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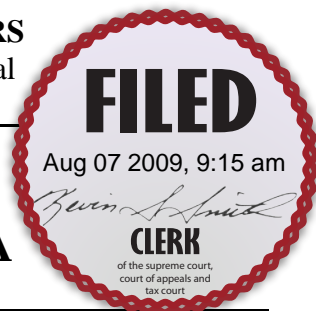
APPELLANT PRO SE:

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**IN THE  
COURT OF APPEALS OF INDIANA**

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CHRISTOPHER STRIED,  
  
Appellant-Plaintiff,

vs.

INDIANA ELECTION COMMISSION,  
  
Appellee-Defendant.

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No. 49A02-0812-CV-1104

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APPEAL FROM THE MARION CIRCUIT COURT  
The Honorable Theodore Sosin, Judge  
Cause No. 49C01-0809-PL-41537

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August 7, 2009

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**ROBB, Judge**

## Case Summary and Issue

Christopher Stried appeals the trial court's dismissal of his action against the Indiana Election Commission ("IEC"). Stried raises one issue on appeal that we restate as whether the trial court abused its discretion in dismissing his action. Concluding that the trial court did not err, we affirm.

## Facts and Procedural History

On May 29, 2008, Stried filed a Consent of Independent or Minor Political Party Candidate Nominated by Petition form with the IEC, declaring his candidacy for Governor of the State of Indiana. By signing the form, Stried certified that he complied with all requirements under the laws of the State of Indiana to be a candidate for the office, including the applicable residency requirement. See Appellee's Appendix at 25. On August 7, 2008, a Denial of Certification of Petition of Nomination was issued by the Secretary of State indicating that less than the required 32,742 valid signatures by registered voters of the election district were submitted with the petition and certification of Stried's petition was therefore denied.

On August 20, 2008, Stried filed a Candidate Filing Challenge alleging that the denial was not in accordance with law because "a chance of history should not be denied due to meaningless technicalities." Id. at 30. On September 12, 2008, Stried filed a complaint against the IEC alleging that the IEC failed to comply with Indiana Code section 3-8-6-12(i) when it failed to hold a hearing on his challenge by September 5, 2008. On October 8, 2008, the IEC filed a "Motion to Dismiss" Stried's complaint, accompanied by a memorandum in

support and several exhibits. Following a hearing, the trial court granted the IEC's motion to dismiss. Stried now appeals.

## Discussion and Decision<sup>1</sup>

### I. Deficiencies in Appeal

We note first that Stried has failed in many respects to comply with our appellate rules in pursuing his appeal. Indiana Appellate Rule 46 governs the arrangement and content of briefs, mandating the following sections under separate headings and in the following order in an appellant's brief: Table of Contents, Table of Authorities, Statement of Issues, Statement of Case, Statement of Facts, Summary of Argument, Argument, and Conclusion. Ind. Appellate Rule 46(A)(1) – (9). Stried's brief contains the following sections and headings: Table of Contents, Facts, Issue, Holding, My Rationale, My Opinion, and Other info. See Appellant's Brief at 2. Appellate Rule 46(A)(8)(a) requires the argument section to contain "the contentions of the appellant on the issues presented, supported by cogent reasoning [and] supported by citations to the authorities, statutes, and the Appendix or parts of the Record on Appeal relied on . . . ." Stried's "rationale" and "opinion" sections – which we take together to comprise his argument – although citing state constitutional and statutory provisions, fail to state the applicable standard of review, see app. r. 46(A)(8)(b), and fail to make an actual legal argument in favor of trial court error. Further, Stried failed to file an

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<sup>1</sup> Stried filed a Motion for Allowance of Video Camera to "tape the proceedings of court and arguments made." As Stried's Motion for Oral Argument was denied by separate order, there are no proceedings or argument to videotape, and the motion is denied as moot.

Appendix with his brief in contravention of Appellate Rule 49.<sup>2</sup> “[T]he same standards apply to pro se appellants as to others, and alleged errors are waived if such rules are not complied with.” Foley v. Mannor, 844 N.E.2d 494, 496 n.1 (Ind. Ct. App. 2006). It would be within our province to waive Stried’s arguments and summarily affirm the trial court’s decision based upon his failure to follow our rules in any meaningful way. However, because we prefer to dispose of cases on their merits, see Art Hill, Inc. v. Review Bd. of Ind. Dep’t of Workforce Dev., 898 N.E.2d 363, 366 (Ind. Ct. App. 2008), and because there is sufficient information in Stried’s brief and in the brief and appendix filed by the State for us to discern his issue and the substance of his argument, we will consider the merits of Stried’s appeal.

