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IN THE
COURT OF APPEALS OF INDIANA

WILLIAM B. KEATON and C. JACK CLARKSON, et al.,	)	
and	)	
KENNETH J. YAGER,	)	
Appellants-Petitioners,	)	
vs.	)	No. 70A01-0510-CV-453
BIG FLATROCK RIVER BOARD OF SUPERVISORS OF RUSH COUNTY,	)	
and	)	
JOINT FAYETTE, HENRY and RUSH COUNTY DRAINAGE BOARD, GARY NAYLOR, JOSEPH LEISURE, LARRY HALE, MARVIN REES and STATE OF INDIANA,	)	
Appellees-Respondents.	)	

APPEAL FROM THE RUSH CIRCUIT COURT
The Honorable James B. Humphrey, Special Judge
Cause Nos. 70C01-0306-MI-102, 70C01-0305-MI-92

December 29, 2006

MEMORANDUM DECISION - NOT FOR PUBLICATION

MAY, Judge

William Keaton, C. Jack Clarkson and others ("Keaton") and Kenneth Yager appeal a summary judgment[1] for the Big Flatrock River Board of Supervisors and the Joint Fayette, Henry, and Rush County Drainage Board (collectively, "the Board").[2] Between them, Keaton and Yager raise sixteen allegations of error, of which we address five. We find the Board's assessment of the minimum statutory amount was not error,

[1] The trial court granted summary judgment on all issues raised except the constitutionality of the drainage statutes.

[2] The Board moved to strike a reply brief and appendix Yager submitted, as both were filed late. Yager asserts his reply brief was in fact a cross-appellee's brief because the Board raised in its Appellee's Brief an "issue challenging the trial court's jurisdiction" and it was therefore timely filed. (Response to Appellees' Motion to Strike Reply Brief & Appendix of Appellant Kenneth J. Yager at 1.) We agree. In its brief the Board asserted the trial court had no jurisdiction over Yager's petition for judicial review of the Board's decision because his petition was filed late. Yager responded in his reply brief to that allegation. We accordingly deny the motion to strike Yager's reply brief and appendix.

In addition we find the trial court had jurisdiction over Yager's petition. Such a petition must be filed within twenty days after the date the Board publishes notice its order or determination has been made. Ind. Code § 36-9-27-106. The Board directs us to notice published in the Connersville News-Examiner on May 22, 2003, and notes Yager filed his petition twenty-one days later, on June 12. Yager notes the same notice was published in the Rushville Republican on May 23, 2003, which would render timely his petition.

The Board does not acknowledge in its brief the May 23 publication, nor does it offer authority for its apparent premise that when notice is published in different newspapers on different days a petition for judicial review must be filed within twenty days of the earlier publication date. In light of our preference to decide issues on their merits when possible, *Masonic Temple Ass'n of Crawfordsville v. Ind. Farmers Mut. Ins. Co.*, 837 N.E.2d 1032, 1036 (Ind. Ct. App. 2005), *reh'g denied*, we find Yager's petition was timely.

the individuals or entities who brought the petition to establish the drain had standing, the petition adequately described the parcels of land affected by the drain, a Board member's conflict of interest was resolved by her resignation when the conflict was discovered, and the court did not err to the extent it declined to consider Keaton's "designation" of the entire record.

We accordingly affirm.

FACTS[3] AND PROCEDURAL HISTORY

In the 1990s Rush County and the City of Rushville undertook to "rehabilitate" (Appellees/Defendants' App. at 115) the Big Flatrock River by removing debris clogging the river in order to reduce flooding. A Flatrock River Board of Supervisors was established to oversee the project and the project was completed. A number of people subsequently petitioned for establishment of the river as a legal drain so the condition of the river could be maintained.

The petition at issue in the case before us was presented to the Rush County Surveyor and filed in April of 2001. Land in Henry and Fayette counties would also be affected, so a joint board was formed with a representative from each county. In August 2001, a petition, amended to include the additional affected land, was presented to the Rush County Surveyor. He determined the amended proposed drain included over 100,000 acres in three counties and he filed the amended petition with the joint Board in January 2002.

[3] We remind Yager and Keaton that a Statement of Facts should be a concise narrative of the facts stated in a light most favorable to the judgment and should not be argumentative. *Burrell v. Lewis*, 743 N.E.2d 1207, 1209 (Ind. Ct. App. 2001). The Statements of Facts Yager and Keaton offer us are, by contrast, attempts to discredit the trial court's judgment.

