

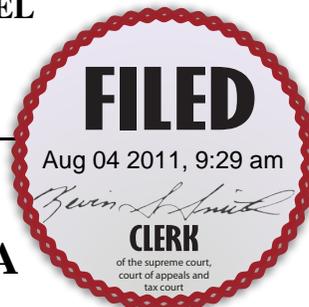
Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.

APPELLANT PRO SE:

ROBERT HOLLAND
Gary, Indiana

ATTORNEY FOR APPELLEE:

ROBERT E. STOCHEL
Hoffman & Stochel
Crown Point, Indiana



**IN THE
COURT OF APPEALS OF INDIANA**

ROBERT HOLLAND,)

Appellant-Plaintiff,)

vs.)

No. 45A04-1004-PL-324

MANUFACTURERS AND TRADERS)

TRUST COMPANY ON BEHALF OF THE)

CONTIMORTGAGE HOME EQUITY LOAN)

TRUST 1995-4,)

Appellee-Respondent,)

RICHARD LOVELESS,)

Appellee-Respondent/Counterclaimant.)

APPEAL FROM THE LAKE CIRCUIT COURT
The Honorable Lorenzo Arredondo, Judge
The Honorable Richard F. McDevitt, Magistrate
Cause No. 45C01-0812-PL-318

August 4, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Chief Judge

Case Summary and Issues

Robert Holland appeals the trial court's judgment in favor of intervenor Richard Loveless in Holland's quiet title lawsuit, wherein the trial court determined that Loveless owns the real estate at issue; that Holland's lawsuit was frivolous, unreasonable, and groundless; and that Loveless is entitled to recover attorney fees and costs. On appeal, Holland raises eleven issues, which we consolidate and restate as: 1) whether the trial court properly dismissed Holland's quiet title complaint; 2) whether the trial court properly granted summary judgment in favor of Loveless, quieting title in Loveless free of any liens or claims of Holland; 3) whether the trial court properly concluded Holland's lawsuit was frivolous, unreasonable, or groundless; 4) whether Holland is entitled to relief from judgment pursuant to Indiana Trial Rule 60(B); and 5) whether any of Holland's remaining issues entitle him to relief on appeal. Concluding that the trial court properly resolved the issues and that Holland is not entitled to any relief, we affirm.

Facts and Procedural History

The Real Estate at issue in this case is on Chase Street in Gary, Indiana. In February 2006, Loveless purchased the Real Estate from Manufacturers and Traders Trust Company ("MTT") as Trustee on behalf of the Contimortgage Home Equity Loan Trust 1995-A,

following a foreclosure. The settlement statement, dated February 23, 2006, indicates Loveless paid \$43,500 for the Real Estate. In consideration of the payment, Loveless received a Trustee's Deed. However, the deed was not recorded until September 8, 2009.

At some point before December 30, 2008, Holland gained access to the Real Estate, which was then vacant. In 2009, Holland began periodically residing on the Real Estate, initially without electricity. Eventually Holland had electricity and other utilities turned on and began residing at the Real Estate full-time by himself. Holland later testified that he had neither a deed nor a lease to the Real Estate and did "not ha[ve] an opportunity to" pay taxes on the Real Estate. Transcript at 38. Holland also testified that Loveless never gave him permission to occupy or take possession of the Real Estate, though Holland claimed he lacked the opportunity to talk with Loveless. Holland opined that the Real Estate "was, in fact, abandoned" and that therefore he was justified to enter and take possession of it. Id. at 47. Holland was aware, however, that MTT was a previous owner of the Real Estate as late as 2006.

On December 30, 2008, Holland filed his complaint to quiet title in the Real Estate. On February 13, 2009, Loveless filed a motion to intervene, to which Holland filed an objection. The trial court permitted Loveless to intervene in the case and later consolidated the case with another quiet title lawsuit that Holland, concerning the same Real Estate, filed against MTT.

