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**IN THE  
COURT OF APPEALS OF INDIANA**

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JENNA L. ZENT, et al., )

Appellants-Plaintiffs, )

vs. )

STALLARD & ASSOCIATES, INC., )

Appellee-Defendant. )

No. 49A02-1012-PL-1364

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APPEAL FROM THE MARION SUPERIOR COURT  
The Honorable Cynthia J. Ayers, Judge  
The Honorable Burnett Caudill, Magistrate  
Cause No. 49D04-0910-PL-48052

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**September 29, 2011**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**NAJAM, Judge**

## STATEMENT OF THE CASE

Jenna L. Zent appeals the trial court's entry of summary judgment in favor of Stallard & Associates, Inc. ("Stallard") on Zent's complaint "relating to a landlord-tenant dispute against [Stallard]." <sup>1</sup> Brief of Appellant at 1. Stallard cross-appeals and asks that we dismiss the appeal, citing Zent's violations of the appellate rules. We prefer to decide cases on the merits, but here Zent's violations of the Rules of Appellate Procedure are so flagrant and numerous that a dismissal is warranted.

We dismiss.

## FACTS AND PROCEDURAL HISTORY

On December 31, 2009, Zent filed an amended complaint, and she subsequently filed a motion for partial summary judgment. Stallard filed a cross-motion for summary judgment. Following a hearing, the trial court entered summary judgment in favor of Stallard on November 22, 2010.

On December 15, Zent timely filed a notice of appeal with this court, but she did not pay the filing fee until January 6, 2011.<sup>2</sup> Zent's appellant's case summary ("ACS") was due January 14, but she did not file it until January 24. The ACS was not only untimely, but was defective, and on January 31 the clerk of this court sent Zent's counsel a notice of defect. Zent did not file a corrected ACS pursuant to the notice of defect, and

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<sup>1</sup> Zent has not provided this court with a copy of her complaint or amended complaint. We note that Zent's appendix did not include any motions, memoranda, or briefs related to summary judgment. Accordingly, we ordered her to file a supplemental appendix to provide us with those documents. Thus, Zent had two opportunities to submit a copy of her complaint and/or amended complaint to this court but failed to do so.

<sup>2</sup> Indiana Appellate Rule 9(E) provides that the filing fee shall be paid when the notice of appeal is served on the Clerk.

this court sent Zent's counsel a notice of return. On February 22, Zent filed a second ACS, but that ACS was also defective. Finally, in March, Zent filed a corrected ACS, but she did not serve a copy on Stallard.

Zent's brief was due on February 17, 2011. On March 25, thirty-six days after the deadline for filing had passed, Zent filed a brief and appendix. In addition to being untimely, the brief and appendix were defective in several ways, including: no bindings; no blue covers; no page numbering in the appendix; and the brief was not signed by Zent's counsel. On March 29, the clerk of this court sent Zent's counsel a letter stating that neither the brief nor appendix were filed because they were untimely. The clerk also informed Zent's counsel that it would keep the brief and appendix for ten days, during which time Zent could move the court for permission to file them belatedly. On April 4, Zent filed her "Motion to File Belated Documents," and on April 15 a motions panel of this court granted Zent's motion and directed the clerk to file-stamp her brief and appendix. Also on April 15, Stallard filed an objection to Zent's motion and a motion to dismiss Zent's appeal. Our review of the record indicates that the motions panel had not yet received Stallard's Verified Objection and Motion to Dismiss when it granted Zent's motion.

### **DISCUSSION AND DECISION**

On cross-appeal, Stallard asks us to reconsider the motions panel's decision to permit the belated filings of Zent's brief and appendix and to dismiss the appeal. As this court observed in Miller v. Hague Insurance Agency, 871 N.E.2d 406, 407 (Ind. Ct. App. 2007),

[e]ven though our motions panel has already ruled on this issue, [the appellee] is not precluded from presenting its arguments to us. Smith v. Deem, 834 N.E.2d 1100, 1103 (Ind. Ct. App. 2005), trans. denied. “It is well established that we may reconsider a ruling by the motions panel.” Cincinnati Ins. Co. v. Young, 852 N.E.2d 8, 12 (Ind. Ct. App. 2006), trans. denied. While we are reluctant to overrule orders decided by the motions panel, this court has inherent authority to reconsider any decision while an appeal remains in fieri. See Davis v. State, 771 N.E.2d 647, 649 n.5 (Ind. 2002); State v. Moore, 796 N.E.2d 764, 766 (Ind. Ct. App. 2003), trans. denied.

