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IN THE
COURT OF APPEALS OF INDIANA

James Stephens,

Appellant-Plaintiff,

v.

The Honorable Peggy Ryan
Hart, Magistrate,

Appellee-Defendant.

October 14, 2022

Court of Appeals Case No.
22A-MI-1301

Appeal from the Putnam Circuit
Court

The Honorable Matthew L.
Headley, Judge

The Honorable Melinda K.
Jackman-Hanlin, Magistrate

Trial Court Cause No.
67C01-2202-MI-59

Riley, Judge.

STATEMENT OF THE CASE

- [1] Appellant-Plaintiff, James Stephens (Stephens), appeals the trial court’s grant of Appellee-Defendant’s, Peggy Hart (Magistrate Hart), Motion to Dismiss Stephens’ Complaint.
- [2] We affirm.

ISSUES

- [3] Stephens presents this court with three issues, which we restate as:
- (1) Whether Magistrate Hart was entitled to absolute judicial immunity on the allegations raised in Stephens’ Complaint;
 - (2) Whether Stephens waived his claim that the trial court magistrate had authority to enter a final appealable order dismissing his Complaint; and
 - (3) Whether Stephens waived his challenge to the constitutionality of the Indiana statute that provides that magistrates have essentially the same powers as judges.

FACTS AND PROCEDURAL HISTORY

- [4] In accordance with our standard of review of a trial court’s grant of a motion to dismiss pursuant to Indiana Trial Rule 12(B)(6), we take the following facts as alleged in Stephens’ Complaint as true. On July 29, 2019, Stephens filed a successive petition for post-conviction relief. Stephens’ post-conviction matter was assigned to Magistrate Hart of the Marion Superior Court. On December 13, 2019, Stephens filed his Motion for Elected Judge to Sit and Decide this Cause, seeking a change of judge from Magistrate Hart to “the elected judge.”¹ (Appellant’s App. Vol. II, p. 11). On December 17, 2019, Magistrate Hart granted Stephens’ motion. Thereafter, Magistrate Hart failed to transfer Stephens’ post-conviction proceeding to the judge. Magistrate Hart subsequently ruled upon several motions filed by

¹ Stephens has included only the first page of this motion in the record on appeal. The first page of Stephens’ motion does not disclose what legal authority he relied upon in filing the motion.

Stephens in his pursuit of post-conviction relief, including denying a motion for default judgment, a motion to certify the denial of his motion for default judgment for interlocutory appeal, a combined motion for default judgment and for summary judgment, and a motion for a telephonic/video hearing. Stephens' petition for post-conviction relief was ultimately denied.²

[5] On February 2, 2022, Stephens filed his Complaint in the Putnam Circuit Court pursuant to 42 U.S.C. §§ 1331 and 1983, suing Magistrate Hart in her personal capacity and alleging, in relevant part, that his rights under the Fourteenth Amendment to due process had been violated when, in contravention of Indiana Code section 33-33-49-32(c), Magistrate Hart had granted his motion for change of judge to the elected judge but had then failed to transfer the proceeding. In his Complaint, Stephens listed the motions Magistrate Hart had subsequently denied and alleged that Magistrate Hart had impermissibly entered final appealable orders. Stephens requested relief of \$300,000, the removal of Magistrate Hart from the judiciary, and the revocation of Magistrate Hart's license to practice law. Stephens' civil suit against Magistrate Hart was assigned to Magistrate Melinda Jackman-Hanlin (Magistrate Jackman-Hanlin).

[6] On May 2, 2022, Magistrate Hart filed her Indiana Trial Rule 12(B)(6) Motion to Dismiss with supporting memorandum, arguing that Stephens' claims were barred because Magistrate Hart was entitled to absolute judicial immunity. On May 9, 2022, Stephens filed his opposition to Magistrate Hart's Motion to Dismiss in which he argued that the transferring of his post-conviction case to the elected judge after granting his motion under Indiana Code section 33-33-49-32(c) for change of judge was a ministerial act for which Magistrate Hart could not claim judicial immunity. On May 10, 2022, the trial court granted Magistrate Hart's Motion to Dismiss "based on the doctrine of judicial immunity" without entering any additional findings of fact or conclusions of law. (Appellant's App. Vol. II, p. 8). On May 12, 2022, Stephens filed an addendum memorandum of law opposing Magistrate Hart's Motion

² Stephens appealed the denial of his petition for post-conviction relief, arguing that Magistrate Hart had no authority to rule on his motion for default judgment after granting his motion for change of judge under I.C. § 33-33-49-32(c), and that, as a result, she had deprived him of a ruling on his motion for default judgment. *See Stephens v. State*, No. 21A-PC-2933, slip op. at 2 (Ind. Ct. App. July 18, 2022). This court affirmed the denial of post-conviction relief, concluding that Stephens had failed to demonstrate any prejudice from the magistrate's failure to transfer his case to the judge. *Id.* Magistrate Hart does not argue that the court's opinion precludes Stephens' instant claims.

