MEMORANDUM DECISION

APPELLANT PRO SE

Anita Bryant
Tampa, Florida

ATTORNEYS FOR APPELLEE

John H. Brooke
Danyel N. Struble
Amanda N. Brown
Brooke & Struble, PC
Muncie, Indiana

IN THE COURT OF APPEALS OF INDIANA

Anita Bryant,
Appellant,

v.

Delaware County Auditor and Delaware County Treasurer,
Appellees.

March 9, 2023

Court of Appeals Case No. 22A-TS-2380

Appeal from the Delaware Circuit Court

The Honorable Thomas A. Cannon, Jr., Judge

Trial Court Cause No. 18C05-2208-TS-232

Memorandum Decision by Judge Riley
Chief Judge Altice and Judge Pyle concur.

Riley, Judge.

STATEMENT OF THE CASE

[1] Appellant, Anita Bryant (Anita), appeals the trial court's Order, denying her objection to the tax sale of certain real estate in favor of Appellees-Plaintiffs, the Delaware County Auditor and the Delaware County Treasurer (collectively, Plaintiffs).

[2] We dismiss.

ISSUE

[3] Anita presents this court with at least three issues, but we do not reach the merits of her claims because we find an issue raised by Plaintiffs to be dispositive: Whether Anita has standing to bring this appeal.

FACTS AND PROCEDURAL HISTORY

[4] On August 25, 2022, Plaintiffs filed their Petition for Issuance of Tax Deed in Cause Number 18C05-2208-TS-232 (Cause -232) in the Delaware Circuit Court, seeking an entry of judgment and order for the sale of certain real property located at 3915 South Ebright Street, Muncie, Indiana, to satisfy delinquent property taxes or special assessments and costs. On August 29, 2022, the trial court entered its Judgment and Order of Sale. On August 30, 2022, Anita filed her unverified Objection to Tax Sale seeking an injunction to stop the sale of the real estate. In her objection, Anita styled herself as "Beneficiary/Heir" of the supervised estate of Laura J. Bryant (Estate), Cause Number 18C01-2106-ES-15 (Cause -15). She stated that Leonard Bryant (Leonard) was the Personal Representative of the Estate, and claimed the real

estate at issue was part of the Estate. (Appellant's App. Vol. II, p. 9). Anita further claimed that Leonard "and/or Council" had made misrepresentations, presumably in Cause -15 matters, regarding the real property that merited injunctive relief stopping the tax sale. (Appellant's App. Vol. II, p. 9). On August 31, 2022, the trial court set a hearing on Anita's objections for September 28, 2022. On September 9, 2022, Anita filed her appearance in Cause -232. On September 28, 2022, the trial court held a hearing on Anita's objections to the tax sale at which Anita appeared. On September 30, 2022, the trial court issued its Order, denying Anita's objection to the tax sale, finding, in relevant part, as follows:

> The [c]ourt finds the Respondent/Objector lacks standing to object to the sale, and that no legal remedy is available to remove the property located at 3915 S. Ebright St., Muncie, Indiana from the tax sale other than payment of delinquent taxes and penalties.

(Appellant's App. Vol. II, p. 8).

[5] On October 7, 2022, Anita filed a motion seeking to stay the tax sale pending appeal, which the trial court denied on October 10, 2022. On October 11, 2022, Anita filed a motion with this court seeking an emergency stay of the tax sale pending her appeal. On October 12, 2022, this court denied Anita's motion.

[6] Anita now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

[7] Anita brings several claims on appeal, but we do not reach the substance of her arguments because we conclude that she lacks standing to bring the instant appeal. "A would-be party must first have standing to seek relief from the courts." *Simon v. Simon*, 957 N.E.2d 980, 987 (Ind. Ct. App. 2011). Similar to the real-party-in-interest requirement, the standing requirement ensures "that the party before the court has a substantive right to enforce the claim that is being made in the litigation." *Id.* In *Simon*, a surviving spouse and would-be party who was not the personal representative of an estate attempted to appeal an estate-related matter, claiming that she, as a beneficiary of the estate who was aggrieved by the trial court's decision, had standing to do so. *Id.* at 987-88. The surviving spouse relied on Indiana Code section 29-1-1-22 of the Probate Code which provides that "[a]ny person considering himself aggrieved by any decision of a court having probate jurisdiction in proceedings under this article may prosecute an appeal to the court having jurisdiction of such appeal." *Id.* at 988. This court rejected the surviving spouse's claim of standing to appeal, concluding that

> to prosecute an appeal, the person considering herself aggrieved must have first been a party before the trial court. Appellate Rule 17(A) provides that "[a] party of record in the trial court . . . shall be a party on appeal." The converse is also true: a person who is not a party of record in the trial court cannot become a party for the first time on appeal. *See Treacy v. State*, 953 N.E.2d 634 (Ind. Ct. App. 2011), *pet. for trans. filed.* That is, "Rule 17 . . . limits the class of parties on appeal to parties of record in the trial court." *Id.*

Id. at 989-90. The *Simon* court concluded that the surviving spouse had no standing to appeal because she had never motioned to intervene in her personal capacity in the trial court proceedings. *Id.* at 989. The court also observed that there are no appellate rules providing for intervention in an appeal and that a party who feels they are an aggrieved person under section 29-1-1-22 must "make that argument to the trial court in the first instance in a motion to intervene." *Id.* We dismissed the appeal for lack of jurisdiction. *Id.* at 990.

