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IN THE
COURT OF APPEALS OF INDIANA

EVELYN GARRARD, by and through her Attorney-in-fact, RONALD D. GARRARD,	)	
Appellant/Plaintiff/Counterclaim and Third-Party Defendant,	)	
vs.	)	No. 45A04-1003-PL-229
DEBRA L. TEIBEL and DOUGLAS GRIMMER,	)	
Appellees/Defendants/Counterclaim and Third-Party Plaintiffs,	)	
and	)	
DEBRA LINDSAY,[1]	)	
Appellee/Third-Party Defendant.	)	

APPEAL FROM THE LAKE SUPERIOR COURT
The Honorable Calvin D. Hawkins, Judge
Cause Nos. 45D02-0906-PL-127, 45D02-0906-ES-1, 45D02-0906-GU-1

[1] Lindsay did not file a brief in the instant appeal. Pursuant to Indiana Appellate Rule 17(A), however, a party of record in the trial court shall be a party on appeal.

June 8, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

BRADFORD, Judge

Appellant/Plaintiff/Counterclaim and Third-Party Defendant Evelyn Garrard, by and through her Attorney-in-fact, Ronald D. Garrard ("Garrard"), appeals the trial court's grant of summary judgment in favor of Evelyn's children, Appellees/Defendants/Counterclaim and Third-Party Plaintiffs Debra Teibel and Douglas Grimmer, following their counterclaim and third-party complaint, in Garrard's action against them for damages, seeking invalidation of Garrard's power of attorney over Evelyn. We affirm.

FACTS AND PROCEDURAL HISTORY

Garrard was previously married to Evelyn, but the two were divorced on July 13, 1993. On May 13, 2003, after being diagnosed with mild dementia which was expected to progress, Evelyn executed a durable power of attorney appointing her children Debra Tiebel and Douglas Grimmer as her attorneys-in-fact.

By September 2005, Evelyn was formally diagnosed with Pick's disease, a form of frontal temporal dementia. In the spring of 2006, Evelyn became reacquainted with Garrard, and on March 3, 2006, executed a full power of attorney naming Garrard as her attorney-in-fact. That same day, Evelyn also revoked all prior powers of attorney, including the May 2003 document naming Tiebel and Grimmer as her attorneys-in-fact. On April 17, 2006, Evelyn remarried Garrard.

On June 15, 2007, Garrard filed a complaint for damages against Tiebel and Grimmer alleging that, despite the revocation of their powers of attorney, they had taken unlawful action in various accounts owned by Evelyn. On July 26, 2007, Tiebel and Grimmer filed their answer and affirmative defenses. In addition, they filed a counterclaim and third-party complaint against Garrard seeking, *inter alia*, a declaratory judgment invalidating Garrard's power of attorney for Evelyn (Count II), and the appointment of a guardian over Evelyn (Count III). On August 13, 2007, Garrard moved to dismiss the counterclaim and third-party complaint. Following Tiebel's and Grimmer's August 21, 2007 filing of an amended counterclaim and third-party complaint, the trial court held a hearing on October 24, 2007. In a January 31, 2008 order, the trial court denied Garrard's motion to dismiss, and it ordered that America L. McAlpin be named guardian ad litem for Evelyn. The trial court additionally issued an injunction prohibiting the disposition of Evelyn's property by any party.

On July 22, 2008, McAlpin filed a petition seeking emergency appointment of a temporary guardian for Evelyn. Following a hearing on December 3, 2008, the Probate Commissioner found Evelyn to be incapacitated and in need of a guardian.

On January 9, 2009, Tiebel and Grimmer moved for summary judgment on Counts II and III of their counterclaim. In support of their motion, Tiebel and Grimmer designated, *inter alia*, affidavits from Dr. Richard Cristea, M.D., and Dr. Joseph Fink, Ph.D., indicating that Evelyn was incapacitated as of September 2005 and would have been unable to understand the nature and effect of a power of attorney or the nature and obligation of a marriage contract.

Following a hearing, on December 11, 2009, the trial court granted summary judgment in favor of Tiebel and Grimmer on Counts II and III of their counterclaim. In granting summary judgment, the trial court found that the undisputed evidence showed Evelyn was incapacitated by September of 2005. Significantly, the trial court refused to consider Garrard's evidence on the grounds that it consisted of unsworn, unauthenticated reports which were not proper designations. The court subsequently denied Garrard's motion to correct error.

Following Garrard's notice of appeal, on December 3, 2010, this case was dismissed following Garrard's failure to file briefs or an appendix which complied with the Indiana Appellate Rules. Garrard petitioned for rehearing on January 18, 2011, and this court reinstated his appeal on February 15, 2011. This appeal follows.

DISCUSSION AND DECISION

Upon appeal Garrard challenges the trial court's issuance of summary judgment on several grounds. Under Indiana Trial Rule 56(C), summary judgment is appropriate when the designated evidentiary matter shows that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.

Garrard's challenge to the trial court's summary judgment is waived for failure to comply with the Indiana Appellate Rules. Garrard's statement of facts does not explain any of the facts and proceedings in this case after 2007. The summary judgment proceedings at issue occurred in 2009.

While this is a challenge to summary judgment, and Garrard claims that certain evidence creates a genuine issue of material fact, Garrard fails to demonstrate what facts,

if any, he designated to the trial court. His two-volume appendix consists of exhibits A-WW, but there is no motion or filing indicating that he designated any or all of these exhibits to the trial court or which of his many arguments these exhibits purportedly support. Most of Garrard's citations are to his motion to correct error following the summary judgment proceedings, and many of his arguments, which allege untimeliness and other errors, appear to be a resurrection of his August 2007 motion to dismiss. While Garrard does cite to Exhibit TT, which is a Proposed Order for Denial of Summary Judgment, this document does not reference designated evidence. Accordingly, we are unable to discern Garrard's basis for appeal. *See Vandenburgh v. Vandenburgh*, 916 N.E.2d 723, 729 (Ind. Ct. App. 2009) (observing that Indiana Appellate Rule 46(A)(8)(a) requires citation to parts of the record relied upon and that noncompliance with appellate rules, when it impedes review, results in waiver).

The judgment of the trial court is affirmed.

BAKER, J., and MAY, J., concur.