On July 29, 2009, Loveless answered Holland's complaint and filed a multi-count counterclaim against Holland, seeking to quiet title in his own name and recover damages for

trespass, as well as attorney fees and costs on the basis that Holland's quiet title lawsuit was frivolous. Loveless also filed a motion for preliminary injunction, seeking an order for Holland to vacate the Real Estate. Following an evidentiary hearing, the trial court issued findings of fact and conclusions thereon and granted Loveless's motion for preliminary injunction.

The parties filed cross-motions for summary judgment and cross-motions to dismiss each other's claims. On February 26, 2010, the trial court issued its order dismissing Holland's quiet title complaint with prejudice, as "Holland has presented absolutely no evidence of ownership" of the Real Estate and "[u]nder any imaginable circumstance . . . cannot prevail in this lawsuit." Appellant/Plaintiff Robert Holland's Brief Appendix at 19. The trial court also entered partial summary judgment in favor of Loveless, declaring title to the Real Estate quieted in Loveless free and clear of any liens or claims of Holland.

On June 10, 2010, the trial court issued its order concluding Holland continued to litigate his claim even though it was frivolous, unreasonable, and groundless, and awarding Loveless attorney fees and costs in the sum of \$10,531.27. On December 1, 2010, the trial court issued an order finding that, because Loveless had filed a waiver of remaining damage claims against Holland, there were no longer any outstanding issues and the trial court's previous partial summary judgment was made a final judgment. Holland now appeals pro se.

Discussion and Decision

Initially we observe that Holland's Statement of the Issues fails to reflect the substantive content of the argument section of his brief, making it difficult to discern exactly

what issues and arguments Holland intends to raise in this appeal. See Ind. Appellate Rule 46(A)(4) (statement of issues “shall concisely and particularly describe each issue presented for review”). The facts section of Holland’s brief is rife with argument, which is inappropriate in a statement of the facts. Barth v. Barth, 693 N.E.2d 954, 956 (Ind. Ct. App. 1998), trans. denied. Holland’s brief also refers to alleged facts that are not part of the record, and which we may not consider despite Holland’s plea for us to take judicial notice of them. See Ind. Evidence Rule 201(a) (providing a court may take judicial notice of only those facts “(1) generally known within the territorial jurisdiction of the trial court, or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned”). The fact Holland is proceeding pro se does not excuse these deficiencies in his brief, as it is well-settled that pro se litigants are held to the same rules of procedure as licensed attorneys. Wright v. Elston, 701 N.E.2d 1227, 1231 (Ind. Ct. App. 1998), trans. denied. Nonetheless, we will review the merits of this case to the extent possible, in light of our “strong preference to decide cases on their merits.” State v. Delph, 875 N.E.2d 416, 422 (Ind. Ct. App. 2007), trans. denied.

I. Dismissal of Holland’s Quiet Title Claim

Holland argues Loveless’s deed was procured by fraud and is thus invalid. However, even if there were problems with Loveless’s chain of title, none relate to Holland to give him title when all he did was squat on the Real Estate. “In an action to quiet title or for possession of land the plaintiff must recover, if at all, on the strength of his own title and not

on the weakness of his adversary's title.” Otterman v. Hollingsworth, 140 Ind. App. 281, 285, 214 N.E.2d 189, 192 (1966).

Holland also contends the Real Estate was abandoned and that he rightfully entered onto it to “abate[] the nuisances” caused by its abandonment. Appellant/Plaintiff Robert Holland’s Brief at 19. Holland claims he “became the owner of the real estate . . . immediately when he took possession of the abandoned property.” Id. at 32. In support, Holland cites Pittsburg, C., C. & St. Louis Ry. Co. v. Wilson, 46 Ind. App. 444, 91 N.E. 725 (1910) for the proposition that “[p]ossession of land is sufficient evidence of ownership to make the question of title one for the jury.” Holland’s Br. at 33. However, that case also stated “occupancy of land is sufficient evidence of title in the occupant as against all persons except those claiming under a superior title.” Pittsburg, 91 N.E. at 727 (emphasis added). Loveless claims under a superior title, namely the Trustee’s Deed, while Holland admits he has no deed or other document evidencing ownership. The concept of abandonment is inapplicable here because Loveless never manifested an intention to abandon the Real Estate, but merely allowed it to sit vacant and fall into disrepair. “[M]ere proof of non-use for a number of years is insufficient to show an intention to abandon.” Southern Ry. Co. v. Bd. of Comm’rs of Vanderburgh County, 426 N.E.2d 445, 448 (Ind. Ct. App. 1981).

