MEMORANDUM DECISION

APPELLANT *PRO SE*

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IN THE COURT OF APPEALS OF INDIANA

Kevin Martin,
Appellant/Plaintiff/Crossclaim Defendant,

v.

T. Wellington et al.,
Appellees/Defendants/Crossclaim Plaintiffs.

October 18, 2023

Court of Appeals Case No. 23A-CT-830

Appeal from the LaPorte Superior Court

The Honorable Michael A. Fish, Special Judge

Trial Court Cause No. 46D02-2007-CT-1144

Memorandum Decision by Judge Bradford
Judges Vaidik and Brown concur.

Bradford, Judge.

Case Summary

[1] Kevin Martin initiated the underlying lawsuit against T. Wellington and Sergeant ("Sgt.") Chilling[1] after he claims he was subjected to cruel and unusual punishment by Sgt. Chilling on March 3, 2020. The trial court dismissed Martin's lawsuit on March 15, 2023. On appeal, Martin contends that the trial court erred in dismissing his lawsuit and abused its discretion in denying his motion for a default judgment. Wellington and Sgt. Chilling (collectively, "Appellees") concede that Martin sufficiently pled a claim against Sgt. Chilling but argue that the trial court properly dismissed Martin's claim against Wellington. Appellees also contend on cross-appeal that the trial court erred in permitting Martin to proceed *in forma pauperis*. Because we agree with Appellees, we affirm in part, reverse in part, and remand to the trial court for further proceedings.

Facts and Procedural History

[2] Martin is currently incarcerated in the Department of Correction ("DOC") after having been found guilty of murder, Class A misdemeanor battery by bodily waste, and four charges of Level 6 felony battery. On July 15, 2020, Martin

[1] The record does not provide any identifying information for Sgt. Chilling beyond referring to Sgt. Chilling.

filed a complaint in which he alleged that Sgt. Chilling had violated his Eighth Amendment rights by using excessive force against him and then failing to obtain necessary medical attention for him. Specifically, Martin alleged that on March 3, 2020, Sgt. Chilling had "slap[ped him] to the ground" for refusing an order and had used excessive force in restraining him with handcuffs and leg shackles. Appellant's App. Vol. II p. 14. Martin also named T. Wellington as a defendant but made no allegations of wrongdoing against Wellington, merely stating that Wellington had emailed a request form and grievance to a grievance specialist, giving prison officials notice of his claims against Sgt. Chilling.

[3] As the case proceeded, Martin filed various petitions and motions, including a petition to proceed *in forma pauperis* and a motion for a default judgment. For their part, Appellees moved to dismiss. On February 13, 2023, the trial court granted Martin's petition to proceed *in forma pauperis*, denied Martin's motion for a default judgment, and denied Appellees' motion to dismiss. On March 13, 2023, Appellees moved to screen Martin's complaint, arguing that it was frivolous. Two days later, the trial court granted Appellees' motion to screen and dismissed the case "in its entirety." Appellant's App. Vol. II p. 11.

Discussion and Decision

[4] Martin contends that the trial court erred in dismissing his case and abused its discretion in denying his motion for a default judgment. Appellees concede that the trial court "may have improperly screened Martin's claim against [Sgt.] Chilling because Martin's claim could have a basis in the Eighth Amendment."

Appellees' Br. p. 9. Appellees argue, however, that "the trial court properly dismissed Martin's claim against [Wellington], whose only alleged involvement in the matter was forwarding grievance forms" and the trial court did not abuse its discretion in denying Martin's motion for a default judgment. Appellees' Br. p. 9. Appellees also contend on cross-appeal that the trial court erroneously granted Martin pauper status.