## II. Stried’s Complaint

### A. Standard of Review

Although the IEC styled its dispositive motion as a “motion to dismiss,” it attached thereto supporting affidavits and other exhibits. Trial Rule 12(B) states that a motion to dismiss for failure to state a claim upon which relief can be granted “shall be treated as one for summary judgment” if matters outside the pleading are presented and not excluded. (Emphasis added.) It is clear from the basis of the trial court’s decision that it considered matters outside the pleadings. Therefore, we will review the trial court’s order as one granting summary judgment to the IEC.<sup>3</sup>

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<sup>2</sup> Although Stried withdrew his request for a transcript of the proceedings before the trial court, he still had the obligation to provide a conforming appendix.

<sup>3</sup> There is no indication in the record before us that Stried objected to the evidence submitted with the State’s motion to dismiss, nor has he raised as an allegation of error in this appeal the consideration of such evidence.

Summary judgment is appropriate only when the designated evidence “shows that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Ind. Trial Rule 56(C). “A genuine issue of material fact exists where facts concerning an issue which would dispose of the litigation are in dispute or where the undisputed facts are capable of supporting conflicting inferences on such an issue.” Scott v. Bodor, Inc., 571 N.E.2d 313, 318 (Ind. Ct. App. 1991). We review the grant or denial of a motion for summary judgment *de novo*. Univ. of S. Ind. Found. v. Baker, 843 N.E.2d 528, 531 (Ind. 2006). We construe all facts and reasonable inferences drawn from them in favor of the non-moving party, Am. Home Assurance Co. v. Allen, 814 N.E.2d 662, 666 (Ind. Ct. App. 2004), trans. dismissed, and resolve all doubts as to the existence of a material issue against the moving party, Tibbs v. Huber, Hunt & Nichols, Inc., 668 N.E.2d 248, 249 (Ind. 1996). We are not bound by the trial court’s reasoning in entering summary judgment. Rice v. Strunk, 670 N.E.2d 1280, 1283 (Ind. 1996). We may affirm a grant of summary judgment on any basis supported by the record. Garriott v. Peters, 878 N.E.2d 431, 435-36 (Ind. Ct. App. 2007), trans. denied. The party appealing the trial court’s summary judgment decision has the burden of persuading us that the decision was erroneous. Owens Corning Fiberglass Corp. v. Cobb, 754 N.E.2d 905, 908 (Ind. 2001).

#### B. Judgment as a Matter of Law

Stried’s complaint alleges the IEC was required to conduct a hearing on his challenge to the denial of certification within a certain time and failed to do so. The statutory framework governing Stried’s candidacy provides that a petition for nomination is to be filed

with the secretary of state before noon on June 30 before the election. See Ind. Code §§ 3-8-2-5(2); 3-8-6-10(b); 3-8-6-12(a). The petition for nomination is required to be signed by “the number of voters equal to two percent (2%) of the total vote cast at the last election for secretary of state in the election district that the candidate seeks to represent.” Ind. Code § 3-8-6-3. The secretary of state is then required to determine by noon on August 20 before the election whether a sufficient number of signatures had been obtained. Ind. Code § 3-8-6-12(e). If the petition has an insufficient number of signatures, the secretary of state is required to deny certification of the petition. Ind. Code § 3-8-6-12(d). Stried filed his petition for nomination on May 29, 2008, declaring his candidacy for governor of the State of Indiana in the November 2008 general election. The secretary of state denied certification of Stried’s petition for nomination on August 7, 2008, because the sufficient number of signatures of registered voters pursuant to Indiana Code section 3-8-6-3 for a candidate for governor is 32,742 and fewer than 32,742 signatures were submitted with Stried’s petition. See id. at 27.

