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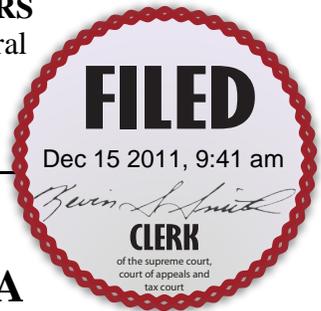
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**IN THE
COURT OF APPEALS OF INDIANA**

NAJEE SABREE Q. BLACKMAN,)

Appellant-Petitioner,)

vs.)

SAMANTHA MADDOX, et al.,)

Appellees-Respondents.)

No. 34A05-1106-CT-379

APPEAL FROM THE HOWARD SUPERIOR COURT

The Honorable George A. Hopkins, Judge

Cause No. 34D04-0907-CT-79

December 15, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

NAJAM, Judge

STATEMENT OF THE CASE

Najee Sabree Q. Blackman appeals the trial court's dismissal of his complaint for damages against Samantha Maddox, Kevin Davis, Tom Richardson, Laurie Johnson, Michael Kidder, Wayne Scaife, Alan Finnan, Edwin Buss, and J. Ashby.¹ Blackman presents several issues for our review, which we restate as:

1. Whether the trial court abused its discretion when it did not appoint an attorney to represent him in this matter.
2. Whether the trial court erred when it did not transfer the case to Madison County.
3. Whether the trial court erred when it dismissed his complaint with prejudice.

We affirm.

FACTS AND PROCEDURAL HISTORY

Blackman is incarcerated at the Indiana State Reformatory in Pendleton. On December 12, 2010, Blackman filed a "Notice of Loss of Property – Tort Claim" with the Department of Correction. That Notice alleged in relevant part that in October 2010, Maddox took four computer disks from Blackman, ostensibly to mail them to his attorney on his behalf. Blackman listed the aggregate value of those disks, which contained "book and movie manuscripts," at more than twenty million dollars. Appellant's App. at 4. Blackman alleged that Maddox lost the disks and that "[t]he loss was in fact a 'theft'" by Maddox. *Id.* The only other defendant named in the Notice was Davis, but Blackman did not allege any wrongdoing by Davis. Attached to the Notice was an exhibit, Exhibit A, which consisted of an excerpt from the DOC Administrative Procedures Manual of

¹ Each of the named defendants was, at all relevant times, employed by the Department of Correction.

Policies and Procedures regarding “Disposition of Prohibited Property” possessed by an offender.

On January 27, 2011, Blackman filed a Notice of Tort Claim with the Clerk of the Howard Superior Court. In that Notice, Blackman alleged that “[o]n or about July 18, 2010,” he was “deprived of his typewriter [and] four (4) floppy disks[.]” Id. at 6. Blackman stated that Maddox had “retrieved [the items] from Davis in October” and that Maddox had told Davis that she had delivered the disks to the mailroom for mailing to Blackman’s lawyer. Id. Blackman further alleged that Davis discovered that the mailroom personnel had no memory of Maddox asking that any disks be mailed for Blackman. Finally, Blackman stated that he had “repeatedly sent numerous requests to Mr. Richardson, Mr. Johnson, Mr. Kidder, Mr. Finnan via grievance to Mr. Scaife, which ha[ve] not been answered[.]” Id. at 7. Blackman claimed damages in excess of two million dollars.

On April 29, 2011, the defendants, by the Deputy Attorney General, filed a Motion for Screening and Dismissal of Prisoner’s Complaint and a memorandum in support thereof.² And on June 1, the trial court issued an order stating

The Court, being duly advised in the premises, now FINDS that said Motion should be, and hereby is, GRANTED in its entirety. Dismissal is warranted pursuant to IND. CODE § 34-58-1-2 et seq. Plaintiff’s Notice of Tort Claim is not a Complaint and as such fails to state a claim upon which relief may be granted and/or the Complaint seeks monetary relief from defendants who are immune from liability for such relief under the Indiana Tort Claims Act. Therefore all claims against all Defendants [are] DISMISSED WITH PREJUDICE.

Id. at 78. This appeal ensued.³

² Blackman has not included copies of these pleadings in his appendix on appeal in violation of Appellate Rule 50(A)(2)(f).

DISCUSSION AND DECISION

Issue One: Appointment of Counsel

Blackman first contends that the trial court abused its discretion when it “refused” to assign counsel to represent him in this matter. Brief of Appellant at 20. However, contrary to Blackman’s assertion on appeal, on January 28, 2011, the trial court granted Blackman’s request for indigent counsel, albeit without naming an attorney in the order. The record is silent regarding what transpired regarding that order thereafter. Regardless, on March 9, Blackman filed his “Pro-se Initiating Party’s Entry of Appearance.” Appellant’s App. at 30. And there is nothing in the record showing that Blackman ever complained to the trial court that an attorney had not been assigned to him. Instead, the record supports a determination that Blackman merely changed his mind and decided to represent himself. Blackman has not demonstrated an abuse of discretion on this issue.