And as we also stated in Miller,

Indiana Appellate Rule 45(B) states that “[t]he appellant’s brief shall be filed no later than thirty (30) days after . . . the trial court clerk or Administrative Agency issues its notice of completion of the Transcript.” Rule 45(D) further provides that “[t]he appellant’s failure to timely file the appellant’s brief may subject the appeal to summary dismissal.” “Dismissal for the late filing of an appellant’s brief is within the discretion of this court.” Haimbaugh Landscaping, Inc. v. Jegen, 653 N.E.2d 95, 99 (Ind. Ct. App. 1995), trans. denied. Although we will exercise our discretion to reach the merits when violations are comparatively minor, if the parties commit flagrant violations of the Rules of Appellate Procedure we will hold issues waived, or dismiss the appeal. Terpstra v. Farmers & Merch. Bank, 483 N.E.2d 749, 752 (Ind. Ct. App. 1985), trans. denied; Town of Rome City v. King, 450 N.E.2d 72, 76 (Ind. Ct. App. 1983).

871 N.E.2d at 407-08.

We cannot agree with Zent’s contention that, except for the tardiness of her initial brief, “nothing” she submitted to this court “was in violation of the Indiana Rules of Appellate Procedure.” Reply Brief at 8. Neither do we consider Stallard’s cross-appeal frivolous, as Zent suggests. Here, again, Zent’s violations of the appellate rules are numerous and flagrant. Not only were her brief and appendix filed thirty-six days late, but they each contained violations of basic rules regarding bindings, covers and pagination. And Zent’s counsel failed to sign the appellant’s brief. The signature of the party or her counsel is required by Appellate Rule 23(E). The signature is the attorney’s

acknowledgement that he prepared the brief; that he has read the same; that, to the best of his knowledge, information, and belief, there is good ground to support it; and that it is not interposed for delay. Indiana Trial Rule 11(A) requires the filing attorney's signature for the same reasons. Huffman v. Ind. Office of Env'tl. Adjudication, 811 N.E.2d 806, 815 (Ind. 2004).

Zent's counsel sought additional time to file her brief, but only after the time for filing the brief had expired and after the clerk of this court had informed him that his brief was untimely. The brief was ultimately filed thirty-six days late. But Appellate Rule 35(A) provides that

[a]ny motion for an extension for time shall be filed at least seven (7) days before the expiration of time unless the movant was not then aware of the facts on which the motion is based. No motion for an extension of time shall be filed after the time for doing the act expires.

Zent's Motion to File Belated Documents was an untimely motion for an extension of time. Zent's assertion that Appellate Rule 15(E) prohibited her from filing her brief until after her ACS had been filed is unpersuasive because she filed the brief eleven days after filing her ACS. And again, although our motions panel permitted Zent to file her belated brief, again, we are not bound by that decision. See Miller, 871 N.E.2d at 407.

Zent's counsel has not shown good cause or offered any reasonable explanation for the late filings or defects other than to state that it is his "first appeal."<sup>3</sup> Instead, a large part of his brief in response to the cross-appeal is devoted to minimizing his failure to comply with the appellate rules. Specifically, he refers to the failure to "submit documents in accordance with the rule to each party" as a mere courtesy. Reply Brief at

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<sup>3</sup> Zent's counsel made this statement in an undated letter to the clerk, which is included in the clerk's file.

8. But the Appellate Rules are not to be taken so lightly. Timely service on other parties is a requirement, not a courtesy. Appellate Rule 24 provides that service of the case summary, appearances, and all other documents “must” be served on all parties to the appeal no later than the document is filed or received for filing.

In Miller, we held that “[w]hile the filing of a brief one day late has been considered a minor violation of our appellate rules, the filing of a brief thirty-eight days late is not.” 871 N.E.2d at 408. Here, we likewise conclude that the filing of appellant’s brief thirty-six days late, in addition to the numerous other rules violations detailed above, without any showing of good cause or other reasonable explanation, warrants dismissal of this appeal.

Dismissed.

RILEY, J., and MAY, J., concur.