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IN THE
COURT OF APPEALS OF INDIANA

EDDIE J. WILLIAMS, JR.,	)	
	)	
Appellant-Petitioner,	)	
	)	
vs.	)	No. 49A02-0902-CV-140
	)	
STATE EMPLOYEES' APPEALS COMMISSION,	)	
	)	
	)	
Appellee-Respondent.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Thomas Carroll, Judge
Cause No. 49D06-0812-MI-56332

July 16, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

Eddie J. Williams, Jr. appeals the trial court's dismissal of the action against the State Employees' Appeals Commission ("SEAC").

We reverse and remand.

FACTS

After being terminated from his employment at Pendleton Juvenile Correctional Facility ("Pendleton"), Williams appealed to SEAC.[1] On November 18, 2008, in "Eddie J. Williams Jr., Petitioner, vs. Pendleton Juvenile Correctional Facility, Respondent," SEAC affirmed the "Findings of Fact and Conclusions of Law with Non-Final Order of the Administrative Law Judge." (App. 41[2]).

On December 15, 2008, Williams filed in the Marion Circuit Court his verified petition for judicial review, which was assigned to the Marion County Superior Court. His petition named SEAC as the sole "Respondent Agency"; alleged that the November 18, 2008 SEAC decision "was unsupported by substantive evidence of record," and "arbitrary, capricious, an abuse of discretion and not in accordance with the law" [3]; and

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[1] The SEAC is "authorized and required" to "hear or investigate appeals from state employees" concerning an involuntary change in employment status or conditions and to "fairly and impartially render decisions as to the validity of the appeals or lack thereof." Ind. Code § 4-15-1.5-6.

[2] Except in the single instance so specified, "App." refers to Williams' Appendix.

[3] SEAC's "Notice of Final Order of the State Employees' Commission" states that it "has affirmed, without modification, the 'Findings of Fact and Conclusions of Law with Non-final Order of the Administrative Law Judge' as the Commission's findings of fact and conclusions of law with final order." (App. 41). Although Williams' petition for judicial review is part of his Appendix, it does not reflect that said findings of fact and conclusions of law were included with his petition to the trial court for judicial review. Moreover, Williams' Appendix does not contain said findings of fact and conclusions of law.

sought to "be reinstated as an employee of Pendleton," with "all back pay and benefits." (App. 6, 8, 9).

On January 7, 2009, SEAC filed a motion to dismiss in the Marion Superior Court. SEAC argued that Williams had "failed to state a claim upon which relief can be granted" because SEAC was "not a proper responding party." (App. 43). In its accompanying memorandum, SEAC cited Indiana Code section 4-21.5-1-3, providing that an "agency" for the purposes of Indiana's Administrative Orders and Procedure Act is "any officer, board, commission, department division, bureau, or committee of government that is responsible for any stage of a proceeding" under the Act. SEAC asserted that although it had "ultimate authority in [Williams'] underlying administrative proceeding," Pendleton and Williams "were the only parties to the underlying administrative proceeding," and his petition failed to name Pendleton as the respondent. (App. 47).

On January 12, 2009, the trial court judge concluded that SEAC was "not a proper party to this action." (App. 50). His order granted SEAC's motion to dismiss, and dismissed Williams' petition "with prejudice." *Id.* On February 6, 2009, SEAC filed a motion for *nunc pro tunc* order, asserting that it had erroneously sought "dismissal of the action . . . with prejudice," and that Williams' petition should have been "dismissed without prejudice." (SEAC's App. 1). The trial court did not rule on this motion. On February 11, 2009, Williams filed his notice of appeal.

