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IN THE
COURT OF APPEALS OF INDIANA

Timothy Stark,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

February 23, 2023
Court of Appeals Case No.
21A-PL-805
Appeal from the Marion Superior
Court
The Honorable David J. Dreyer,
Senior Judge
Trial Court Cause No.
49D12-2002-PL-6192

Opinion by Judge Tavitias
Chief Judge Altice and Judge Brown concur.

Tavitias, Judge.

Case Summary

[1] Timothy Stark, pro se, appeals the trial court’s judgment against him in an action brought by the State of Indiana (“State”) against Wildlife in Need and

Wildlife in Deed, Inc. (“WIN”), Stark, and Melisa Lane. The trial court found that Stark is personally liable for funds and assets misappropriated from WIN. On appeal, Stark argues that the trial court erred by granting summary judgment. We conclude that the trial court’s conclusion that Stark is personally liable for funds and assets misappropriated from WIN is not clearly erroneous. We, therefore, affirm.

Issue

- [2] Stark raises two issues, which we revise and restate as whether the trial court properly found Stark personally liable for funds and assets misappropriated from WIN.

Facts

- [3] WIN was a nonprofit corporation located in Charlestown, Indiana, which was incorporated in 1999, with the purpose of rescuing and rehabilitating wildlife. Stark was the president, and Lane, Stark’s then-wife, was the secretary and treasurer of WIN.¹ Stark had an animal exhibitor license through the United States Department of Agriculture (“USDA”), but WIN did not have a license. The WIN Board of Directors rarely held formal meetings, did not take minutes of meetings, and did not prepare or review budgets or financial statements.
- [4] Stark and Lane owned the property where WIN was located, and their personal residence was also located on the property. WIN did not have an agreement to

¹ Stark and Lane divorced in September 2019. Lane was not involved with WIN after the divorce.

lease the property from Stark and Lane, and WIN paid for improvements to Stark and Lane's property to house the animals. Stark had a line of credit that was secured by improvements to the property, including the improvements constructed by WIN. WIN also paid for property taxes and utility bills for the entire property, including the property taxes and utility bills for Stark's personal residence. WIN also routinely paid Stark's personal credit card bills.

[5] Until 2014, WIN had annual revenue of less than \$50,000. In late 2013, however, WIN started advertising a "Tiger Baby Playtime" program, which allowed paying participants to interact with tiger cubs. The events were advertised as fundraising for WIN, and WIN's annual revenue increased substantially. In 2016 and 2017, WIN reported more than \$1,000,000 in annual revenue. WIN used a portion of the funds to purchase additional animals. In 2014, WIN had forty-three animals, but after Tiger Baby Playtime events began, WIN eventually acquired 293 animals. Although Stark claims that he owns all of the animals at WIN, almost all of the animals were purchased with WIN funds.

[6] In September 2017, People for Ethical Treatment of Animals, Inc. ("PETA") brought a federal court action against WIN, Stark, and others related to WIN's treatment of the tiger cubs and other big cats. In February 2018, the United States District Court, Southern District of Indiana, preliminarily enjoined WIN from declawing their big cats, prematurely separating big cat cubs from their mothers, and using cubs in Tiger Baby Playtime. *See People for Ethical Treatment*

of Animals, Inc. v. Wildlife in Need & Wildlife in Deed, Inc., No.

417CV00186RLYDML, 2018 WL 828461, at *8 (S.D. Ind. Feb. 12, 2018).²

[7] In February 2019, Stark left Indiana and attempted to form a zoo in Oklahoma with Jeff Lowe.³ Stark’s goal was to transfer “assets from Indiana to Oklahoma” Tr. Vol. II p. 221. Stark took multiple animals with him, and fifteen to twenty of the animals died during transport. Stark also took heavy excavation equipment purchased by WIN to Oklahoma, and WIN paid to transport the equipment. WIN also paid to transport a bulldozer back to Indiana. Stark’s personal expenses during his time in Oklahoma were charged to his personal credit card, and WIN paid the monthly credit card debt. Stark did not seek approval from the Board of Directors to take the animals or equipment to Oklahoma or to pay his personal expenses. Eventually, Stark had a “falling out” with Lowe and returned to Indiana in August 2019. *Id.* at 218.