I. Whether the Trial Court Erred in Dismissing Martin's Case

[5] "Every resource that courts devote to an abusive litigant is a resource denied to other legitimate cases with good-faith litigants." *Zavodnik v. Harper*, 17 N.E.3d 259, 264 (Ind. 2014). "There is no right to engage in abusive litigation, and the state has a legitimate interest in the preservation of valuable judicial and administrative resources." *Id.* In an effort to limit abusive litigation, the Indiana General Assembly has enacted procedures to prevent abusive civil litigation by criminal offenders. *See* Ind. Code § 34-58-1-2 ("the Screening Statute"). The Screening Statute provides that

> (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.
(c) A court shall dismiss a complaint or petition if:
(1) the offender who filed the complaint or petition received leave to prosecute the action as an indigent person; and
(2) the court determines that the offender misrepresented the offender's claim not to have sufficient funds to prosecute the action.

Ind. Code § 34-58-1-2. "If a court determines that a claim may not proceed under [the Screening Statute], 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.

[6] We review an order dismissing a lawsuit pursuant to the Screening Statute de novo. *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 as well as the fact that a judicial record dismissing a case exists." *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.*

[7] Indiana Trial Rule 8(A), Indiana's notice pleading provision, requires only "a short and plain statement of the claim showing that the pleader is entitled to relief." *Trail v. Boys and Girls Clubs of Northwest Ind.*, 845 N.E.2d 130, 135 (Ind. 2006). "Under Indiana's 'notice' pleading system, a pleading need not adopt a specific legal theory of recovery to be adhered to throughout the case." *Binninger v. Hendricks County Bd. of Zoning Comm'rs*, 668

> N.E.2d 269, 272 (Ind. Ct. App. 1996)[, *trans. denied*]. Notice pleading merely requires pleading the operative facts so as to place the defendant on notice as to the evidence to be presented at trial. *Noblesville Redev. Comm'n v. Noblesville Associates Ltd. P'ship*, 674 N.E.2d 558, 563 (Ind. 1996). Therefore, under notice pleading the issue of whether a complaint sufficiently pleads a certain claim turns on whether the opposing party has been sufficiently notified concerning the claim so as to be able to prepare to meet it. *Id.* at 563–564.

City of Clinton v. Goldner, 885 N.E.2d 67, 74 (Ind. Ct. App. 2008).

[8] > The Eighth Amendment, which applies to the states through the Fourteenth Amendment, prohibits the infliction of cruel and unusual punishment and manifests an intention to limit the power of those entrusted with the government's criminal-law function. *Whitley v. Albers*, [475 U.S. 312, 318] (1986). However, not every governmental action affecting the interests or well-being of a prisoner is subject to Eighth Amendment scrutiny. *Id.* "After incarceration, only the 'unnecessary and wanton infliction of pain' ... constitutes cruel and unusual punishment forbidden by the Eighth Amendment." *Ingraham v. Wright*, [430 U.S. 651, 670] (1977) (quoting *Estelle v. Gamble*, [429 U.S. 97, 103] (1976)) (citations omitted).

Smith v. Ind. Dep't of Corr., 871 N.E.2d 975, 987 (Ind. Ct. App. 2007), *trans. denied*.

[9] With regard to Sgt. Chilling, Martin claimed that Sgt. Chilling had slapped him "to the ground" for an alleged failure to follow an order, used excessive force in restraining him with handcuffs and leg shackles, and denied him medical attention. Appellant's App. Vol. II p. 14. Appellees concede that Martin has

satisfied Trial Rule 8's pleading requirements, as his allegations were sufficient to notify Sgt. Chilling of the substance of his claim.

[10] However, to the extent that Martin brought a claim against Wellington, the trial court properly found that dismissal was warranted as Martin had failed to allege any wrongdoing by Wellington. According to Martin's complaint, Wellington's only involvement was to email a request form and grievance to a grievance specialist, giving prison officials notice of Martin's grievance. Martin does not allege that Wellington violated any laws or his constitutional rights in this regard. Thus, to the extent that Martin asserted a claim against Wellington, the trial court properly dismissed said claim.

II. Whether the Trial Court Abused its Discretion in Denying Martin's Motion for a Default Judgment

[11] "Our standard of review for a trial court's decision regarding a default judgment is well-settled." *Whetstine v. Menard, Inc.*, 161 N.E.3d 1274, 1279 (Ind. Ct. App. 2020), *trans. denied*.