After a public hearing in April 2002, the petition was referred to the Rush County Surveyor for preparation of a final report. That report, presented in November 2002, indicated the drain affected about 95,000 acres. In December of 2002 the Board accepted the report and proposed assessments. Shortly thereafter a board member, Janet Kile, disqualified herself because she owned affected land and therefore had a conflict of interest as the drain affected less than 100,000 acres. A replacement board member was appointed and the Board eventually approved the final report, set assessments, and made findings and conclusions.

Keaton and Yager each petitioned for judicial review and the two cases were consolidated. Keaton and Yager moved for summary judgment. The trial court granted summary judgment for the Board.

DISCUSSION AND DECISION

On appeal from summary judgment, we face the same issues that were before the trial court and follow the same process. *Schaefer v. Kumar*, 804 N.E.2d 184, 191 (Ind. Ct. App. 2004), *trans. denied* 812 N.E.2d 808 (Ind. 2004). Summary judgment is appropriate where the designated evidence shows there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *Id*.; Ind. Trial Rule 56(C). A genuine issue of material fact exists where facts concerning an issue that would dispose of the litigation are in dispute or where the undisputed material facts are capable of supporting conflicting inferences on such an issue. 804 N.E.2d at 191.

A summary judgment is clothed with a presumption of validity, and the parties who lost in the trial court (here, Keaton and Yager) have the burden of demonstrating the

summary judgment was erroneous. See *Wilcox Mfg. Group, Inc. v. Mktg. Servs. of Ind., Inc*., 832 N.E.2d 559, 562 (Ind. Ct. App. 2005). We consider only those matters that were designated at the summary judgment stage. *Schaefer*, 804 N.E.2d at 191. A summary judgment may be affirmed on any theory supported by the designated materials. *Id*. at 193.

T.R. 56(B) provides "[w]hen any party has moved for summary judgment, the court may grant summary judgment for any other party upon the issues raised by the motion although no motion for summary judgment is filed by such party." Therefore, although Keaton and Yager alleged they were entitled to summary judgment, the trial court was not precluded from finding the Board was entitled to summary judgment. *See id*.

1. Waiver of Yager's Allegations of Error

Yager purports to raise six issues on appeal, only two of which we may address. Ind. Appellate Rule 46(A)(8)(a) states the argument section of an appellant's brief "must contain the contentions of the appellant on the issues presented, supported by cogent reasoning. Each contention must be supported by citations to the authorities, statutes, and the Appendix or parts of the Record on Appeal relied on . . . ." We prefer to decide cases on their merits, but we will deem alleged errors waived where an appellant's noncompliance with the rules of appellate procedure is so substantial it impedes our consideration of the errors. *Shepherd v. Truex*, 819 N.E.2d 457, 463 (Ind. Ct. App. 2004).

The purpose of the appellate rules, especially App. R. 46, is to aid and expedite review, as well as to relieve us of the burden of searching the record and briefing the case. *Id*. We will not consider an appellant's assertion on appeal when he has failed to present meaningful argument supported by authority and references to the record as required by the rules. *Id*. If we were to address such arguments, we would be forced to abdicate our role as an impartial tribunal and would instead become an advocate for one of the parties. *Id*.

In *Shepherd*, we found an allegation of error "utterly devoid of cogent argument." *Id*. Shepherd cited some authority, but "merely gives the cite, perhaps asserting what the cited authority allegedly states, and then wholly fails to explain in what way, if at all, the referenced authority affects or relates to the present case." *Id*. We found his argument too poorly developed and improperly expressed to be considered meaningful argument as required by our rules.

We further noted Shepherd could not "take refuge in the sanctuary of his amateur status." *Id.* A litigant who chooses to proceed *pro se*, as did Yager, will be held to the same rules of procedure as trained legal counsel and must be prepared to accept the consequences of his action. *See id*.

Yager asserts the joint Board did not timely file a transcript of the proceedings. His premise for this allegation of error appears to be that the Board could not seek an extension of time after the twenty-day deadline in Ind. Code § 36-9-27-106(d). The statute does not explicitly so provide, and Yager offers no argument or authority in support of his apparent premise. We therefore do not address that allegation of error.