[8] In February 2020, a USDA Chief Administrative Law Judge revoked Stark’s animal exhibitor license due to more than 100 violations of animal welfare regulations and standards and assessed substantial civil penalties against WIN and Stark.⁴ *See In Re: Timothy L. Stark, an Individual; & Wildlife in Need & Wildlife*

² In August 2020, PETA prevailed in its action against WIN and Stark, and the district court entered a permanent injunction against WIN and Stark. *See People for Ethical Treatment of Animals, Inc. v. Wildlife in Need & Wildlife in Deed, Inc.*, 476 F. Supp. 3d 765, 785 (S.D. Ind. 2020).

³ Stark and Lowe were featured in the March 2020 Netflix documentary, *TIGER KING: MURDER, MAYHEM AND MADNESS*, and the November 2021 Netflix documentary, *TIGER KING 2*.

⁴ The Chief Administrative Law Judge’s decision was affirmed by a USDA Judicial Officer in April 2020. *See In Re: Timothy L. Stark, an Individual; & Wildlife in Need & Wildlife in Deed, Inc., an Indiana Corp.*,

in Deed, Inc. an Indiana Corp., Respondents., 78 Agric. Dec. 17, 2020 WL 836675 (U.S.D.A. Feb. 3, 2020).

[9] Also in February 2020, the Indiana Attorney General filed its complaint for appointment of a receiver and permanent removal of directors against WIN, Stark, and Lane to: (1) remove Stark and Lane from their director and officer positions at WIN; (2) require Stark and Lane to return to WIN all funds and assets misappropriated from WIN; (3) issue an order dissolving WIN and appointing a receiver to wind up WIN's affairs, recover misappropriated assets, liquidate assets, and arrange the placement of all WIN animals; and (4) issue an injunction to prevent WIN, Stark, and Lane from acquiring, owning, or exhibiting any exotic or native animals. Of relevance to this appeal, the State alleged that, pursuant to Indiana Code Section 23-17-13-1, Stark discharged his duties as a director in bad faith, without reasonable care, and not in the best interests of the corporation. The trial court entered a preliminary injunction to prevent, in part, the removal of any animals from the property.

[10] On September 10, 2020, the trial court appointed the Indianapolis Zoological Society ("IZS") as receiver and ordered IZS to remove the animals from WIN. IZS found that "[o]verall, the conditions [of the animals] were terrible." Tr. Vol. III p. 98. The trial court, however, found Stark and WIN in contempt after Stark and WIN removed over \$100,000 worth of animals from the

Respondents, 79 Agric. Dec. 1, 2020 WL 8174371 (U.S.D.A. Apr. 8, 2020). In August 2020, the Seventh Circuit Court of Appeals dismissed Stark's petition for judicial review for lack of jurisdiction.

property before the IZS arrived to take custody of the animals. In fact, some of the missing animals were located by IZS near Stark's property in a box truck with no ventilation, food, or water. The trial court issued a writ of body attachment for Stark.

[11] The WIN Board of Directors voted to dissolve WIN on September 22, 2020, and the Articles of Dissolution were signed on October 27, 2020. The trial court entered a default judgment against WIN on November 4, 2020. The trial court then appointed a corporate receiver to wind down WIN.

[12] On February 8, 2021, the trial court held an evidentiary hearing to address Stark's and Lane's personal liability. After the State's presentation of evidence, the State moved to dismiss Lane from the proceedings, which the trial court granted. On April 6, 2021, the trial court entered findings of fact and conclusions thereon granting judgment against Stark in his personal capacity. In particular, the trial court found:

97. The Indiana Attorney General is vested under [Indiana Nonprofit Corporation Act ("INCA")] with authority to seek certain remedies—including injunctive relief—against directors who have breached their fiduciary duties to the nonprofit corporation. Ind. Code § 23-17-24-1.5(b), (c). A director may be held personally liable if a breach of a fiduciary duty is willful or reckless. Ind. Code § 23-17-13-1(d).

98. Stark breached his fiduciary duties as a member of WIN's Board of Directors and as WIN's President. Stark routinely failed to act in WIN's best interest, including but not limited to taking assets belonging to WIN to be used in a private venture in Oklahoma, causing the death of numerous WIN animals in

transport to Oklahoma, conduct resulting in the finding of multiple violations of the Animal Welfare Act by the USDA, leaving at least one piece of heavy equipment in Oklahoma, routinely using WIN's funds for his personal sustenance without any corporate oversight or record keeping of the activity, using WIN funds to make improvements to real property not owned by WIN and using that property to secure a line of personal credit, using WIN funds to pay for utilities utilized solely for his benefit, and using WIN funds to pay thousands of dollars of personal credit card debt. Stark diverted WIN assets to be used for personal gain to an outrageous extent. The Court finds that Stark's misconduct involving WIN assets breached fiduciary duties owed to WIN and was not only reckless but rises to the level of willful behavior as he intended to act solely in his own interests and not those of WIN.