A candidate may contest the denial of certification for an insufficient number of signatures by filing a statement contesting the denial with the election division not later than noon seventy-four days before the election, which in this case was August 22, 2008. Ind. Code § 3-8-6-14(c). Indiana Code section 3-8-1-2(a)(7) provides that the commission “shall act if a candidate . . . has filed . . . [a] contest to the denial of certification under IC 3-8-6-12.” Indiana Code section 3-8-1-2 further provides:

(e) Before the commission . . . can consider a contest to the denial of a certification under IC 3-8-6-12, a candidate . . . must file a sworn statement with the election

division . . . :

(1) stating specifically the basis for the contest; and

(2) setting forth the facts known to the candidate supporting the basis for the contest.

(f) Upon the filing of a sworn statement under subsection . . . (e), the commission . . . shall determine the validity of the questioned . . . denial of certification under IC 3-8-6-12.

(Emphasis added.) The commission “shall rule on . . . the denial of certification . . . no later than noon sixty (60) days before the date on which the general . . . election will be held for the office.” Ind. Code § 3-8-6-14(e). In this case, sixty days before the election was September 5, 2008. Stried filed his challenge on August 20, 2008. The challenge includes the following pre-printed language:

If I am filing this challenge as a candidate, the following facts are known to me and lead me to believe that the denial of certification of my petition of nomination due to insufficient signatures . . . is not in accordance with law, and I therefore request a hearing on this matter before the appropriate election authority under IC 3-8-1-2:

Appellee’s App. at 30. Stried’s “facts” are that “[a] chance of history should not be denied due to meaningless technicalities.” Id. The record contains no indication that the IEC responded in any way to Stried’s challenge. On September 12, 2008, the deadline for ruling on his challenge having passed, Stried filed his complaint against the IEC.

Indiana Code section 3-8-1-2(e) imposes certain obligations on a candidate “before the commission . . . can consider a contest to the denial of certification . . . .” The candidate must state specifically the basis for the contest and set forth facts supporting the contest. Ind. Code § 3-8-1-2(e). Stried’s contest fails to do so. He does not contest the determination of the number of required signatures or contest the determination that he failed to submit the

required number. He states no basis on which the denial was not in accordance with the law.

If Stried wishes the IEC to be held to the requirements of the law, he also must comply with the requirements imposed upon him. Because Stried's challenge failed to meet the requirements of Indiana Code section 3-8-1-2(e) by failing to set forth the specific basis for his contest and the facts supporting it, the commission was not only not required by the terms of the statute, but also not allowed, to consider his contest to the denial of certification.<sup>4</sup>

Stried has failed to meet his burden of persuading us that the trial court's decision was erroneous.

### Conclusion

There is no genuine issue of material fact with respect to Stried's complaint and the IEC was entitled to judgment as a matter of law. The trial court's judgment is affirmed.

Affirmed.

DARDEN, J., and BAILEY, J., concur.

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<sup>4</sup> Because we can affirm the grant of summary judgment on any basis supported by the record, we need not address the specific basis the trial court set forth for its decision. However, we note that Stried acknowledges he does not meet the requirements of the office for which he sought to run. See Appellant's Brief at 4 ("If elected, my Lt. Governor who was old enough and met the residency requirements would have been sworn-in."). He argues "anyone can run and be elected as Governor," they just cannot be sworn in if they do not meet the requirements. Indiana Code section 3-8-6-14(b) provides that "each candidate nominated by petition of nomination must satisfy all statutory eligibility requirements for the office for which he was nominated . . . ." Indiana Code section 3-8-1-9 provides:

A candidate for the office of governor . . . :

- (1) must have been a United States citizen for at least five (5) years before the election;
- (2) must have resided in the state for at least five (5) years before the election;
- (3) must be thirty (30) years old upon taking office; and
- (4) may not hold any other office of the United States or of this state upon taking office;

as provided in Article 5, Sections 7 and 8 of the Constitution of the State of Indiana.

Contrary to Stried's assertion, the statute requires that "a candidate" meet the eligibility requirements for the office. Moreover, the petition of nomination submitted by Stried states that "I comply with all requirements under the laws of the State of Indiana to be a candidate for this office." Appellee's App. at 25. By signing the petition of nomination, Stried falsely certified that he met the specific requirements for the office of governor. Indiana Code section 3-8-1-2(g) provides that the commission "shall deny a filing if the commission . . . determines that the candidate has not complied with the applicable requirements for the candidate set forth in the Constitution of the United States, the Constitution of the State of Indiana, or this title."