[8] Although Plaintiffs devote the lion's share of their appellate argument to defending the trial court's decision, they also contest Anita's standing to bring this appeal. Here, Anita appears pro se, as she did in the underlying proceedings. However, it is well-established that on appeal pro se litigants are held to the same standards as attorneys. *Spainhower v. Smart & Kessler, LLC*, 176 N.E.3d 258, 263 (Ind. Ct. App. 2021), *trans. denied.*

[9] Plaintiffs did not name Anita as a party in Cause -232, so she was not a party of record. Anita's status as a putative aggrieved beneficiary of the Estate did not, by itself, confer standing upon her to bring this appeal. *See Simon*, 957 N.E.2d at 989-90. Anita did not make herself a party to the underlying proceedings through a successful motion to intervene. The fact that she filed an appearance in Cause -232 did not provide her with standing. *See Kelley v. Kelley*, 158 N.E.3d 396, 399-400 n.1 (Ind. Ct. App. 2020) (dismissing an appeal by a person who was neither a party of record nor an intervenor in the trial court proceedings, even though that person had filed an appearance and had been referred to by the trial court as "intervenor"). The fact that Plaintiffs may have treated Anita

as a party did not provide her with standing. *See id.* at 399 n.2 (observing that a lack of jurisdiction cannot be waived by the parties and is an issue that can be raised at any time). There is no provision in the Tax Sale Statute conferring standing on persons such as Anita. *See* I.C. § 6-1.1-24 *et seq.* Because Anita was not a party to the underlying proceedings, she does not have standing, and we dismiss her appeal. *See Simon*, 957 N.E.2d at 990.

CONCLUSION

[10] Based on the foregoing, we conclude that Anita has no standing to bring this appeal.

[11] Dismissed.

[12] Altice, C. J. and Pyle, J. concur

STATE OF INDIANA)
) SS
COUNTY OF DELAWARE)

IN THE DELAWARE CIRCUIT COURT #5

2022 TERM

IN RE: THE TAX SALE OF 2022

CAUSE NO. 18C05-2208-TS-000232

DELAWARE COUNTY
AUDITOR/TREASURER
Plaintiff

ANITA BRYANT
Respondent/Objector

ORDER DENYING OBJECTION TO TAX SALE PERTAINING TO REAL ESTATE LOCATED AT 3915 S EBRIGHT ST, MUNCIE, INDIANA

Respondent/Objector, Anita Bryant, appears via Zoom for hearing Objection to Tax Sale filed on August 30, 2022. The Delaware County Auditor's Office appears by Counsel, Danyel Struble, in person and John Brooke, via Zoom. Evidence heard and concluded.

The Court finds the Repsondent/Objector lacks standing to object to the sale, and that no legal remedy is available to remove the property located at 3915 S. Ebright St., Muncie, Indiana from the tax sale other than payment of delinquent taxes and penalites.

ORDERED AND DATED SEP 30 2022

JUDGE, THOMAS A. CANNON JR.,
DELAWARE CIRCUIT COURT #5

DISTRIBUTION:
Anita Bryant, 6902 W. Hillsborough Ave., Tampa, FL 33634
Danyel Struble, Attorney for Delaware County
Delaware County Treasurer
Delaware County Auditor

In the
Indiana Supreme Court

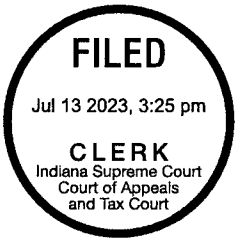
Anita Bryant,
Appellant(s),

v.

Delaware County Treasurer; Delaware County Auditor,
Appellee(s).

Court of Appeals Case No.
22A-TS-02380

Trial Court Case No.
18C05-2208-TS-232



Order

This matter has come before the Indiana Supreme Court on a petition to transfer jurisdiction, filed pursuant to Indiana Appellate Rules 56(B) and 57, following the issuance of a decision by the Court of Appeals. The Court has reviewed the decision of the Court of Appeals, and the submitted record on appeal, all briefs filed in the Court of Appeals, and all materials filed in connection with the request to transfer jurisdiction have been made available to the Court for review. Each participating member has had the opportunity to voice that Justice's views on the case in conference with the other Justices, and each participating member of the Court has voted on the petition.

Being duly advised, the Court DENIES the petition to transfer.

Done at Indianapolis, Indiana, on 7/13/2023.

Loretta H. Rush
Chief Justice of Indiana

All Justices concur.