, resulting in probable fatal injury and requesting compensatory and punitive damages. Shelton was served with a copy of the complaint on May 18, 2009, and Hoffman filed a motion for default judgment on June 29, 2009. The trial judge signed the order of default on the same day and ordered a damages hearing for September 10, 2010. The damages hearing was reset and was subsequently held on November 15, 2010. On that date, the trial court entered judgment and damages in the amount of $3,496,900. Shelton filed a notice of appeal on December 14, 2010. This appeal ensued.

DISCUSSION AND DECISION

We first address Hoffman's cross-appeal. Hoffman claims that Shelton's notice of appeal was untimely because it was not filed within thirty days of the trial court's order of default on June 29, 2009.

Pursuant to Indiana Appellate Rule 9(A), a party must initiate an appeal by filing a notice of appeal within thirty days of the entry of a final judgment. Therefore, we must determine whether the June 29, 2009 order was a final judgment. Indiana Appellate Rule 2(H) states, in pertinent part:

> A judgment is a final judgment if:
>
> (1) it disposes of all claims as to all parties;
>
> (2) the trial court in writing expressly determines under Trial Rule 54(B) or Trial Rule 56(C) that there is no just reason for delay and in writing expressly directs the entry of judgment (i) under Trial Rule 54(B) as to fewer than all the claims or parties, or (ii) under Trial Rule 56(C) as to fewer than all the issues, claims or parties . . . .

In the instant case, the trial judge signed the default order on June 29, 2009, and, in that order, set the date for the damages hearing. The June 29, 2009 order was not called a judgment and did not enter judgment for damages; rather, the order was merely the ruling on a motion submitted by Hoffman. Until the court determined the amount of damages, all claims of this lawsuit had not been disposed of as required by Indiana Appellate Rule 2(H)(1) for a final judgment. *See Georgos v. Jackson*, 790 N.E.2d 448, 452 (Ind. 2003) (stating that a disposition of all claims requires more than entry of a ruling on a motion without entry of judgment and that a judgment that fails to determine

damages is not final). Thus, until the trial court held the damages hearing and entered the judgment of default and damages on November 15, 2010, there was not a final judgment in this case.

Additionally, we note that the trial court's order states that "there is no just cause for delay in entering default." Appellant's App. p. 3. This language uses a portion of the language set forth in Indiana Appellate Rule 2(H)(2) as taken from Indiana Trial Rule 54(B). However, Indiana Trial Rule 54(B) has been said to set forth a bright-line rule requiring the trial court to, "in writing, expressly determine that there is no just reason for delay and, in writing, expressly direct entry of judgment." *Georgos*, 790 N.E.2d at 452. Here, these requirements have not been met. Although the court's June 29, 2009 order contains a portion of the "magic language" required by Indiana Trial Rule 54(B), it does not expressly direct entry of judgment so as to qualify the order as a final judgment under Indiana Appellate Rule 2(H)(2).

Shelton filed his notice of appeal on December 14, 2010. His notice of appeal was timely filed within thirty days of the trial court's entry of judgment and damages on November 15, 2010, and the issues he raises are properly before us in this appeal.

Shelton's sole contention on appeal is that the trial court erred by entering the default judgment against him. Specifically, Shelton asserts that Hoffman's complaint was not timely filed, that Hoffman erred by not filing a tort claim, and that, because Shelton is acting pro se, the court should not have entered a default judgment against him.

Shelton first claims that Hoffman's complaint was not timely filed pursuant to Indiana Code section 34-11-2-3 (1998). Indiana Code section 34-11-2-3 states:

> An action of any kind for damages, whether brought in contract or tort, based upon professional services rendered or which should have been rendered, may not be brought, commenced, or maintained, in any of the courts of Indiana against physicians, dentists, surgeons, hospitals, sanitariums, or others, unless the action is filed within two (2) years from the date of the act, omission, or neglect complained of.

Hoffman filed suit against Shelton based upon Shelton's alleged battery of Dattilo. The suit is not based upon professional services rendered by a physician, dentist, surgeon, hospital, or sanitarium. Consequently, this statute does not apply here. Shelton's claim fails.

Next, Shelton avers that Hoffman should have, but did not, file a tort claim pursuant to Indiana Code section 34-13-3-8 (1998). This statute pertains to tort claims against a political subdivision, and we fail to see how it is related to the instant case. Moreover, Shelton's argument on this issue is completely unintelligible, and we have previously stated that we will not address arguments that are too poorly developed to be understood. *See Thacker v. Wentzel*, 797 N.E.2d 342, 345 (Ind. Ct. App. 2003). This claim fails.

Finally, Shelton cannot take refuge in the sanctuary of his amateur status. As we have noted many times before, a litigant who chooses to proceed pro se will be held to the same rules of procedure as trained legal counsel and must be prepared to accept the consequences of his action. *Id.* We find no error here.

CONCLUSION

Based upon the foregoing analysis and authorities, we conclude that Shelton timely filed his notice of appeal. However, we further determine that the trial court properly entered default judgment against him.

Affirmed.

BAKER, J., and BARNES, J., concur.