99. Stark breached his fiduciary duties by allowing WIN to make distributions of WIN assets to himself. INCA provides that a nonprofit "corporation may not make distributions," Ind. Code § 23-17-21-1, where a "distribution" is "a direct or an indirect transfer of money or other property or incurrence or transfer of indebtedness by a corporation to or for the benefit of a person." Ind. Code § 23-17-2-10(a). A director who assents to a distribution is personally liable to the corporation for the amount of the distribution that is illegal. Ind. Code § 23-17-13-4(a).

100. Stark further breached his fiduciary duties by failing to inform the Board of Directors of his intent to transfer all of WIN's assets to a new business in Oklahoma. . . .

101. The Court concludes that Stark's plans to transfer all or substantially all of WIN's assets to a new business in Oklahoma triggered the requirement that a meeting be held at which the Board of Directors vote to approve the transfer and triggered the requirement that the Board of Directors be given notice prior to the meeting that a vote is to be held. The Court concludes that

Stark's planning and, in fact, undertaking to transfer WIN's assets without first notifying the Board of those plans and obtaining approval through a vote of the Board constitutes a breach of Stark's fiduciary duty to act in the best interest of WIN. Further, this breach was willful as Stark intended to keep the Board uninformed about his planned transfer of all of WIN's assets to another business he planned to organize.

102. The animals at issue in this case are rightfully the property of WIN. . . .

103. Stark failed to provide any credible evidence of personal ownership of any of the animals to counter the evidence presented by the State.

* * * * *

105. [] Stark's purported ownership of the animals could not relieve WIN of its obligation to obtain its own license and therefore provides no support or finding that the animals belonged to Stark. . . .

* * * * *

112. Piercing the corporate veil and holding Stark personally liable is appropriate. WIN, through Stark, solicited donations purportedly for its stated corporate purpose, but Stark ultimately had no intention of reasonably, adequately fulfilling that purpose and fraudulently used the donations for personal gain. WIN paid Stark's personal obligations. WIN's Board of Directors failed meaningfully to engage in any corporate formalities. Finally, Stark commingled WIN and his assets and affairs, for example by Stark's utilizing WIN equipment and animals in attempting to start a private zoo in Oklahoma.

Appellant’s App. Vol. II pp. 80-88. The trial court then permanently enjoined Stark from “acquiring, owning, and exhibiting any exotic or native animals” and ordered him to “return to WIN all funds and assets misappropriated from WIN in an amount and inventory” determined by the corporate receiver.⁵ *Id.* at 89. Stark now appeals.

Discussion and Decision

[13] Stark challenges the trial court’s judgment finding him personally liable for the misappropriation of WIN assets. We begin by noting that Stark proceeds pro se, and we, therefore, reiterate that “a pro se litigant is held to the same standards as a trained attorney and is afforded no inherent leniency simply by virtue of being self-represented.” *Zavodnik v. Harper*, 17 N.E.3d 259, 266 (Ind. 2014). “This means that pro se litigants are bound to follow the established rules of procedure and must be prepared to accept the consequences of their failure to do so.” *Picket Fence Prop. Co. v. Davis*, 109 N.E.3d 1021, 1029 (Ind. Ct. App. 2018) (citing *Basic v. Amouri*, 58 N.E.3d 980, 983-84 (Ind. Ct. App. 2016)), *trans. denied*. Although we prefer to decide cases on their merits, arguments are waived where an appellant’s noncompliance with the rules of appellate procedure is so substantial it impedes our appellate consideration of the errors. *Id.*

⁵ The trial court found that the judgment against Stark was “**FINAL**,” and the State makes no argument that the judgment was not final. Appellant’s App. Vol. II p. 89 (emphasis in original).

[14] Indiana Appellate Rule 46(A)(8)(a) requires that the argument section of a brief “contain the contentions of the appellant on the issues presented, supported by cogent reasoning. Each contention must be supported by citations to the authorities, statutes, and the Appendix or parts of the Record on Appeal relied on” We will not consider an assertion on appeal when there is no cogent argument supported by authority and there are no references to the record as required by the rules. *Id.* “We will not become an advocate for a party or address arguments that are inappropriate or too poorly developed or expressed to be understood.” *Picket Fence*, 109 N.E.3d at 1029 (quoting *Basic*, 58 N.E.3d at 984) (internal quotation marks omitted).