Yager also argues: "It is undisputed, by the material facts, that the Appellant's private property is being taken for public use without compensation[,] which is a violation of rights under [the Indiana and United States constitutions]." (Appellant's Br. at 11) (hereinafter "Yager Br."). Conversion to a regulated drain works no additional taking of the property, save that incidentally required by the county to enter upon the land to repair and maintain the drain. *Johnson v. Kosciusko County Drainage Bd*., 594 N.E.2d 798, 804 (Ind. Ct. App. 1992), *reh'g denied, trans. denied*. Ind. Code § 36-9-27-33 grants the county an easement of up to 75 feet on either side of the drain for repair and maintenance purposes, but those "minimal and infrequent intrusions . . . are incidental." *Id*.

As Yager offers only speculation that the drain "adversely affects flooding"[4] of his property, (Yager Br. at 10), which speculation is not supported by references to the designated evidence, Yager has not offered the argument required by App. R. 46(A)(8) to claim the establishment of the regulated drain was an unconstitutional taking without compensation. *See Bemis v. Guirl Drainage Co*., 182 Ind. 36, 105 N.E. 496, 500 (1914) (drainage laws are not an exercise of the power of eminent domain, but of the state's police power, which does not demand that compensation be made as a condition to its rightful exercise). We accordingly do not consider Yager's argument he was subjected to an unconstitutional "taking" of his property.

[4] It appears from the context in which this statement is made that Yeager is alleging the drain might cause his property to be flooded.

Finally, we are unable to address Yager's allegation "the Surveyor failed to receive, maintain, and make available material and documents pursuant to Indiana Code § 36-9-27-109." (Yager Br. at 15.) That section provides:

> All petitions, evidence, requests, and other documents required to be filed with the board under this chapter, including all material and documents of every kind prepared by the county surveyor or on the surveyor's behalf, shall be filed in the office of the surveyor, who shall receive them for the board. The surveyor shall:
> (1) mark each document filed, showing the date it was received; and
> (2) record the fact of filing, designating the nature of the document and by whom it was filed, in a journal maintained for that purpose.

The Board designated evidence that documents presented for filing were received in the surveyor's office and available for public inspection. Yager notes a stipulation that the surveyor had maintained no "journal" (App. to Appellant's Br. at 26) (hereinafter "Yager App.").[5] "Journal" is not defined in Article 36-9, but the dictionary definition is "a record of current transactions usu. kept daily or regularly[.]" Webster's Third New International Dictionary at 1221 (1976). Yager offers no argument the surveyor's recordkeeping could not be considered a "journal" or that he was prejudiced by the surveyor's failure to keep the documents in the form of a "journal." He has accordingly waived that allegation of error.

[5] Yager also appears to argue he was not "given a reasonable opportunity to review a completed record." (Yager Br. at 15.) Ind. Code § 36-9-27-109 provides: "These copies shall be made available to the *trial court, the supreme court, or the court of appeals* in any proceedings pending under sections 106, 107, and 108 of this chapter," and the surveyor is to "maintain a copy of each document described in subsection (a) *for the use of the board*." (Emphases supplied.) Yager offers no argument that those provisions entitle him to review the surveyor's records, and we must accordingly decline to address that allegation of error.

2. Adequacy of Surveyor's Report

Yager asserts the surveyor's report was "statutorily defective," (Yager Br. at 15), because the surveyor did not include plans and specifications as required by Ind. Code § 36-9-27-61. That section required the surveyor to "[p]repare plans for structures other than bridges or culverts crossing a railroad right-of-way or a highway owned by the state." The surveyor testified there would be no construction so there could be no plans for structures.

The law does not "require the doing of a useless thing." *Stropes by Taylor v. Heritage House Childrens Ctr. of Shelbyville, Inc.*, 547 N.E.2d 244, 247 (Ind. 1989), *reh'g denied*. We accordingly find no error to the extent the Surveyor failed to include plans for structures that were not contemplated.[6]

We further note that in order to reverse a trial court's decision, an appellant must show how an alleged error prejudiced him. *In re Adoption of G.W.B.*, 776 N.E.2d 952, 955 (Ind. Ct. App. 2002). Yager has offered no argument he was prejudiced by the surveyor's failure to provide plans when no structures were contemplated.

3. Assessment of Affected Landowners

Yager argues the Board "improperly assessed benefits and unlawfully shifted damages associated with the drain," (Yager Br. at 12), because it "limited its consideration to indirect benefits of maintenance which accrue to all landowners within

[6] Keaton made a similar allegation of error, but also failed to show prejudice or offer argument the statute required the surveyor to do "a useless thing." Keaton also asserts error in the surveyor's failure to mail the plans and specifications to the Department of Natural Resources as required by Ind. Code § 36-9-27-70. For the reasons indicated above, we find no error to the extent the surveyor failed to do this "useless thing."

the watershed." (*Id*.) His argument appears premised on evidence "[a]ll property owner's [sic] are being assessed equally regardless of the direct benefits" of the drain. *Id*. As that is not the reason for the equal assessment, we find no error.