To obtain ownership of land by adverse possession, a person must establish by clear and convincing evidence the elements of control, intent, notice, and duration. Fraley v. Minger, 829 N.E.2d 476, 486 (Ind. 2005). As for duration, the land must be “continuously” possessed for ten years. Id.; see id. at 484, 488 (referring to ten-year limitations period). In

addition, our supreme court held in Fraley that courts will enforce the requirement of the adverse possession tax statute, Indiana Code section 32-21-7-1, that the adverse possessor pay and discharge all real estate taxes and special assessments that the adverse possessor reasonably, in good faith, believes to be due during the period of adverse possession. Id. at 493.

Holland did not squat on the Real Estate nearly long enough to raise a colorable issue of adverse possession. Further, by his own admission, Holland did not pay any taxes on the Real Estate. Therefore, Holland cannot establish ownership by adverse possession. Perceiving no other basis upon which Holland's quiet title claim could possibly succeed, we conclude it was properly dismissed.

II. Summary Judgment in Favor of Loveless

Holland's appellate argument includes his claim "[t]here is not [a] good chain of title held in this case for [MTT] and Richard Loveless." Holland's Br. at 29. As mentioned, he contends the deed held by Loveless was obtained through fraud and is therefore invalid, and that Loveless took title by a "straw purchase" from MTT. Id. at 14. However, Holland does not claim that he himself was defrauded. Rather, he asserts MTT and Loveless defrauded others, i.e., those who owned the Real Estate before MTT acquired title via foreclosure proceedings. Even leaving aside whether Loveless lacks standing to assert the rights of previous owners with whom he has no privity, such defects cannot give Holland any claim or lien superior to Loveless's title. Loveless presented his fee simple deed to the Real Estate, by which his prima facie case for quiet title was established. See Otterman, 140 Ind. App. at

285, 214 N.E.2d at 192. Holland did not present any evidence that he had legal title, let alone a superior title.

Holland also contends that because he performed work on the Real Estate to improve its condition, he is “entitled to foreclose on the recorded Common Law Lien and a Mechanic’s Lien against the property for the work performed.” Holland’s Br. at 20. However, Holland makes no claim, and there is no indication, that he performed work at the express or implied request of Loveless, which would be required to establish such a lien. “Before a mechanic’s lien can attach to real estate, the statute’s absolute first requirement is that the landowner consented to the improvements on which the lien is based.” Cho v. Purdue Research Found., 803 N.E.2d 1161, 1168 (Ind. Ct. App. 2004). Further review of this argument has been waived by Holland’s failure to provide cogent reasoning or cite legal authority in support thereof. See App. R. 46(A)(8)(a) (providing an appellant’s argument must be supported by cogent reasoning and cite the legal authority relied upon); Pitman v. Pitman, 717 N.E.2d 627, 631 n.2 (Ind. Ct. App. 1999) (“Failure to support contentions of error with citation to relevant authority results in waiver of the issue for appellate review.”).

III. Attorney Fees

In any civil action, the trial court may award attorney fees as part of the cost to the prevailing party, if the trial court finds that the other party:

- (1) brought the action or defense on a claim or defense that is frivolous, unreasonable, or groundless;
- (2) continued to litigate the action or defense after the party’s claim or defense clearly became frivolous, unreasonable, or groundless; or
- (3) litigated the action in bad faith.

