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APPELLANT PRO SE:

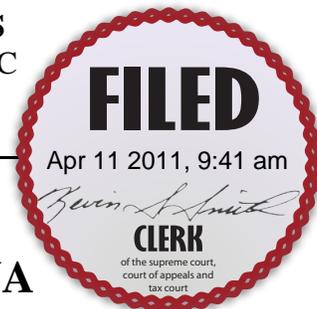
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**IN THE
COURT OF APPEALS OF INDIANA**

SHEILA RUDOLPH,)
)
Appellant-Plaintiff,)
)
and)
)
LUVENIA KILPATRICK, CHERYL)
THOMPSON, WILLIAM THOMPSON,)
ESTHER J. JOHNSON and ELLA)
WILLIAMS, on behalf of themselves)
And all other similarly situated,)
)
Plaintiffs,)
)
vs.)
)
DARROLYN A. ROSS, ROBERTA L.)

No. 49A02-1007-PL-754

ROSS and THE LAW GROUP OF ROSS)
and BRUNNER,)
)
Appellees-Defendants.)

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable David A. Shaheed, Special Judge
Cause No. 49D01-0503-PL-11918

April 11, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Chief Judge

Case Summary and Issue

Sheila Rudolph appeals the trial court’s order granting partial summary judgment in favor of the Law Group of Ross and Brunner, Roberta L. Ross, and Darrolyn A. Ross (collectively “Attorneys”). Rudolph raises one issue, which we restate as whether the trial court erred in concluding that no genuine issue of material fact remains. Concluding that no genuine issue of material fact remains and that Attorneys are entitled to judgment as a matter of law, we affirm.

Facts and Procedural History

In June 1994, a hexane gas explosion occurred at a Central Soya facility in Indianapolis, injuring Rudolph and several others. Rudolph signed at least one settlement

agreement and release of claims against Central Soya, including one on August 10, 1994, entitled “Release of All Claims,” in which she “release[d], acquit[ted], and forever discharge[d] Central Soya Co., Inc. for personal property, lost wages, evacuation expense[s], . . . emotional stress [sic], real property claim[s] . . . ” and any and all claims for “bodily and personal injuries.” Appellee’s Joint Supplemental Public Access Appendix (“Appellee’s Supp. App.”) at 47. For this release of claims, Rudolph accepted monetary compensation from Central Soya.

Rudolph and others subsequently retained Attorneys to file suit against Central Soya in June 1996, at which time Attorneys were unaware of Rudolph’s release of claims against Central Soya. Attorneys later became aware of Rudolph and others’ release of claims, and after further discussions Attorneys settled the case with Central Soya on behalf of all plaintiffs, including Rudolph and others who had signed releases. Attorneys settled the case with the understanding that Central Soya did not intend for Rudolph or other plaintiffs who had signed releases to receive any settlement proceeds because they had already released their right to seek or receive compensation from Central Soya.

Upon receiving the agreed-upon settlement amount from Central Soya, Attorneys calculated each plaintiff’s portion and paid each plaintiff accordingly, including Rudolph and others who had signed releases, and plaintiffs who had not signed releases.

Rudolph and others then brought suit against Attorneys, alleging Attorneys improperly retained more than their share as compensation for legal services, and seeking an “accounting of all settlement proceeds recovered and received from Central Soya.” Id. at 35.

Attorneys moved for partial summary judgment, which was effectively full summary judgment as to Rudolph and others who signed releases of claims with Central Soya. Following a hearing, the trial court granted Attorneys' motion for partial summary judgment. Rudolph now appeals pro se.¹

Discussion and Decision

I. Standard of Review

On appeal of a summary judgment order we are bound by the same standard as the trial court, and we consider only those materials which the parties designated at the summary judgment stage. Estate of Pflanz v. Davis, 678 N.E.2d 1148, 1151 (Ind. Ct. App. 1997). We liberally construe all designated evidentiary material in the light most favorable to the non-moving party to determine whether there is a genuine issue of material fact for trial. Dunifon v. Iovino, 665 N.E.2d 51, 55 (Ind. Ct. App. 1996), trans. denied. 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 a judgment as a matter of law.” Ind. Trial Rule 56(C). A genuine issue of material fact exists where facts concerning an issue which would dispose of the litigation are in dispute, or where undisputed facts are capable of supporting conflicting inferences on such an issue. Briggs v. Finley, 631 N.E.2d 959, 963 (Ind. Ct. App. 1994), trans. denied.

¹ Other plaintiffs affected by the trial court order are not parties to this appeal, and we limit our review accordingly.

II. Appellate Practice and Waiver

At the outset, we acknowledge and respect Rudolph's right to appeal pro se. However, we also note that pro se litigants are not excused from abiding by the appellate rules, and will be held to the same standard as trained attorneys. Wright v. Elston, 701 N.E.2d 1227, 1231 (Ind. Ct. App. 1998), trans. denied. Indeed, the appellate rules are not merely codified formalistic customs, but are intended and designed to allow appellants to present their appeal clearly, completely, and yet concisely, to allow for opposing argument as appropriate and our decision upon the merits in an efficient manner. "We cannot become advocates for the appellant, and we will not review arguments that are poorly developed, wholly undeveloped, or improperly expressed." Owen v. State, 269 Ind. 513, 519, 381 N.E.2d 1235, 1239 (1978).