to Dismiss.³ The trial court treated Stephens' latest filing as a motion to correct error and, on May 13, 2022, denied Stephens' request to set aside its previous ruling dismissing Stephens' Complaint. On May 19, 2022, Stephens filed his Objection to Magistrate Entering a Final Appealable Order and Request the Presiding Judge to Review and Enter a Final Appealable Order in which he contended in part that, under Article 7, section 1 of the Indiana Constitution, judicial acts may only be performed by judges. Stephens reasserted the arguments he had made in opposition to Magistrate Hart's Motion to Dismiss and further alleged that by allowing Magistrate Jackman-Hanlin to dismiss his Complaint, the elected Putnam Circuit Court judge had allowed Magistrate Jackman-Hanlin "to violate statutory law, Ind. Code § 33-23-5-8, Indiana Constitution Article 7, § 1." (Appellant's App. Vol. II, p. 37). On May 26, 2022, the trial court denied Stephens' Objection, as per an entry in the chronological case summary that "a magistrate has the authority to enter a final appealable order under I.C. [§] 33-23-5-8 and the Order Granting Motion to Dismiss signed by the magistrate in this matter is a final appealable order." (Appellant's App. Vol. II, p. 7).

[7] Stephens now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

I. *Dismissal of Stephens' Complaint*

[8] Stephens appeals following the trial court's grant of Magistrate Hart's Rule 12(B)(6) motion to dismiss for failure to state a claim upon which relief can be granted. A motion under Rule 12(B)(6) merely tests the sufficiency of the plaintiff's claim and not the facts supporting the claim. *Bellwether Props., LLC v. Duke Energy Ind., Inc.*, 87 N.E.3d 462, 466 (Ind. 2017). We conduct our review of such matters de novo. *Residences at Ivy Quad Unit Owners Ass'n v. Ivy Quad Dev., LLC*, 179 N.E.3d 977, 981 (Ind. 2022). As part of our de novo review, we take the facts alleged in the complaint as true, consider all the allegations of the complaint in the light most favorable to the non-moving party, and draw every reasonable inference in the non-moving party's favor. *Id.* Ultimately, our task is to determine whether the non-movant has alleged some factual scenario in which a legally actionable injury has occurred. *Id.* We may affirm a trial court's Rule 12(B)(6) dismissal of a complaint "if it is sustainable on any basis in the record." *Thornton v. State*, 43 N.E.3d 585, 587 (Ind. 2015).

³ Stephens did not include a copy of this filing in his Appendix.

[9] Magistrate Hart argued in her dismissal motion that she was entitled to absolute judicial immunity regarding the acts alleged in Stephens' Complaint. In causes of action alleging federal civil rights violations, it is well-settled in Indiana that "judges are entitled to absolute judicial immunity for all actions taken in the judge's judicial capacity, unless those actions are taken in complete absence of jurisdiction." *Mendenhall v. City of Indianapolis*, 717 N.E.2d 1218, 1226 (Ind. Ct. App. 1999), *trans. denied*; *see also Hupp v. Hill*, 576 N.E.2d 1320, 1324 (Ind. Ct. App. 1991) (holding that absolute judicial immunity applies to claims brought under § 1983). The purpose of granting immunity to judicial officials is to preserve judicial independence in the decision-making process. *Mendenhall*, 717 N.E.2d at 1226. "In determining whether a person is entitled to the benefit of judicial immunity, we use the functional approach established by the United States Supreme Court and look to the nature of the function performed, not the identity of the person who performed it." *Id.* (citing *Forrester v. White*, 484 U.S. 219, 224, 108 S.Ct. 538, 98 L.Ed.2d 555 (1988)). Judges are entitled to absolute immunity only for actions that are judicial or adjudicative and not for those that are administrative in nature. *Forrester*, 484 U.S. at 227-30 (holding that a judge was not entitled to absolute immunity when he demoted and discharged a probation officer, which was an action taken in the judge's administrative capacity). Stephens argues that Magistrate Hart was not entitled to judicial immunity because (1) she lost "all jurisdiction" over his post-conviction case when she granted his motion for change of judge; and (2) the transfer of his post-conviction case to the elected judge was a "purely ministerial duty" and not a judicial act. (Appellant's Br. pp. 12, 13). We address each of these contentions in turn.