The Board is obliged to prepare a schedule of assessments describing each tract of land it determines will be benefited by the proposed drain. Ind. Code § 36-9-27-62. It must also determine the amount of damages sustained by all owners as a result of the proposed drain, and prepare a schedule of damages containing the amount of each owner's damages explaining the injury on which the determination is based. It then sets forth the amount of each owner's assessment based on the total estimated cost of the proposed drain.

In *Whitley, Noble & Allen Joint Drainage Bd. v. Tschantz*, 461 N.E.2d 1146, 1147-48 (Ind. Ct. App. 1984), we affirmed the trial court's determination a uniform assessment was unlawful. The Board did not state the basis for the uniform assessment, but it appeared from the record it was adopted on the theory that every acre of land that drained into the river contributes to the drainage problem, so landowners were equally obliged to pay for the maintenance of the river. We noted the statutory requirement that the assessments be based on the benefits derived from the maintenance project, Ind. Code § 36-9-27-39, and determined the Board improperly limited its consideration to the "indirect benefits of the maintenance that accrue to all landowners within a watershed." 461 N.E.2d at 1149. The uniform assessment schedule adopted by the Board was therefore arbitrary and not supported by substantial evidence. *Id*.

In the case before us, we cannot say the uniform assessment reflects that the Board improperly limited its consideration to the indirect benefits that accrue to all landowners within a watershed. Ind. Code § 36-9-27-86(c)(3) provides "[a]n assessment of less than five dollars ($5) is increased to five dollars ($5). The difference between the actual assessment and the five dollar ($5) amount that appears on the statement is a low assessment processing charge. The low assessment processing charge is considered a part of the assessment."

The Board discussed whether to "pro-rate the assessment to consider the amount of the proposed drain each parcel used," (Appellees-Defendants' App. at 154), but noted "[e]ven if the assessment was parcel-by-parcel, the law still requires a minimum assessment of $5.00" (*Id.*) We accordingly do not reverse on the ground all property owners were assessed equally.

4. Standing

Both Yager and Keaton argue the Board did not have standing to bring the petition. Ind. Code § 36-9-27-54(b) provides a petition seeking to establish a drain may be filed by:

> (1) the owners of:
> (A) ten percent (10%) or more in acreage; or
> (B) twenty-five percent (25%) or more of the assessed valuation;
> of the land that is outside the corporate boundaries of a municipality and is alleged by the petition to be affected by the proposed drain;
> (2) a county executive that wants to provide for the drainage of a public highway;
> (3) a township executive or the governing body of a school corporation that wants to drain the grounds of a public school; or
> (4) a municipal legislative body that wants to provide for the drainage of the land of the municipality.

The Board, Keaton and Yager assert, is not within any of those categories.

Keaton and Yager's argument that the Board was the petitioner appears to be premised on the identification of the Board as petitioner in "[a]ll legal notices which were run in the newspapers concerning the drain petition . . . ." (Br. of Appellant at 26) (hereinafter "Keaton Br."). Neither offers argument or authority in support of the apparent premise the caption in a legal notice published in a newspaper is determinative of the identity of every petitioner, and we decline to so hold.

The record reflects there were other individuals or entities who were proper petitioners under Ind. Code § 36-9-27-54, including the town council[7] of the Town of Glenwood ("The Town of Glenwood now joins in the petition . . . requesting establishment of the Big Flatrock River as a drain . . . .") (Appellees-Defendants' App. at 130), the City of Rushville ("The City of Rushville, pursuant to I.C. 36-9-27-3(a)(1) by its Board of Works[8] petitions the Rush Country Drainage Board to establish a new regulated drain . . . .") (*id.* at 133) (footnote supplied), and a number of individual property owners. The petition stated the individual petitioners "are the owners of at least 10% or more an [sic] acreage of the land to be served by the drain and as such are qualified to file such petition." (*Id.* at 500.) It incorporated the legal description of each owner's parcel. Keaton and Yager direct us to no designated evidence those individuals

[7] The town council is the town's "legislative body." Ind. Code § 36-5-2-2.