[15] Stark devotes the majority of his brief to explaining why the trial court improperly granted summary judgment. Stark, however, misunderstands the legal process used here. The trial court did not grant summary judgment to the State on its claims to hold Stark personally liable; rather, the trial court held an evidentiary hearing on the State’s complaint and issued findings of fact and conclusions thereon. “To avoid waiver on appeal, a party must develop a cogent argument.” *Wilkes v. Celadon Grp., Inc.*, 177 N.E.3d 786, 790 (Ind. 2021) (citing Ind. Appellate Rule 46(A)(8)(a)). Stark’s argument regarding summary judgment is not cogent and is, therefore, waived.

[16] Waiver notwithstanding, we will address whether the trial court’s findings of fact and conclusions thereon regarding Stark’s personal liability are clearly erroneous. Because neither party filed a written request for findings of fact and conclusions thereon regarding this issue, the trial court’s findings of fact are

controlling only as to issues they cover. *In re Adoption of I.B.*, 32 N.E.3d 1164, 1169 (Ind. 2015). “We limit our review of those matters to whether the evidence supports the findings and then whether the findings support the judgment, reversing the findings only if they are clearly erroneous.” *Id.* “On all other matters, the general-judgment standard applies, and we will affirm on any legal theory supported by the evidence.” *Id.* The trial court’s conclusions of law and any constitutional challenges are reviewed de novo. *Id.*

[17] The trial court found that Stark was personally liable under three theories: (1) Stark breached his fiduciary duties to a nonprofit corporation and is liable under Indiana Code Section 23-17-13-1; (2) Stark breached his fiduciary duties to a nonprofit corporation by making unlawful distributions to himself in violation of Indiana Code Section 23-17-13-4; and (3) piercing of the corporate veil was appropriate under the circumstances. Stark does not specifically challenge any of the trial court’s findings of fact or the trial court’s conclusion that Stark was required to return the misappropriated WIN funds to the corporate receiver because he breached his fiduciary duty to WIN under Indiana Code Section 23-17-13-1 or Section 23-17-13-4; rather, Stark argues only that the State did not satisfy the legal requirements for piercing the corporate veil. We hold that the trial court’s conclusions are not clearly erroneous under any of the three theories.

*Indiana Code Section 23-17-13-1*⁶

[18] Indiana Code Section 23-17-13-1, which governs standards of conduct for directors⁷ of a nonprofit corporation, provides:

(a) A director shall, based on facts then known to the director, discharge duties as a director, including the director's duties as a member of a committee, as follows:

(1) In good faith.

(2) With the care an ordinarily prudent person in a like position would exercise under similar circumstances.

(3) In a manner the director reasonably believes to be in the best interests of the corporation.

* * * * *

(d) A director is not liable for an action taken as a director, or failure to take an action, unless the:

(1) director has breached or failed to perform the duties of the director's office in compliance with this section; and

⁶ Few Indiana cases have mentioned Indiana Code Section 23-17-13-1. A similar statute, however, exists regarding other corporations, *see* Ind. Code § 23-1-35-1(e), and cases have analyzed that statute. *See, e.g., Rapkin Grp., Inc. v. Cardinal Ventures, Inc.*, 29 N.E.3d 752, 758-59 (Ind. Ct. App. 2015) (holding that genuine issues of material fact precluded summary judgment regarding the breach of fiduciary duty claim), *trans. denied*.

⁷ A director under the nonprofit corporation statutes means "an individual designated in articles of incorporation or bylaws, elected by the incorporators or otherwise elected or appointed, to act as a member of a board of directors." Ind. Code § 23-17-2-9.

(2) breach or failure to perform constitutes willful misconduct or recklessness.

[19] Under this statute, the State was required to demonstrate that Stark breached or failed to perform his duties to WIN and that the breach or failure amounted to willful misconduct or recklessness. Stark contends that, because Stark did not collect a salary from WIN, he was entitled to use “the proceeds of WIN to handle personal obligations, such as utilities for the properties.” Appellant’s Br. p. 21. Stark argues that WIN’s payment of his personal obligations were less than the amount he would have received as a salary. We do not find Stark’s argument persuasive.

[20] The State presented evidence that Stark: (1) routinely used WIN’s funds to pay his personal expenses, including thousands of dollars of Stark’s personal credit card debt, even while he was living in Oklahoma; (2) took equipment and animals belonging to WIN to Oklahoma, resulting in the death of numerous animals and the loss of expensive equipment; (3) used WIN funds to make improvements to his personal property and used the improvements to secure a personal line of credit; (4) failed to inform the Board of Directors of his plans to transfer WIN assets to Oklahoma; and (5) claimed ownership of the animals purchased with WIN funds. In fact, Stark testified, “for the last 21 years, I am Wildlife in Need.” Tr. Vol. II p. 209.