DECISION

Williams argues that the trial court erred when it granted the motion to dismiss his petition for judicial review on the grounds that SEAC was not a proper party to the action

because SEAC is a state agency; his petition was served on Pendleton; and inasmuch as the statute provides that for judicial review, "[e]ach person who was a party to the proceeding before the agency is a party to the petition for review," Pendleton "was a party to this proceeding." (Williams' Br. at 7, quoting I.C. § 4-21.5-5-6). Citing the same provision of the statute, SEAC argues that the trial court "did not have venue to review SEAC's action because Williams did not name the Pendleton Juvenile Facility as a party." SEAC's Br. at 3. SEAC's brief also brings to our attention its motion to the trial court for a *nunc pro tunc* order making the dismissal "without prejudice." *Id.* Williams' reply does not address the matter of the motion for a *nunc pro tunc* order and argues that because he "was not terminated until SEAC sent" him its notice of final order, it was not necessary to name a respondent other than SEAC.[4]

We first note that SEAC's motion for a *nunc pro tunc* order stated that the "proposed order" it submitted to the trial court on January 7, 2009, with its motion to dismiss "incorrectly stated that dismissal of the action was <u>with</u> <u>prejudice</u>" when the proposed order "should have stated that the claims were dismissed <u>without</u> <u>prejudice</u>." (SEAC's App. 1). We find this to be the admission of a mistake by SEAC, and that the <u>nature</u> of the dismissal was erroneous, *i.e.*, that the dismissal should have been <u>without</u> <u>prejudice</u>.

We further note that SEAC's motion to dismiss asserted Williams' "fail[ure] to state a claim upon which relief can be granted," (App. 43), and when a motion to dismiss

[4] We note that his petition for judicial review stated that Williams "appealed his termination by the supervisor of Pendleton . . . ." (App. 6)

for failure to state a claim is sustained, "the pleading may be amended once as of right . . . ." Ind. Trial Rule 12(B). *See also Thacker v. Bartlett*, 785 N.E.2d 621, 624 (Ind. Ct. App. 1003); *Baker v. Town of Middlebury*, 753 N.E.2d 67, 75 (Ind. Ct. App. 2001), *trans. denied*. In addition, a motion to dismiss for failure to state a claim upon which relief may be granted "shall include failure to name the real party in interest under Rule 17," T.R. 12(B)(7); and Trial Rule 17(A) provides that "[n]o action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time after objection has been allowed" for corrective action to be taken in that regard. *See also Meyers v. Meyers*, 861 N.E.2d 704, 705 (Ind. 2007).

Additionally, we note that Williams sought judicial review of an SEAC order which properly named Pendleton as the respondent, but that when Williams filed his petition for judicial review, he did not name Pendleton as a respondent and named <u>only</u> SEAC as the respondent. Williams should have also named Pendleton as a respondent. *See* Ind. Code § 4-21-5-5-6(d) ("Each party who was a party to the proceeding is a party to the petition for review."). However, consistent with the foregoing procedural options that allow correction of such an oversight, we also find that pursuant to Indiana Trial Rule 21(A), Williams' failure to name Pendleton as a party is not fatal to his claim. Trial Rule 21(A) provides that the "failure to name another person as a party or include him in the action is not ground for dismissal; but such omission is subject to the right of such person to intervene or of an opposing party to name or include him in the action . . . ." Moreover, the Rule further provides that "[s]ubject to its sound discretion and on motion of any party or of its own initiative, the court may order parties dropped or added at any

stage of the action and on such terms as are just and will avoid delay." T.R. 21(A). Inasmuch as Pendleton was served with a copy of Williams' petition, it would not have been inappropriate for the trial court to order Pendleton added as a party to the action.

That said, we reiterate: Pendleton was a named respondent in the SEAC order appealed; the order submitted to the trial court with SEAC's motion to dismiss erroneously stated that the dismissal was "with prejudice"; Pendleton was served with Williams' petition, and the provisions of Indiana trial rules provide for an amendment to add a proper party. Based on such considerations, we reverse the trial court's order dismissing Williams' petition for judicial review, and we remand with instructions for the trial court to order joinder of Pendleton and consider the merits of his petition.

Reversed and remanded.

BAILEY, J., and ROBB, J., concur.