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APPELLANT PRO SE:

ERIC D. SMITH
New Castle, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

ERIC D. SMITH,)
)
Appellant,)
)
vs.) No. 46A04-0805-CV-259
)
STEPHEN J. HUCKINS,)
)
Appellee.)

APPEAL FROM THE LaPORTE SUPERIOR COURT
The Honorable Steven King, Judge
Cause No. 46D02-0803-PL-039

April 7, 2009

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

Eric D. Smith (“Smith”), an inmate at New Castle Correctional Facility, appeals the trial court’s dismissal of his complaint pursuant to Indiana Code section 34-58-1-2, which provides a screening procedure for offender litigation. Concluding that the trial court properly dismissed Smith’s claims, we affirm.

Facts and Procedural History

On March 13, 2008, Smith, pro se, filed a complaint in LaPorte Superior Court against the Honorable John G. Baker, Stephen J. Huckins (“Huckins”), and other unknown defendants. Specifically, Smith alleged that the defendants took actions which resulted in his numerous losses at the trial court level.

On March 28, 2008, the trial court dismissed Smith’s complaint pursuant to Indiana Code section 34-58-1-2. Specifically, the trial court determined that Smith was barred from filing any more civil lawsuits by Indiana Code section 34-58-2-1¹ and that the complaint was frivolous and intended only to harass the defendants, lacked any arguable basis in law or fact, and, as to the Honorable John G. Baker, was barred by reason of judicial immunity.

On April 16, 2008, Smith appealed, filing a motion for leave to file appeal from the trial court’s application of Indiana Code section 34-58-2-1. Appellees filed a response in opposition to Smith’s motion for leave to file appeal. On June 12, 2008, we ordered that Smith may file an appeal as to Huckins but may not as to the Honorable John G. Baker and unnamed appellees. We determined that the sole issue to be determined in

¹ This section has been found to be unconstitutional under the Open Courts clause of the Indiana State Constitution in Smith v. Ind. Dep’t. of Correction, 883 N.E.2d 802 (Ind. 2008).

this appeal was whether the trial court erred when it dismissed Smith’s complaint as to Huckins.

Discussion and Decision

Smith contends that the trial court erred in dismissing his complaint pursuant to Indiana Code section 34-58-1-2. Indiana Code section 34-58-1-1 provides, “Upon receipt of a complaint or petition filed by an offender, the court shall docket the case and take no further action until the court has conducted the review required by section 2 of this chapter.” Section 2, in turn, provides in pertinent part:

- (a) A court shall review a complaint or petition filed by an offender and shall determine if the claim may proceed. A claim may not proceed if the court determines that the claim:
 - (1) is frivolous;
 - (2) is not a claim upon which relief may be granted; or
 - (3) seeks monetary relief from a defendant who is immune from liability for such relief.
- (b) A claim is frivolous under subsection (a)(1) if the claim:
 - (1) is made primarily to harass a person; or
 - (2) lacks an arguable basis either in:
 - (A) law; or
 - (B) fact.

Ind. Code § 34-58-1-2. If a court determines that a claim may not proceed under section 2, “the court shall enter an order: (1) explaining why the claim may not proceed; and (2) stating whether there are any remaining claims in the complaint or petition that may proceed.” Ind. Code § 34-58-1-3 (formatting omitted).

In reviewing the dismissal of an offender’s claim, complaint, or dismissal pursuant to Indiana Code section 34-58-1-2, we employ a de novo standard of review. Smith v. Huckins, 850 N.E.2d 480, 484 (Ind. Ct. App. 2006). Like the trial court, we look only to the well-pleaded facts contained in the complaint or petition. Id. Further, we determine

whether the complaint or petition contains allegations concerning all of the material elements necessary to sustain a recovery under some viable legal theory. Id.

Smith's complaint alleges no facts concerning how Huckins violated his freedom of speech and access to courts and how delaying copy requests and denying needed legal research materials violated those rights. Smith makes only broad statements amounting to legal conclusions. Although Indiana uses notice pleading, the plaintiff must still plead the operative facts involved in the litigation. See Donahue v. St. Joseph County, 720 N.E.2d 1236, 1239 (Ind. Ct. App. 1999). Smith pleaded none. In addition, Smith's claim that Huckins is preventing him from pursuing civil litigation is again undermined by the fact that Smith is pursuing this very lawsuit and several others.

Smith's claim is frivolous, lacks an arguable basis in fact and law, and is not a claim upon which relief may be granted.

Affirmed.

BAILEY, J., and BARNES, J., concur.