Rudolph has dreadfully and incurably failed to follow the rules of appellate procedure and substantive appellate principles. For example, Rudolph has failed to present a cogent legal argument, refer to or cite legal authority, refer to or cite the record on appeal, include a complete statement of the case or statement of the facts relevant to the issue presented for appeal, and failed to file an appellant's appendix. See Marshall v. State, 621 N.E.2d 308 (Ind. 1993) ("Without citation to legal authority in addition to citation of the record, we cannot determine the merits of the claim and, thus, consider the issue waived."); Wright v. Elston, 701 N.E.2d 1227, 1231 (Ind. Ct. App. 1998) ("When no cogent argument is presented, our consideration of the issue is waived."), trans. denied; Ind. Appellate Rule 46(A)(5) (regarding statement of the case); App. R. 46(A)(6) (regarding statement of facts);

App. R. 49(A) (stating an appellant “shall” file an appendix); see also Anglin v. Grimm, 157 Ind. App. 362, 300 N.E.2d 137 (1973) (dismissing an appeal for an egregious failure to abide by appellate rules). Rudolph’s statement of facts includes only one comprehensible sentence regarding facts, in which she simply restates the allegation underlying her lawsuit. Rudolph’s one-sentence argument section merely restates, yet again, the allegation underlying the lawsuit.

Each of the above-highlighted failures is noteworthy for slightly different reasons, but at bottom, each is significant and incurable because it leaves us with no foundational or detailed understanding of the facts of the appellant’s case and the alleged legal error(s) by the trial court. Accordingly, we conclude that Rudolph has waived the issue of her appeal.

III. Merits

However, even considering all of the above, in this case we choose to adhere to our preference for deciding cases on their merits. See Kelly v. Levandoski, 825 N.E.2d 850, 856 (Ind. Ct. App. 2005), trans. denied. Accordingly, we evaluate whether Rudolph has revealed a genuine issue of material fact that would have precluded the trial court’s order granting summary judgment in favor of Attorneys. We do this without weighing the evidence or judging the credibility of witnesses, State ex rel. Coril v. Wabash Circuit Court, 631 N.E.2d 914, 916 (Ind. 1994), and by “liberally constru[ing] all designated evidentiary material in the light most favorable” to Rudolph. Dunifon, 665 N.E.2d at 55. We also note that Rudolph, as the appellant, bears the burden to establish an error by the trial court. See Carter v. Whitney, 136 Ind. App. 427, 433, 202 N.E.2d 167, 169 (1964). Finally, we do so relying on the

materials that Attorneys have provided on appeal because, as stated above, Rudolph has provided us with barely any information.

In short, we agree with the trial court that no genuine issue of material fact remains. The designated evidence shows that in Rudolph's August 1994 agreement, she released all claims to further compensation for any injuries associated with the June 1994 explosion at Central Soya. This "Release of All Claims," Appellee's Supp. App. at 46, effectively terminated her right to any future compensation. Therefore, as a matter of law, Rudolph is not entitled to recover for her injuries because she willfully forfeited that right years ago. See Bernstein v. Glavin, 725 N.E.2d 455, 462 (Ind. Ct. App. 2000), trans. denied. In other words, Rudolph has no right to any portion of the settlement that Attorneys negotiated with Central Soya, and therefore any alleged misuse of the settlement monies is of no consequence to her.

In addition, we note that Rudolph's appeal borders on frivolity and Attorneys' entitlement to an award of damages or costs pursuant to Appellate Rules 66(E) or 67(B). Under these rules, we may award damages or costs in our discretion when an appeal is "permeated with meritlessness, bad faith, frivolity, harassment, vexatiousness, or purpose of delay." Inland Steel Co. v. Pavlinac, 865 N.E.2d 690, 704 (Ind. Ct. App. 2007) (citations omitted); see Comm. Coin Laundry Sys. v. Enneking, 766 N.E.2d 433, 442 (Ind. Ct. App. 2002) (regarding costs). We have further clarified that "[o]ften attorney fees are awarded where procedural or substantive bad faith is shown. Procedural bad faith stems from flagrant violations of appellate procedure; substantive bad faith is found where appellate arguments are utterly devoid of all plausibility." Inland Steel, 865 N.E.2d at 690 (citation omitted).

On its face, Rudolph's appeal might entitle Attorneys to damages or costs for her flagrant disregard for appellate rules and the lack of plausibility of her appellate claim. However, we also bear in mind that Rudolph is appealing pro se, and that there is no evidence or allegation that Rudolph has appealed in a manner calculated to require the maximum expenditure of resources or time of Attorneys or this court. See id. In fact, Rudolph's emotional statement in her appellate brief demonstrates her genuine frustration and a lack of spite or vexatiousness. Consequently, we do not award damages or costs to Attorneys under Appellate Rule 66(E) or Rule 67(B).

Conclusion

Rudolph has waived her appellate claim by, among other things, failing to provide a statement of the underlying facts or cogent legal argument. Even if we were to address the merits – to the extent possible on the sparse appellate record – we would affirm the trial court's summary judgment in favor of Attorneys.

Affirmed.

NAJAM, J., and CRONE, J., concur.