[8] Under section 36-9-27-3, "The rights and powers of a political subdivision under this chapter as an owner shall be exercised on behalf of the political subdivision by: (1) the works board, for a municipality[.]"

do not own at least ten per cent of the affected acreage. The Petitioners included individuals and entities with standing, and we decline to reverse on that ground.[9]

5. Propriety of the Petition

Keaton asserts the petition was not in compliance with the controlling statute because it did not properly describe the individual parcels of the affected land and did not describe an area equal to three-fourths of the affected land.

A petition to establish a drain must include the legal description of each tract of land a petitioner believes will be affected by the proposed drain, and the name and address of each owner as shown by the tax duplicate or record of transfers of the county. Ind. Code § 36-9-27-54. It must describe an area of land equal to three-fourths or more in area of all the affected land. *Id*.

Keaton correctly notes the petition was only two pages, and asserts it therefore could not have included legal descriptions that took 393 pages in the proceedings before the Board. However, he does not acknowledge in either his brief or reply brief that the petition explicitly states "Following and incorporated in this petition . . . is a list containing the legal description of each tract of land believed to be effected [sic] by the drain, with the name and address of each owner as shown by the tax duplicate or record of transfers . . . ." (Appellees-Defendants' App. at 500.) Nor does he offer argument or

[9] Both Keaton and Yager assert in their reply briefs that the documents indicating Glenwood and Rushville joined the petition were mere "resolutions" that did not make the towns petitioners because the resolutions "did not meet the statutory requirements for a petition to establish a drain." (Reply Br. of Appellant at 4) (hereinafter "Keaton Reply Br."). Neither appellant offers legal argument or authority in support of the apparent premise that a municipality's resolution to "join" a petition must meet every statutory requirement for the petition itself or that such a resolution is otherwise ineffective to make the municipality a "petitioner." We accordingly do not reverse on that ground. *See* App. R. 46(A)(8).

authority to support his apparent premise such incorporation of additional documents is not permitted by the statute. We accordingly do not reverse on that ground. *See* App. R. 46(A)(8).

"Affected land" is land within a watershed that is affected by a regulated drain. *Johnson*, 594 N.E.2d at 801. Keaton describes a number of areas he asserts would be "affected" by the drain yet were not described in the petition. In support of his apparent premise that these excluded areas amount to at least one-quarter of all the affected land he offers only the bald assertion that "it is obvious from Figures 2 and 3[10] that ¾ of all affected land was not described by the drain petition." (Keaton Br. at 26) (footnote added). Keaton's assertion this result is "obvious" does not, without more, amount to the "argument" supported by legal authority and citations to the record our rules require. *See, e.g., Pitcock v. Worldwide Recycling, Inc.*, 582 N.E.2d 412, 416 (Ind. Ct. App. 1991) (noting that bald assertions in an appellate brief would not be considered in determining whether genuine issue of fact existed for summary judgment purposes). We further note Keaton did not respond in his reply brief to the Board's assertion Keaton's argument was based on evidence not designated to the trial court and explaination why certain areas were excluded. *See Baseball, Inc. v. Ind. Dept. of State Revenue*, 672 N.E.2d 1368, 1373 (Ind. Ct. App. 1996) (noting, where appellant did not respond in its reply brief to appellee's assertion, "it is axiomatic that we will not formulate a more relevant argument

[10] Keaton inserted in his brief Figures 2 and 3, which are maps the Board asserts were not designated to the trial court and are not otherwise included in the record. Keaton does not offer a citation to the record for these maps, nor does he respond in his reply brief to the Board's allegation the maps were not designated. We accordingly agree with the Board that any argument based on those maps should not be considered.

on [appellant's] behalf" and accordingly finding no error), *trans. denied* 683 N.E.2d 593 (Ind. 1997). We decline to reverse on that ground.

6. Board Member's Conflict of Interest

Ind. Code § 36-9-27-12 provides:

> Whenever it appears, in any proceeding for the construction, reconstruction, or maintenance of a regulated drain, that a member of the board has an interest in the proceedings because of his ownership of real property affected by the drain, that member shall immediately disqualify himself from serving on the board in those proceedings.

That section does not apply to a "joint board that includes three (3) or more counties in a drainage basin of more than one hundred thousand (100,000) acres." *Id.* If a proper objection has been filed, the person against whom the objection is made must disqualify herself "*from any further action* in the proceedings to establish the drain." Ind. Code § 36-9-27-60 (emphasis supplied).