[10] Regarding Stephens' claim that Magistrate Hart was divested of all jurisdiction upon granting his motion for change of judge, we find that our decision in *Sims v. Beamer*, 757 N.E.2d 1021 (Ind. Ct. App. 2001), is instructive. *Sims* raised a § 1983 claim against a judge and others who he alleged had discriminated against him based on his race. *Id.* at 1023. *Sims* alleged that he had filed a valid motion for a change of venue which the judge had granted, thereby divesting the judge of jurisdiction to do anything other than transfer venue. *Id.* *Sims* further alleged that the judge subsequently, and while "completely lacking in jurisdiction," had denied *Sims*' motion for a default judgment. *Id.* *Sims*' complaint was dismissed based on judicial immunity. *Id.* at 1024. On appeal, *Sims* argued that the trial court's grant of his motion for change of venue had deprived it of jurisdiction such that the trial court judge was not entitled to immunity. *Id.* In rejecting this claim, this court held that judicial immunity applied because the grant of a change in venue did not deprive the trial court of subject matter

jurisdiction, and thus, the trial court, while perhaps acting in excess of its authority, had not acted in the complete absence of jurisdiction. *Id.* at 1024-25. Indeed, the *Sims* court recognized that our supreme court has held that “in courts of general jurisdiction, an action never lies against the judge because the judge has jurisdiction of all causes.” *Id.* at 1025 (citing *Cato v. Mayes*, 388 N.E.2d 530, 532 (Ind. 1979)).

[11] Here, Magistrate Hart presided over Stephens’ post-conviction relief proceedings. Post-conviction relief proceedings are civil in nature. *Weisheit v. State*, 109 N.E.3d 978, 983 (Ind. 2018). After Magistrate Hart granted Stephens’ motion for a change of judge, she issued her rulings as a magistrate of the Marion Superior Court, which is a court of general jurisdiction. See I.C. § 33-29-1-1.5(1) (“All standard superior courts have . . . original and concurrent jurisdiction in all civil cases and in all criminal cases[.]”). Therefore, we cannot conclude that Magistrate Hart was stripped of all jurisdiction and claim to immunity after granting Stephens’ motion for change of judge. In arguing otherwise, Stephens draws our attention to *Harper v. Boyce*, 809 N.E.2d 344, 346 (Ind. Ct. App. 2004), wherein this court held in resolving a claim relating to Indiana Trial Rule 76 that “[a]s a general proposition, when a proper and timely motion for change of judge is filed, the trial court is divested of jurisdiction to take further action except to grant the change of judge.” However, even if the same were true of a change of judge motion made under Indiana Code section 33-33-49-32(c), in light of *Sims*, the grant of the motion for change of judge did not overcome the trial court’s subject matter jurisdiction to defeat Magistrate Hart’s claim to judicial immunity.

[12] We find Stephens’ argument that Magistrate Hart’s duty to transfer his post-conviction proceedings to the judge was a ministerial act not entitled to immunity to be equally unpersuasive. As Magistrate Hart correctly argues, in his Complaint, Stephens alleged no damages flowing from Magistrate Hart’s failure to transfer Stephens’ post-conviction case after granting his motion for change of judge; rather, his alleged injuries were the result of Magistrate Hart’s denial of his subsequent motions, acts which Stephens does not even attempt to characterize as being non-judicial. In addition, Stephens’ argument on this point is premised on Indiana Code section 33-33-49-32(c), which provides that a party to a proceeding in a superior court may request that the elected judge, rather than a magistrate, preside. The request must be made in writing within ten days after the pleadings are closed in a civil case, and the statute provides that “[u]pon a timely request made under this subsection by either party, the magistrate to whom the proceeding has been assigned *shall* transfer the proceeding back to the superior court judge.” I.C. § 33-33-49-32(c)(1)(A) (emphasis added). Stephens

asserts that, because his motion was timely-filed, Magistrate Hart had no discretion in ruling on the motion, and that, in the absence of the exercise of her discretion, her duty to transfer the case was not a judicial act entitled to immunity.

[13] However, as we have previously noted, Magistrate Hart presided over Stephens' post-conviction proceedings, which are governed by Indiana's Rules of Post-Conviction Remedies. The Post-Conviction Rules provide in relevant part that

[e]xcept as otherwise provided in this Rule, [the post-conviction remedy] comprehends and takes the place of all other common law, statutory, or other remedies heretofore available for challenging the validity of the conviction or sentence and it shall be used exclusively in place of them.

