

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:

PATRICIA J. MILLER
Henryville, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

PATRICIA J. MILLER,
Appellant-Defendant,

vs.

JANET ANN LOONEY and
ERNEST GUTHRIE,

Appellees.

)
)
)
)
)
)
)
)
)
)
)

No. 72A05-0607-CV-391

APPEAL FROM THE SCOTT CIRCUIT COURT
The Honorable Nicholas L. South, Special Judge
Cause No. 72C01-0301-PL-2

NOVEMBER 14, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

SULLIVAN, Senior Judge

According to the selective portions of the record which Miller herself has chosen to place in her appendices, it appears that she has intentionally defined her own appellate position. More importantly, in her Appellate Brief, Miller states that her appeal is from the trial court's June 19, 2006 order which denied Miller's April 16, 2006 Motion for a Stay of Judgment.¹ The Motion for Stay is not included in either of Miller's appendices. However, it appears from a statement made by the court during a hearing, apparently on June 8, 2006, that Miller's Motion was to stay "an order issued January 6th [2006]" (Tr. at 3) "until the zoning commission issues its written opinion." (App. at 7). The matters before us do not indicate what "judgment" it is that Miller wished to have stayed.

In order to address the perceived issue, we will refer to the facts as they are related in a prior appeal. In the unpublished memorandum decision of Miller v. Looney, No. 72A01-0309-CV-336 (Ind. Ct. App. 2004), trans. denied, we stated the facts as follows:

In August 1998, Miller, a retired attorney, entered into a contract to purchase a ten-acre tract of land in Scott County ("Parcel One") from . . . Janet Ann Looney. After Miller paid the total amount due under the contract, Looney conveyed Parcel One to her by warranty deed on June 4, 1999.

In August 1998, Miller entered into an oral agreement with Looney and Ernest Guthrie [Looney's agent], whereby they agreed to reserve for her a ten-acre tract adjacent to Parcel One ("Parcel Two") in exchange for a down payment of \$5,000, with the balance to be paid at a later date. Miller presented Guthrie with the down payment on August 28, 1998. When Miller was unable to pay the balance for Parcel Two, she entered into a written contract with Looney to

¹ Miller's pleadings as contained in her Appendices do not refer to Indiana Rules of Trial Procedure, Rule 62 regarding her request for a stay; neither did she proceed in this Court under Rules of Appellate Procedure, Rule 39.

purchase the property. Miller agreed to make annual principal payments and monthly interest payments beginning in August 2000, with the balance to be paid in September 2005.

The warranty deed for Parcel One included a twenty-five-foot-wide “roadway and utility easement.” After Miller’s purchase of Parcel One and down payment for Parcel Two, Guthrie cleared and made drivable a roadway allowing Miller access to her property. Miller paid for some rock used to construct the roadway, but most of the expense was borne by Guthrie. The roadway constructed by Guthrie, which passes through Parcel One and Parcel Two, deviates from the deeded easement. After the roadway was constructed, Miller breached the Parcel Two contract by failing to make the monthly payments. Parcel Two was foreclosed on June 7, 2002, and after a sheriff’s sale, the Scott County Sheriff issued a sheriff’s deed to Looney on October 18, 2002.

After Miller lost all legal rights to Parcel Two, Guthrie threatened to block Miller’s access to the roadway. Miller filed suit against Looney and Guthrie, claiming that for more than three years, she had detrimentally relied upon Guthrie’s placement of the roadway, and that therefore, Looney and Guthrie could not legally prevent her from using it. The trial court ruled in favor of Looney and Guthrie, finding that they are entitled to restrict Miller’s access to Parcel One to the deeded easement. The trial court’s order states, in pertinent part, as follows:

- a. That Miller should construct a road giving her access to her property within the deeded easement, at her expense, within a reasonable time from the date of this order. Miller should construct such a road that mitigates Defendant’s liability if the sewer laterals have to be moved.
- b. That Defendants should be enjoined and restrained from interfering with Miller’s use of the existing road until she has constructed a road on the easement. Defendant Looney would be entitled to have her request for permanent injunction granted when Miller has constructed said road or has failed to do so within a reasonable time.

c. That Defendants shall pay any and all expenses and costs incurred in the relocation of the utility lines, or grant Miller an easement for the same in their present location.