[21] Given these facts, the trial court’s conclusion that Stark breached his duty to act in the best interests of the nonprofit corporation and that his misconduct was willful is not clearly erroneous. As such, pursuant to Indiana Code Section 23-

17-13-1, the trial court properly ordered Stark to “return to WIN all funds and assets misappropriated from WIN” Appellant’s App. Vol. II p. 89.

Indiana Code Section 23-17-13-4

- [22] In general, a nonprofit corporation “may not make distributions.” See Ind. Code § 23-17-21-1. A “distribution” means “a direct or an indirect transfer of money or other property or incurrence or transfer of indebtedness by a corporation to or for the benefit of a person.” Ind. Code § 23-17-2-10(a). Indiana Code Section 23-17-13-4(a) provides: “Subject to section 1(d) of this chapter, a director who votes for or assents to a distribution made in violation of this article or articles of incorporation is personally liable to the corporation for the amount of the distribution that exceeds the amount that could have been distributed without violating this article or articles of incorporation.” The trial court found that “Stark breached his fiduciary duties by allowing WIN to make distributions of WIN assets to himself.” Appellant’s App. Vol. II p. 81.
- [23] The State presented evidence that Stark: (1) routinely used WIN’s funds to pay his personal expenses, including thousands of dollars of Stark’s personal credit card debt, even while he was living in Oklahoma; (2) took equipment and animals belonging to WIN to Oklahoma, resulting in the death of numerous animals and the loss of expensive equipment; and (3) used WIN funds to make improvements to his personal property and used the improvements to secure a personal line of credit. Under these facts, the trial court’s conclusion that Stark breached his fiduciary duty to WIN by making distributions to himself in violation of Indiana Code Section 23-17-13-4 is not clearly erroneous.

Piercing the Corporate Veil

- [24] Regarding piercing the corporate veil, our Supreme Court has held that “Indiana courts are reluctant to disregard a corporate entity, but will do so to prevent fraud or unfairness to third parties.” *Winkler v. V.G. Reed & Sons, Inc.*, 638 N.E.2d 1228, 1232 (Ind. 1994). Our Supreme Court has held that piercing the corporate veil is distinct from the statutory liabilities of a corporate officer. *See Comm’r, Dep’t of Env’t Mgmt. v. RLG, Inc.*, 755 N.E.2d 556, 563 (Ind. 2001) (holding that statutory liabilities of a corporate officer are separate and distinct from piercing the corporate veil) (citing *United States v. Dotterweich*, 320 U.S. 277, 282, 64 S. Ct. 134 (1943)).
- [25] The use of this “equitable power” requires “a highly fact-sensitive inquiry.” *Winkler*, 638 N.E.2d at 1232. Courts may invoke the equitable doctrine of piercing the corporate veil to “protect innocent third parties from fraud or injustice,” where “a corporation is functioning as an alter ego or a mere instrumentality of an individual or another corporation.” *Reed v. Reid*, 980 N.E.2d 277, 301 (Ind. 2012) (quoting *Aronson v. Price*, 644 N.E.2d 864, 867 (Ind. 1994)). “[T]he burden is on the party seeking to pierce the corporate veil to prove that the corporate form was so ignored, controlled or manipulated that it was merely the instrumentality of another and that the misuse of the corporate form would constitute a fraud or promote injustice.” *Id.* To determine whether the party seeking to pierce the corporate veil has met this burden, courts consider whether the party has presented evidence demonstrating:

(1) under capitalization; (2) absence of corporate records; (3) fraudulent representation by corporation shareholders or directors; (4) use of the corporation to promote fraud, injustice, or illegal activities; (5) payment by the corporation of individual obligations; (6) commingling of assets and affairs; (7) failure to observe required corporate formalities; or (8) other shareholder acts or conduct ignoring, controlling, or manipulating the corporate form.

Id.

[26] Stark routinely used WIN to pay his personal obligations, took WIN assets, and commingled WIN assets with his own. With Stark as president, WIN failed to maintain proper corporate records and failed to observe the required corporate formalities. Under these circumstances, the trial court's conclusion that piercing the corporate veil was warranted is not clearly erroneous.

Conclusion

[27] The trial court's conclusion that Stark is personally liable for funds and assets misappropriated from WIN is not clearly erroneous. Accordingly, we affirm.

[28] Affirmed.

Altice, C.J., and Brown, J., concur.