Ind. Post-Conviction Rule 1(1)(b). The Post-Conviction Rules provide that a petitioner may request a change of judge by filing an affidavit that the judge has a personal bias or prejudice against the petitioner. P-C.R. 1(4)(b). This filing must be made within ten days of the filing of a petition for post-conviction relief. *Id.* Stephens does not provide us with any authority holding that I.C. § 33-33-49-32(c)(1)(A) overrides the Post-Conviction Rule pertaining to a change of judge, and we are aware of none. As alleged in his Complaint, Stephens filed his petition for post-conviction relief on July 29, 2019, but he did not file his motion for change of judge until December 13, 2019, which was not within the time frame permitted under the Post-Conviction Rules. We need not address whether Magistrate Hart's act of failing to transfer the case was a non-judicial act, as the entire legal underpinning of Stephens' argument on this point is misplaced. Accordingly, we conclude that the allegations of Stephens' Complaint showed that Magistrate Hart was entitled to judicial immunity and that the trial court's dismissal of Stephens' Complaint was proper.

II. *Challenge to Magistrate's Authority*

[14] Stephens challenges the authority of Magistrate Jackman-Hanlin, the magistrate who presided over his civil Complaint proceedings, to enter a final appealable order dismissing his Complaint, a ruling which he contends may only be made by a judge. Magistrate Hart counters that Stephens waived this argument by failing to timely raise it and that a magistrate has statutory authority to enter such orders. We agree with Magistrate Hart.

- [15] Our supreme court has held that the authority of an officer appointed to try a case does not affect the jurisdiction of the court, and, therefore, the failure of a party to object at trial to the authority of a court officer to enter a final appealable order waives the issue for appeal. *Floyd v. State*, 650 N.E.2d 28, 32 (Ind. 1994); *see also Tapia v. State*, 753 N.E.2d 581, 588 (Ind. 2001) (citing *Floyd* and concluding that Tapia waived his challenge to the magistrate’s authority to issue rulings in his post-conviction proceedings). Any challenge to a presiding officer’s authority must be raised “at the first instance the irregularity occurs, or at least within such time as the tribunal is able to remedy the defect.” *City of Indianapolis v. Hicks*, 932 N.E.2d 227, 231 (Ind. Ct. App. 2010), *trans. denied*.
- [16] Here, Stephens waited until after Magistrate Jackman-Hanlin had ruled on Magistrate Hart’s Motion to Dismiss and after Magistrate Jackman-Hanlin had denied Stephens’ motion to correct error to challenge the authority of the magistrate to enter a final appealable order. His objection to the magistrate’s authority was not timely, and we conclude that he waived this claim. Stephens’ citation to *Campbell v. George*, 77 N.E.3d 816, 818 (Ind. Ct. App. 2017), does not persuade us otherwise. Campbell did not challenge a small claims court magistrate’s authority to issue a final appealable order until after the magistrate had denied his motion to correct error and to set aside the adverse judgment, but another panel of this court held that he had not waived his claim because he had objected while jurisdiction still lay with the superior court, before the completed clerk’s record was noted in the chronological case summary. *Id.* at 817-18. While the *Campbell* court concluded that Campbell had preserved his claim under those circumstances, in light of our supreme court’s holding in *Floyd*, which the *Campbell* court cited, we decline to find that Stephens has preserved his claim with a timely objection.
- [17] His waiver of the issue notwithstanding, the trial court magistrate had the authority to issue a final appealable order dismissing Stephens’ civil Complaint. As of July 1, 2020, our General Assembly amended the magistrate statute to provide that “a magistrate has the same powers as a judge” except the power of judicial mandate. I.C. §§ 33-23-5-8; 33-23-5-8.5. Thus, any claim that the magistrate lacked authority to enter a final dismissal order in this case would have been without merit even if it had been properly preserved.

III. Constitutional Challenge to Indiana Code section 33-23-5-8.5

- [18] Stephens contends that I.C. § 33-23-5-8.5, which provides that a magistrate has powers that are essentially co-extensive to that of a judge, is in contravention to Article 7, section 1 of the Indiana Constitution. However, our review of the pleadings filed in the trial court revealed

that, while Stephens mentioned Article 7, section 1 in his pleadings, he did not raise this issue below. Issues raised for the first time on appeal are waived, even those of constitutional dimensions. *See, e.g., B.Z. v. State*, 943 N.E.2d 384, 394 (Ind. Ct. App. 2011) (declining to address B.Z.’s state privileges and immunities clause challenge to the expungement statute, as it was raised for the first time on appeal). Although an appellate court may consider the constitutionality of a statute even though the issue has been waived, the court acts within its discretion when it declines to do so. *Layman v. State*, 42 N.E.3d 972, 976 (Ind. 2015). We exercise our discretion and decline to address Stephens’ unpreserved constitutional claim.

CONCLUSION

- [19] Based on the foregoing, we conclude that Stephens’ claims against Magistrate Hart were subject to dismissal based on absolute judicial immunity, Stephens’ waived argument that the trial court magistrate lacked authority to dismiss his Complaint is not well-taken, and he has waived any constitutional challenge to the statute granting magistrates the authority to enter final appealable orders.
- [20] Affirmed.
- [21] Bailey, J. and Vaidik, J.concur