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:

ANNA GODBY
New Castle, Indiana

IN THE
COURT OF APPEALS OF INDIANA

ANNA GODBY,	)	
	)	
Appellant,	)	
	)	
vs.	)	No. 33A04-1012-MI-779
	)	
SYLVIA M. GROCE,	)	
	)	
Appellee.	)	

APPEAL FROM THE HENRY SUPERIOR COURT
The Honorable Bob A. Witham, Judge
Cause No. 33D02-0902-MI-2

November 4, 2011

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

Anna Godby ("Godby") appeals the trial court's denial of her motion to correct error following its ruling granting summary judgment in favor of Sylvia M. Groce ("Groce") on Groce's action to quiet title to certain real estate. On appeal, Godby asserts that the trial court erred in failing to appoint a guardian ad litem because she was incompetent and not adequately represented. We affirm.

Facts and Procedural History

In 2008, Godby obtained a tax deed to certain real property located in New Castle, Indiana. Groce disputed Godby's title to the property and, on February 17, 2009, filed an action to quiet title in Henry Superior Court. A pretrial conference was held on March 25, 2010, at which Groce appeared by counsel and Godby appeared pro se. Godby indicated that she did not have an attorney and intended to represent herself, but that Roberta Haddix ("Haddix"), who had accompanied Godby to the hearing, was "going to help [her]." Tr. pp. 3-5. Groce's counsel stated that while he did not object to Haddix assisting Godby at the pretrial hearing, he would object to anyone other than a licensed attorney representing Godby at trial. Tr. pp. 5-6.

Groce filed a motion for summary judgment on July 1, 2010, and the court gave Godby until August 9, 2010 to file a response. On August 2, 2009, the trial court received correspondence from Godby, in which Godby apparently indicated that she was attempting to retain counsel.[1] Tr. p. 9. The trial court treated the correspondence as a motion for an extension of time to respond to Groce's motion for summary judgment and

[1] Godby has not included a copy of this correspondence in the record.

gave Godby until August 27, 2010 to file her response. However, Godby never retained counsel or filed a response in opposition to Godby's motion for summary judgment.

On September 13, 2010, the trial court held a hearing on the motion for summary judgment, at which Godby appeared without counsel. Thereafter, the trial court took the matter under advisement before issuing its order granting summary judgment in Groce's favor on October 5, 2010. On November 4, 2010, Godby filed a motion to correct error alleging that she was incompetent and that the trial court erred by failing to appoint a guardian at litem to represent her. In an affidavit attached to the motion, Godby stated that she was seventy-seven years old and "[b]ecause of [her] age and health [she had] a problem remembering things."[2] Appellant's App. p. 48. The trial court denied the motion without a hearing on November 10, 2010.

Thereafter, Godby initiated the instant appeal. On January 2, 2011, she filed a motion to proceed on appeal *in forma pauperis*, in which she also requested this court to appoint a guardian ad litem to represent her. On July 1, 2011, this court issued an order granting Godby's motion to proceed *in forma pauperis* and remanding the matter to the trial court for the limited purpose of considering Godby's request for the appointment of a guardian ad litem.

[2] Godby also stated that she had informed the court that she could not afford an attorney and that she "could read but did not understand what [she] was reading." Appellant's App. p. 48. However, there is no evidence in the record supporting Godby's assertion that she made such a statement to the trial court.

On August 19, 2011, the trial court issued its order on remand, in which it denied Godby's request for the appointment of a guardian ad litem. The order contained the following relevant findings:

> 1. No proceeding has been initiated in Henry County regarding the establishment of a guardian over the person or the estate of Anna Godby. No court in Henry County has found Anna Godby to be an incompetent person.
> 2. Anna Godby appeared in Court several times on this case. She was advised that the case was not a case on the Court's Small Claims Docket and that she would be held to the same standard as an attorney who appeared in the case. Anna Godby indicated several times that she had spoken to attorneys but had not retained an attorney. Anna Godby never indicated to the Court that she was unable to retain an attorney due to a lack of financial means.
> 3. Anna Godby filed several pleadings and letters with the Court regarding the case. None of the pleadings or letters were unintelligible. Anna Godby appeared in Court several times and always responded to questions and made statements in an intelligent and understandable manner.

Order on Request for Appointment of Guardian Ad Litem pp. 1-2. This appeal ensued.

Discussion and Decision

As an initial matter, we note that Groce has not filed an appellee's brief in this matter. Accordingly, we apply a less stringent standard of review and may reverse if the appellant establishes prima facie error. Aiken v. Stanley, 816 N.E.2d 427, 430 (Ind. Ct. App. 2004). Prima facie means "'at first sight, on first appearance, or on the face of it.'" Id. (quoting Parkhurst v. Van Winkle, 786 N.E.2d 1159, 1160 (Ind. Ct. App. 2003)). However, this rule is not intended to benefit the appellant, but rather to relieve this court of the burden of developing arguments on the appellee's behalf. State v. Moriarty, 832

N.E.2d 555, 558 (Ind. Ct. App. 2005). The burden of demonstrating trial error remains with the appellant. State v. Combs, 921 N.E.2d 846, 850 (Ind. Ct. App. 2010).