Ind. Code § 34-52-1-1(b). In this context, a claim or defense is groundless if no facts exist that support the legal claim relied upon and presented by the losing party. Kahn v. Cundiff, 533 N.E.2d 164, 171 (Ind. Ct. App. 1989), opinion expressly adopted, 543 N.E.2d 627 (Ind. 1989). “A trial court is not required to find an improper motive to support an award of attorney fees; rather an award may be based solely upon the lack of a good faith and rational argument in support of the claim.” Chapo v. Jefferson County Plan Comm’n, 926 N.E.2d 504, 510 (Ind. Ct. App. 2010).

Holland admitted at the injunction hearing that he had no deed and no lease for the Real Estate. He never claimed he had a contract for sale or was party to any other transaction giving him a colorable claim of ownership. Thus, Holland completely failed to provide any facts in support of his quiet title claim. Yet, Holland testified at the injunction hearing that, at that time, he was an attorney licensed to practice law in Indiana. Tr. at 38. Even if Holland is no longer a member of our state’s bar, his legal training and previous licensure to practice law highlights that he knew or should have known his position in the quiet title lawsuit was groundless. This was especially true after Loveless intervened in the case, asserting his own claim of ownership such that Holland’s claim the Real Estate was legally abandoned clearly rang hollow.

Despite the clear lack of merit in his arguments, Holland continued to litigate this case quite vigorously. The chronological case summary (“CCS”) contains 118 total entries and is replete with motions filed by Holland, yet omitted from our recitation of the procedural history of this case because of their marginal relevance. Still, Loveless and his counsel had

to devote time and energy to respond to Holland's numerous filings. Because Holland continued to litigate his claim after it clearly became groundless, the trial court properly awarded attorney fees to Loveless.

IV. Relief From Judgment

Holland appears to argue he is entitled to relief from judgment pursuant to Indiana Trial Rule 60(B) based on purportedly newly discovered evidence and alleged fraud committed by Loveless. As mentioned above, Holland does not argue he was defrauded, only that other persons were defrauded, so his argument as to fraud cannot entitle him to relief. As for new evidence of other "wrongs" committed by Loveless, Holland's App. at 505, Holland refers to a set of documents Holland filed with the trial court on March 7, 2011, after the instant appeal was commenced and after the notice of completion of clerk's record was filed. These documents, though included by Holland in his appendix, are not part of the record on appeal and may not be considered. Even if we could consider them, they lack relevance to the trial court's judgment or the present appeal.¹ Holland has failed to show that he is entitled to any relief from the trial court's judgment.

V. Remaining Issues

In his remaining issues, Holland essentially requests an advisory opinion regarding whether mortgage companies can be held legally responsible when real estate becomes vacant following a foreclosure. He argues that an epidemic of mortgage fraud has led to a surge of vacant properties in urban areas such as Gary, that mortgage companies should be

¹ For these reasons, we would, under normal circumstances, grant Loveless's motion to strike pages 505-75 of Holland's appendix. In the circumstances of this case, we deny Loveless's motion because the

held legally responsible when such properties become a “nuisance,” and that he as a private individual should have a right of legal action to “abate” such nuisances. Holland’s Br. at 1. As an appellate court, it is not our purview to opine on policy questions surrounding a proper legislative or local government response to urban problems. Holland’s arguments on these points have little to do with his quiet title claim and cannot entitle him to any relief on appeal. As we have stated, “appeals are not allowed for purposes of settling abstract questions but only to correct errors injuriously affecting the appellant.” Pitman, 717 N.E.2d at 633. For all of the reasons stated in this opinion, Holland has failed to show any sort of error in the trial court’s judgment against him, and we therefore affirm.

Conclusion

The trial court properly dismissed Holland’s quiet title claim when Holland failed to allege facts or present evidence showing he had legal title to the Real Estate. Further, the trial court properly quieted title in Loveless free of any claims or liens of Holland, and it properly awarded attorney fees to Loveless because Holland continued to litigate his claim after it clearly became groundless. None of Holland’s remaining issues entitle him to relief, and we therefore affirm.

Affirmed.

BARNES, J., and BRADFORD, J., concur.

materials are so irrelevant that they do not affect our decision to affirm the trial court.