Board member Janet Kile, the representative from Rush County, owned land affected by the drain. After reviewing the amended petition, the Rush County Surveyor determined there were more than 100,000 acres of affected land. After further review, the Surveyor determined there were slightly more than 94,000 acres and his final report so indicated. No vote was taken at the Board meeting when this report was presented, but at the next meeting the Board accepted the final report and proposed assessments. Kile presided at that meeting and voted to accept the final report and set the assessments.

About a month later Kile resigned from the Board, noting a conflict of interest had become apparent. The Board met to reorganize as a result of Kile's resignation. It

rescinded her vote to approve the final report. The surveyor read the final report to the new Board and the new Board voted to accept it.

Keaton asserts, without explanation or citation to authority, that all votes in which Kile participated should be set aside. We decline to so hold. The final report was accepted and the assessments set by the new Board, which was apparently properly constituted. Kile was obliged only to disqualify herself "from any *further action*" after the conflict was discovered, Ind. Code § 36-9-27-60 (emphasis supplied), and she did so. The statute does not require that prior actions by the disqualified Board member be rescinded and we will not read such a provision into the statute.[11]

7. Designation of Evidence

In its order on the summary judgment motions Keaton and Yager filed, the trial court noted it can consider only "the evidentiary materials designated specifically to the court. General designations of the record are not specific enough to allow the court to consider those materials." (App. at 7a-7b) (hereinafter "Keaton App."). The court went on to find in favor of the Board "[b]ased on all of the evidentiary materials specifically designated to the court . . . ." (*Id.* at 7b.) From this, Keaton asserts it "appears . . . the court ruled against the Objectors because the Objectors made a general designation of the entire record." (Keaton Br. at 13.)

Keaton concedes he designated the entire record, but asserts he did so because he was attacking the sufficiency of the evidence before the Board: "[t]herefore, the entire

[11] Keaton also asserts "an abhorrent abuse of individual rights," (Keaton Br. at 30), and denial of due process of law arising from Kile's participation and the selection of her replacement. As Keaton offers no authority to support these allegations of error, we decline to address them. *See* App. R. 46(A)(8).

Record was required to be designated for the court to determine whether the decision of the Drainage Board was supported 'by substantial evidence.'" (*Id*. at 14.) He also notes, however, that in his memorandum in support of his summary judgment motion he made "specific citations to the relevant portions of the [Record]." (*Id*. at 16.)

Ind. Trial Rule 56(C) requires each party to a summary judgment motion to "designate to the court all parts of pleadings, depositions, answers to interrogatories, admissions, matters of judicial notice, and any other matters on which it relies for purposes of the motion." This designation requirement "promotes the expeditious resolution of lawsuits and conserves judicial resources by relieving the trial courts from the burden of searching the record" when considering summary judgment motions. *AutoXchange.com, Inc. v. Dreyer & Reinbold, Inc*., 816 N.E.2d 40, 45 (Ind. Ct. App. 2004). We may not reverse a grant of summary judgment on the ground there is a genuine issue of material fact "unless the material fact and the evidence relevant thereto shall have been specifically designated to the trial court." *Id*.; T.R. 56(H). We accordingly decline to reverse to the extent the trial court did not consider Keaton's "designation" of the entire record.

The language of T.R. 56(C) permits the parties to determine how to designate, but the rule requires specificity; designated evidence must be specifically detailed, but the manner in which a party chooses to designate material is not mandated. *Id*. at 45-46. Thus, designating pleadings, discovery materials, and affidavits in their entirety does not meet the specificity requirement of T.R. 56(C). *AutoXchange.com, Inc*., 816 N.E.2d at 45. But even if entire portions of the record are designated, the designation will not fail for

lack of specificity if more detailed references to the record are provided in accompanying memoranda in support or opposition to the motion for summary judgment. *Id*.

We must presume the trial court properly considered the material Keaton specifically designated in his memorandum in support of his summary judgment motion, and we accordingly will not presume the trial court "ruled against Objectors" solely because they "designated the entire record . . . ." (Keaton Br. at 16.) We presume on review that a trial court disregarded inadmissible evidence and rendered its decision solely on the basis of relevant and probative evidence. *Roser v. Silvers*, 698 N.E.2d 860, 864 (Ind. Ct. App. 1998) (addressing review of bench trials). Keaton has not demonstrated the trial court failed to consider the evidence he properly designated or that it ruled against him just because he attempted to "designate" an entire record. We accordingly find no error.

Neither Keaton nor Yager has demonstrated summary judgment for the Board was improperly granted, and we accordingly affirm.

Affirmed.

SULLIVAN, J., and BAKER, J., concur.