We review a trial court's ruling on a motion to correct error for an abuse of discretion. In re Paternity of E.M.L.G., 863 N.E.2d 867, 868 (Ind. Ct. App. 2007) (citing Paragon Family Rest. v. Bartolini, 799 N.E.2d 1048, 1055 (Ind. 2003)). An abuse of discretion occurs only where the trial court's decision is against the logic and effect of the facts before it and the reasonable inferences that may be drawn therefrom. Id.

On appeal, Godby alleges that she was incompetent at the time of the underlying proceedings, and that the trial court was therefore required to appoint a guardian ad litem pursuant to Indiana Trial Rule 17(C), which provides in relevant part that a trial court shall appoint a guardian ad litem for an infant or incompetent person who is not represented.[3] As an initial matter, we note that Godby raised the issue of her entitlement to have a guardian ad litem appointed for the first time in her motion to correct error. Ordinarily, a claim of error may not be asserted for the first in a motion to correct error. Siebert Oxidermo, Inc. v. Shields, 466 N.E.2d 332, 341 (Ind. 1983); see also Walker v. McCrea, 725 N.E.2d 526, 532 (Ind. Ct. App. 2000) ("The failure to raise errors that existed at trial may not be remedied in a post-trial motion to correct errors or on appeal."). Because Godby's argument concerning her entitlement to the appointment of a

[3] Godby appears to argue that Trial Rule 17(C) also required the trial court to appoint a guardian ad litem to represent her because she was not financially able to procure her own counsel. However, the relevant rule provides that "[t]he court *may, in its discretion*, appoint a guardian ad litem or an attorney for persons . . . who are in such position that they cannot procure reasonable representation." T.R. 17(C) (emphasis added). Thus, although the rule empowers a trial court to appoint a guardian ad litem or an attorney when a party is financially unable to procure counsel, it does not require a court to do so. Rather, the decision whether to appoint counsel or a guardian ad litem is left to the trial court's discretion.

guardian ad litem was raised for the first time in her motion to correct error, it is waived. See id.

Waiver notwithstanding, we cannot conclude that Godby has established that she was entitled to a guardian ad litem under Trial Rule 17(C). In Brewer v. Brewer, this court held that "[t]he general rule is that an incompetent person is not required to have or appear by a guardian until such time as the trial court is aware of the person's incapacity." 403 N.E.2d 352, 355 (Ind. Ct. App. 1980). As the trial court noted in its order on remand, Godby filed several intelligible pleadings and letters with the trial court, and she appeared to be coherent and responsive at all hearings before the trial court. Moreover, the trial court found in its order on remand that no proceedings to establish a guardianship over Godby or her estate had been commenced in Henry County, and that no Henry County court had declared Godby to be incompetent. Indeed, Godby does not assert that she has ever been declared incompetent by any court or that she is unable to live independently or manage her own affairs.

Thus, at the time it issued its ruling on Groce's motion for summary judgment, the trial court had no reason to suspect that Godby was incompetent, and it was therefore not required to appoint a guardian. See id. And once Godby raised the issue of her alleged incompetence in her motion to correct error, the trial court was in no way bound to accept Godby's assertions as true, particularly in light of its previous interactions with Godby. In fact, other than self-serving statements Godby made in her motion to correct error and a supporting affidavit, the record is devoid of any evidence supporting Godby's

contention that she was incompetent at the time of the underlying proceedings.[4] Rather, it appears that Godby willingly chose to proceed pro se, but came to regret her decision after the court issued an adverse ruling. However, "a litigant who chooses to proceed *pro se* will be held to the same rules of procedure as trained legal counsel and must be prepared to accept the consequences of his action." Shepherd v. Truex, 819 N.E.2d 457, 463 (Ind. Ct. App. 2004). Godby cannot now use Trial Rule 17(C) as a vehicle to escape the consequences of her decision to proceed pro se. For all of these reasons, we conclude that the trial court acted within its discretion in denying Godby's motion to correct error.[5]

Affirmed.

BAILEY, J., and CRONE, J., concur.

---

[4] On appeal, Godby asserts that the transcripts of the March 25, 2010 pretrial conference and the September 13, 2010 summary judgment hearing "clearly support the conclusion that Godby was unaware of what was going on and thought that she could simply explain everything to the court." Appellant's Br. at 3. However, our review of the transcripts reveals that Godby was aware of the nature of the proceedings and able to make intelligible and coherent statements and provide cogent, responsive answers to questions posed by the court. Although Godby clearly did not understand the applicable procedural rules, this is true of the great majority of pro se litigants. The fact that Godby did not posses the skill and knowledge of a trained attorney did not render her incompetent for the purposes of Trial Rule 17(C).

[5] Godby also asserts that the trial court was required to hold a hearing and issue findings of fact on her motion to correct error. However, Godby has failed to support this assertion with cogent reasoning or citation to authority, and it is therefore waived. See Ind. Appellate Rule 46(A)(8)(a) ("The argument must contain the contentions of the appellant on the issues presented, supported by cogent reasoning."); Romine v. Gagle, 782 N.E.2d 396, 386 (Ind. Ct. App. 2002) ("A party generally waives any issue for which it fails to develop a cogent argument or support with adequate citation to authority and portions of the record."), trans. denied.