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ATTORNEYS FOR APPELLANT:

J. ZACH WINSETT
J. BURLEY SCALES
Scales and Winsett, LLP
Boonville, Indiana

ATTORNEYS FOR APPELLEES:

Attorney for Sherra Wilson:
CHARLES L. MARTIN
Martin & Martin
Boonville, Indiana

Attorney for Michael Gourley:
MARK WARZECHA
Evansville, Indiana

IN THE
COURT OF APPEALS OF INDIANA

IN RE THE ESTATE OF GEORGIA A.)
GOURLEY,)
)
PAMELA TRICKEY,)
)
Appellant-Petitioner,)
)
vs.)
)
SHERRA WILSON and MICHAEL GOURLEY,)
As Co-Personal Representatives of the Estate of)
Georgia A. Gourley,)
)
Appellees-Respondents.)

No. 87A01-0810-CV-506

APPEAL FROM THE WARRICK CIRCUIT COURT
The Honorable David O. Kelley, Judge
Cause No. 87C01-0704-EU-18

May 14, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

MAY, Judge

Pamela Trickey appeals an order that stock owned by her mother be distributed under the laws of intestate succession rather than pursuant to the residuary clause in her mother's probated will. We reverse.

FACTS AND PROCEDURAL HISTORY

Georgia Gourley died in March of 2007. Trickey, one of Georgia's daughters, petitioned to probate the estate as an intestate estate, then petitioned to probate a will executed in 1984. The appellees Sherra Wilson and Michael Gourley, Georgia's other children, then petitioned to probate a will purportedly executed in 1997 or to declare Georgia intestate.

The trial court found there was no evidence the 1997 will was ever executed, admitted the 1984 will into probate, and directed "distribution of specific items referenced therein be made according to the terms of the Will." (App. at 27.) But after so concluding, the court stated "[i]n the absence of a valid Last Will and Testament," any property not addressed in the 1984 will was to be "distributed to her three (3) children in accordance with the laws of intestate succession for the State of Indiana." (*Id.*)

When Georgia died she owned ninety-nine shares of stock in the F.J. Gourley Land Company. That stock was not explicitly mentioned in the will. Item XIII of the will provided the residue of the estate was to be divided equally among Trickey, Wilson,

and Trickey's two children. The trial court found the stock was "not subject to a specific devise" under the terms of the will, but was an asset of the estate, and ordered it distributed "according to the law of intestate succession." (*Id.* at 23.)

DISCUSSION AND DECISION

The interpretation, legal effect, or construction of a will is a question we determine as a matter of law. *Kelly v. Estate of Johnson*, 788 N.E.2d 933, 935 (Ind. Ct. App. 2003), *trans. denied* 804 N.E.2d 750 (Ind. 2003). Consequently, we give no deference to the trial court's decision and review the question *de novo*.

A residuary clause in a will should be liberally construed to avoid partial intestacy. *In re Estate of Kirkendall*, 642 N.E.2d 548, 552 (Ind. Ct. App. 1994). The words used in the residuary clause should be given the widest possible scope and, if general in its terms, all property not otherwise disposed of and not specifically excepted from its operation should pass by virtue of its provisions. *Id.* The fact that one makes a will creates a presumption it is intended to distribute all property; a construction that would result in partial intestacy is contrary to that presumption and should be avoided in favor of any other reasonable construction. *Id.* "Where, as here, the express language of the will manifests a dominant purpose or general plan of distribution, we will give it effect although the testator neglected to provide for the exact contingency which occurred." *Id.* Georgia's stock accordingly should have been distributed pursuant to the terms of the residuary clause.

Wilson’s argument appears to be based on the premise the bequest of the stock “lapsed,” and “lapsed property” is to be “distributed as intestate property ‘unless the testator had indicated a contrary intention in the mil [sic] or some specific statutory provision regulates the devolution of the gift.’”¹ (Appellee’s Br. at 5.) The trial court made no finding or conclusion there was a “lapse” of the bequest of the stock, and on appeal Wilson offers no explanation why there was a “lapse” of this bequest.²

Indiana Appellate Rule 46(A)(8)(a) and 46(B) require parties on appeal to support each contention in their arguments with cogent reasoning and citations to legal authorities, statutes, and the record. Wilson has not provided the requisite cogent reasoning on her claim the bequest of the stock lapsed; we therefore cannot find it should

¹ It appears from the context of this statement in Wilson’s brief that the quoted language Wilson offers is from *In re Estate of Kirkendall*, 642 N.E.2d 548 (Ind. Ct. App. 1994). Wilson offers no pinpoint citation that might direct us to the page in that decision where such language might be found. We direct Wilson’s counsel to Indiana Appellate Rule 22, which provides that citations to decisions in briefs are to follow the format in the current edition of a Uniform System of Citation (Bluebook). When referring to specific material within a source, a citation should include both the page on which the source begins and the page on which the specific material appears. Uniform System of Citation Rule 3.2(a) (18th ed. 2005). As we have often noted, we will not, on review, search through the authorities cited by a party to try to find legal support for its position. *Goodwine v. Goodwine*, 819 N.E.2d 824, 832 (Ind. Ct. App. 2004). We remind counsel that improper citation can amount to failure to make a cogent argument and result in waiver of our consideration of an issue, and such citation does not facilitate our review of the merits. *Nicholson v. State*, 768 N.E.2d 1043, 1049 (Ind. Ct. App. 2002). Finally, we note the language Wilson offers was itself quoted by the *Kirkendall* court from 4 William J. Bowe, *Bowe-Parker Revision of Page on the Law of Wills* § 33.56, at 390-91 (1961 & Supp. 1994). See *Estate of Kirkendall*, 642 N.E.2d at 551. Wilson offers no attribution to that original source.

² Wilson does state we have “dealt with the problem presented when there is a lapse of a specific bequest in a Will because of a prior death of the legatee to be the recipient or when the property no longer exists,” (Appellee’s Br. at 4), but she does not explain how either situation might have arisen in the case before us. She offers citations to four decisions in support of that statement, but the citations do not indicate what courts decided those cases or even whether they are Indiana decisions. Nor does she provide pinpoint citations to any of the four decisions. As explained above, we will not, on review, sift through the record to find a basis for a party’s argument. Nor will we search through the authorities cited by a party in order to try to find legal support for its position. *Wright v. Elston*, 701 N.E.2d 1227, 1231 (Ind. Ct. App. 1998), *trans. denied* 714 N.E.2d 169 (Ind. 2003).

have been distributed pursuant to the laws of intestate succession. We will not become a party's advocate, nor will we address arguments that are inappropriate, improperly expressed, or too poorly developed to be understood. *Barrett v. State*, 837 N.E.2d 1022, 1030 (Ind. Ct. App. 2005), *trans. denied* 855 N.E.2d 995 (Ind. 2006). Failure to put forth a cogent argument acts as a waiver on appeal, *id.*, and is equivalent to a failure to file a brief. *Bright v. Kuehl*, 650 N.E.2d 311, 317 (Ind. Ct. App. 1995). We therefore cannot find the bequest was properly subjected to intestate distribution on the ground it had lapsed.

The stock at issue should have been distributed pursuant to the residuary clause in Georgia's probated will. We accordingly reverse the probate court's Order for Distribution of Stock and direct the stock be distributed in equal shares to Wilson, Trickey, and Trickey's two children as provided in Georgia's will.

Reversed and remanded.

FRIEDLANDER, J., and BRADFORD, J., concur.