Issue Two: Venue

Blackman next contends that “[d]ismissal pursuant to Trial Rule 12(B)(3) did not meet the preferred venue requirements due to Howard County Superior Court’s lack of jurisdiction.” Brief of Appellant at 22. In essence, Blackman maintains that the trial court should have transferred the case to Madison County, the preferred venue, instead of dismissing his complaint. But Blackman does not support his argument with relevant citations to the record. For instance, Blackman cites Trial Rule 75(B)(1), which provides in relevant part that when a claim or proceeding is filed which should have been filed in

³ We remind Blackman that a litigant who proceeds pro se is held to the same established rules of procedure that trained counsel is bound to follow. Hill v. State, 773 N.E.2d 336, 346 (Ind. Ct. App. 2002), trans. denied, cert. denied, 540 U.S. 832 (2003). One of the risks that a defendant takes when he decides to proceed pro se is that he will not know how to accomplish all of the things that an attorney would know how to accomplish. Id.

another court, and if proper objection is made, the court shall order the action transferred to the proper court. And while Blackman states that the defendants “made the ‘proper objection,’” he does not direct us to anything in the record to support that contention. Brief of Appellant at 23. Accordingly, the issue is waived. See Ind. Appellate Rule 46(A)(8)(a).

Issue Three: Dismissal

Blackman contends that the trial court erred when it dismissed his complaint. Again, the trial court listed two grounds for the dismissal, namely, that Blackman’s Notice of Tort Claim failed to state a claim upon which relief may be granted and/or that he sought monetary relief from defendants who are immune from liability for such relief under the Indiana Tort Claims Act. We find the second ground dispositive of this appeal.

Indiana Code Section 34-58-1-2 provides in relevant part that 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 is frivolous; is not a claim upon which relief may be granted; or seeks monetary relief from a defendant who is immune from liability for such relief. Id.

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. Donahue, 907 N.E.2d 553, 555 (Ind. Ct. App. 2009), trans. denied. 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.

In Peterson v. Lambert, 885 N.E.2d 719 (Ind. Ct. App. 2008), we addressed an offender's appeal from the dismissal of his complaint under Indiana Code Section 34-58-1-2, and we find that opinion on all fours with the instant case. In Peterson, after the offender's prohibited personal property was confiscated, he filed a complaint against correctional officers "seeking redress for violation of his due process rights and negligence in the care of his property." Id. at 720. The trial court dismissed his complaint, stating

Although the plaintiff has reiterated several times that the actions of the defendants were "willful and wanton" and "outside the scope of their employment," [h]is averments were not supported by any facts. The defendants were clearly acting within the scope of their employment by confiscating an item that has been prohibited by [Miami Correctional Facility]. In the same vein, the plaintiff is unable to sustain an action in negligence against the defendants when they are following the directives of their employers. . . . The court concludes that the prohibition on baby powder is an administrative decision made by the Department of Correction[] and does not rise to the level of a constitutional deprivation. . . . Based upon the foregoing, the court . . . orders this cause dismissed.

Id.

On appeal, we held

Peterson's claims rest on the allegation that in confiscating his baby powder and addressing or failing to address his grievances thereafter, the defendants were acting willfully and wantonly and clearly outside the scope of their employment. Baby powder is on the list of personal property that is prohibited at MCF. Prison administrators are accorded "wide-ranging deference in the adoption and execution of policies and practices that in their judgment are needed to preserve internal order and discipline and to maintain institutional security." Bell v. Wolfish, 441 U.S. 520, 547 (1979). Peterson has alleged no facts that would support his contention that the

defendants were acting willfully, wantonly, or outside the scope of their employment in confiscating a prohibited item, and he has not made a claim challenging MCF's policies prohibiting certain items.¹ Peterson's complaint lacks an arguable basis in law or fact and the trial court properly dismissed both of his claims.

Id. at 721.

Likewise, here, Blackman refers to the missing personal items as "prohibited personal property." See Brief of Appellant at 12. And attached to his Notice of Tort Claim as Exhibit A was an excerpt from the DOC's Administrative Procedures Manual of Policies and Procedures pertaining to "disposition of prohibited property." Appellant's App. at 9. Indiana Code chapter 34-13-3 controls tort claims against governmental entities and employees. A plaintiff may not maintain an action against a governmental employee personally if that employee was acting within the scope of his or her employment. Ind. Code § 34-13-3-5(b). While Blackman baldly alleges that Maddox stole his four disks, he does not allege facts that would support his contention that the defendants acted willfully, wantonly, or outside the scope of their employment. Indeed, in his Notice of Tort Claim, Blackman states that when he asked Maddox about the missing disks, she told him that they were "around here somewhere." Id. at 7. Thus, the facts as alleged indicate that Maddox, a DOC employee, mishandled the disks in the course of her employment and that the disks are merely missing and were not stolen. And Blackman's allegations against the remaining defendants pertain only to their alleged lack of responsiveness to his grievances concerning the missing disks, also conduct within the course and scope of their employment with DOC. Blackman's

complaint lacks an arguable basis in law or fact and the trial court properly dismissed his complaint.⁴

Finally, Blackman contends that the trial court should have dismissed his complaint without prejudice to permit him to amend his complaint. However, on appeal, Blackman does not explain how he would have changed his complaint to avoid dismissal. As such, Blackman has not demonstrated reversible error.

Affirmed.

ROBB, C.J., and VAIDIK, J., concur.

⁴ To the extent Blackman contends that the trial court erred when it did not state, pursuant to Indiana Code Section 34-58-1-3, that there were no remaining claims in the complaint that could proceed, he is mistaken. The trial court's order clearly states that "all claims against all Defendants" are dismissed with prejudice, which satisfies the requirements of the statute. Appellant's App. at 78.