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APPELLANT PRO SE:

JOSEPH A. TAYLOR
Pendleton, Indiana

IN THE
COURT OF APPEALS OF INDIANA

JOSEPH A. TAYLOR,	)	
	)	
Appellant-Plaintiff,	)	
	)	
vs.	)	No. 67A01-1011-MI-600
	)	
MITCH DANIELS, et al.,	)	
	)	
Appellees-Defendants.	)	

APPEAL FROM THE PUTNAM SUPERIOR COURT
The Honorable Charles D. Bridges, Judge
Cause No. 67D01-0907-MI-23

June 24, 2011

MEMORANDUM DECISION – NOT FOR PUBLICATION

BARNES, Judge

Case Summary

Joseph Taylor appeals the trial court's denial of his amended complaint. We reverse.

Issue

Taylor raises one issue, which we restate as whether the trial court properly denied his amended complaint.

Facts

On August 28, 2009, Taylor filed a pro se complaint against Governor Mitch Daniels, Edwin Buss, Jim Wynn, Bruce Lemmon, Richard Sabolick, D. Zatecky, and the Director of Classification for the Indiana Department of Correction (collectively "the Defendants.)"[1] The Defendants did not file an answer or otherwise respond to the complaint, and no action was taken on the matter until August 2, 2010, when the trial court scheduled a hearing to determine whether the matter should be dismissed pursuant to Indiana Trial Rule 41(E) for Taylor's failure to prosecute. On August 26, 2010, Taylor responded to the trial court's order to show cause. On August 30, 2010, Attorney General Gregory Zoeller indicated that he would respond within thirty days.

On September 29, 2010, Taylor filed an amended pro se complaint for damages and injunctive relief. On October 4, 2010, the Defendants filed a motion for screening and dismissal of Taylor's complaint and a memorandum in support of screening and

[1] Because we do not have a copy of the initial complaint, it is unclear whom Taylor named as defendants. Based on the trial court's October 5, 2010 order, we believe these individuals were all named as defendants. Although a more comprehensive appendix would have been helpful in facilitating our review, we believe the appendix Taylor provided is sufficient to address his claim.

dismissal. The next day, the trial court granted the motion for screening and dismissed the complaint with prejudice. In its order, the trial court stated, "Plaintiff's Complaint fails to state a claim upon which relief may be granted, the Complaint seeks monetary relief from defendants who are immune from liability for such relief under the Indiana Tort Claims Act and there is no private right of action for damages under the Indiana Constitution." App. p. 6. The chronological case summary entry that day also states, "court denies plaintiff's verified amended complaint for damages declaratory and injunctive relief as cause has been dismissed with prejudice." Id. at 3. Taylor filed a motion to correct error, which the trial court denied. Taylor now appeals.

Analysis

Taylor argues that the trial court improperly denied his amended complaint. As an initial matter we observe that Taylor is proceeding pro se. As we have noted many times before, litigants who choose to proceed pro se will be held to the same rules of procedure as trained legal counsel and must be prepared to accept the consequences of their action. Shepherd v. Truex, 819 N.E.2d 457, 463 (Ind. Ct. App. 2004). We also observe that Attorney General Zoeller gave his notice of non-involvement and has not filed an appellee's brief on behalf of the Defendants. Under these circumstances, we do not undertake to develop an argument on the behalf of the Defendants, but rather may reverse upon Taylor's prima facie showing of reversible error. See Button v. James, 909 N.E.2d 1007, 1008-09 (Ind. Ct. App. 2009). In this context, "prima facie" is defined as at first sight, on first appearance, or on the face it. Id. at 1009.

Pursuant to Indiana Trial Rule 15(A), "A party may amend his pleading once as a matter of course at any time before a responsive pleading is served . . . ." "Where no responsive pleading to the original complaint has been filed, the plaintiff has a right to amend her complaint and there is no need to seek the permission of the trial court." Comer v. Gohil, 664 N.E.2d 389, 393 (Ind. Ct. App. 1996), trans. denied. Taylor contends that, because the Defendants never filed or served a responsive pleading, the trial court improperly denied his amended complaint.

Here, even assuming the Defendants' motion for screening and dismissal was a responsive pleading, Taylor filed his amended complaint before the Defendants filed their motion. Thus, the trial court did not have the discretion to deny Taylor permission to file the amended complaint. Further, in dismissing Taylor's original complaint, the trial court reasoned that Taylor was improperly seeking monetary damages. Because Taylor's amended complaint included a request for injunctive relief it appears that the trial court's basis for dismissal would not apply to the amended complaint. In the absence of arguments by the Defendants as to why Taylor was not entitled to amend his complaint as a matter of course or why the amended complaint was subject to dismissal, Taylor has made a showing of prima facie error. Accordingly, we reverse the trial court's denial of Taylor's amended complaint.[2]

[2] Our decision is not intended to prohibit dismissal of the amended complaint in the future should dismissal be warranted.

Conclusion

Taylor has made a prima facie showing that the denial of his amended complaint was improper. We reverse.

Reversed.

RILEY, J., and DARDEN, J., concur.