Memorandum Decision at 2-4.

We affirmed the trial court's order, stating that the evidence most favorable to the judgment indicated that (1) the Parcel One contract contained a description of the deeded roadway and utility easement; (2) the Parcel One contract contained no promise by Looney and Guthrie to construct a finished road; (3) Guthrie cleared the roadway after Miller agreed to purchase Parcel Two; and (4) Miller later defaulted on the contract for Parcel Two, "resulting in foreclosure and the loss of any legal right she may have had to access that parcel via the roadway constructed by Guthrie." *Id.* at 5. Miller then filed her motion to stay the trial court's order, which the trial court denied.

The essence of Miller's position is that the court's order was a taking of her property because "I cannot access my land." (App. at 6). This statement is incorrect as reflected by Miller's own admission that the twenty-five foot easement conveyed in the warranty deed from Looney to Miller in June of 1999 "comes to her property." (Supp. App. at 29). She further testified that "I can get to [my property]." *Id.*

It is apparent that Miller is not contending that she was precluded from accessing her ten-acre parcel. Rather, she is arguing that her preferred use of her property, i.e for the breeding of Chinese Shar-Pei dogs, is hampered and further that locating the driveway across the breadth of her property as opposed to remaining within the twenty-five foot easement was not desirable. She asserts that in order for her to reach a projected location for her kennel and accompanying facilities she would have to construct a road or

other access across the front of her property requiring movement of lateral sewage lines, an assertion that Guthrie has contradicted.

It seems clear that the issue is not whether Miller has access to her ten-acre parcel or whether she has full use of the twenty-five foot roadway and easement covered by her warranty deed. The dispute seems to focus upon whether the roadway established by Guthrie for Miller's access was correctly placed within the twenty-five foot area covered by the easement grant and whether the various sewer and utility lines were correctly located. Miller also appears to escalate her contention into one that would require Guthrie to build her a road totally removed from the twenty-five foot easement so as to permit her to use her property as she wishes.

The record and other documents before this court are of little, if any, assistance in attempting either to resolve whatever is in dispute or even to discern what the dispute is. We are hampered in crafting a reasoned opinion or decision because of the very real procedural impediments to such resolution. We note, however, that the trial court, at an early stage, appeared to reach what we deem to be an equitable and realistic solution to the "roadway/easement" issue or issues.

The law is clear and well established that it is the appellant's burden to demonstrate that the judgment or ruling complained of is erroneous. She must do so by the record presented to us. See Shigley v. Whitlock, 160 Ind.App. 78, 310 N.E.2d 93, 95 (1974). Before reversal may be obtained, she must affirmatively show that the error has prejudiced her substantial rights. Furthermore, this court will not search the record to find grounds for reversal. Hebel v. Conrail, Inc., 475 N.E.2d 652, 659 (Ind. 1985).

Prejudicial error must be clearly shown. In re Remonstrance Appealing Ordinance, 769 N.E.2d 622, 631 (Ind. Ct. App.2002). Miller has not established clear error either by the appendices filed or otherwise, and the arguments in her brief do not demonstrate prima facie error.

In the latter respect, we are cognizant that when, as here, the appellees have not filed a brief, we need not develop an argument on their behalf. Trinity Homes, LLC v. Fang, 848 N.E.2d 1065 (Ind. 2006). In such a case, we will reverse the decision of the trial court if the appellant's brief presents a case of prima facie error. Id. However, "[w]here an appellant is unable to meet this burden, we will affirm." Id. at 1068. Miller has not met the requisite burden in this case.

Accordingly, the denial of the stay is affirmed.

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