> The decision to grant or deny a motion for default judgment is within the trial court's discretion. *R.R. Donnelley & Sons Co. v. N. Tex. Steel Co., Inc.*, 752 N.E.2d 112, 126 (Ind. Ct. App. 2001), *reh'g denied*, *trans. denied*. We reverse only if the trial court's decision is clearly against the logic and effect of the facts and circumstances. *Id.* The trial court's discretion in granting or denying a motion for default judgment is considerable. *Green v. Karol*, 168 Ind. App. 467, 473, 344 N.E.2d 106, 110 (Ind. Ct. App. 1976). "The trial court should use its discretion to do what is 'just' in light of the unique facts of each case." *Allstate Ins. Co. v. Watson*, 747 N.E.2d 545, 547 (Ind. 2001) (quoting *In re Ransom*,

> 531 N.E.2d 1171, 1172 (Ind. 1988)).
>
> The trial court's discretion should be exercised in light of the disfavor in which default judgments are held. *Watson*, 747 N.E.2d at 547. "[A] default judgment is not generally favored, and any doubt of its propriety must be resolved in favor of the defaulted party." *Id.* (quoting *Green*, 168 Ind. App. at 474, 344 N.E.2d at 111). It is "an extreme remedy and is available only where that party fails to defend or prosecute a suit. It is not a trap to be set by counsel to catch unsuspecting litigants." *Watson*, 747 N.E.2d at 547.

Progressive Ins. Co. v. Harger, 777 N.E.2d 91, 94 (Ind. Ct. App. 2002).

[12] In denying Martin's motion for a default judgment, the trial court noted that Appellees had filed a responsive pleading. Martin argues on appeal that Appellees had not done so in a timely fashion. Indiana Trial Rule 3 provides that

> [a] civil action is commenced by filing with the court a complaint or such equivalent pleading or document as may be specified by statute, *by payment of the prescribed filing fee or filing an order waiving the filing fee*, and, where service of process is required, by furnishing to the clerk as many copies of the complaint and summons as are necessary.

(Emphasis added). Martin did not pay the prescribed filing fee prior to the trial court's February 16, 2023 order granting him permission to proceed *in forma pauperis*. As such, his civil action did not commence until February 16, 2023, by which time Appellees had filed a responsive pleading. We cannot say that

the trial court abused its discretion in denying Martin's motion for a default judgment.

III. Whether the Trial Court Erred in Granting Martin Pauper Status

[13] Again, the Screening Statute

> authorizes a court to review an offender's claim and bar it from going forward if it is frivolous (that is, made primarily to harass or lacking an arguable basis in law or fact), is not a claim on which relief may be granted, or seeks monetary damages from a defendant who is immune from such relief.

Zavodnik, 17 N.E.3d at 264. In addition to the Screening Statute, the Indiana General Assembly has also adopted a three-strikes rule, which provides that

> [i]f an offender has filed at least three (3) civil actions in which a state court has dismissed the action or a claim under [Indiana Code section] 34-58-1-2, the offender may not file a new complaint or petition as an indigent person under this chapter, unless a court determines the offender is in immediate danger of serious bodily injury.

Ind. Code § 34-10-1-3.

[14] We have previously noted that Martin has had at least three civil actions dismissed under Indiana Code section 34-58-1-2. *See Martin v. Hunt*, 130 N.E.3d 135, 138 n.2 (Ind. Ct. App. 2019). Thus, pursuant to Indiana Code section 34-10-1-3, Martin could not file a new lawsuit as an indigent person or proceed *in forma pauperis* unless the trial court determined that he "was in

immediate danger of serious bodily injury." Ind. Code § 34-10-1-3. In requesting permission to proceed *in forma pauperis*, Martin did not allege, and the trial court did not find, that he was in immediate danger of serious bodily injury. As such, the trial court erred in allowing Martin to proceed *in forma pauperis*. On remand, Martin may not proceed *in forma pauperis* but rather must pay any required filing fee before his lawsuit may proceed. *See generally Smith v. Wrigley*, 925 N.E.2d 747, 751 (Ind. Ct. App. 2010) (finding that requirement that certain individuals pay a filing fee before being permitted to bring a lawsuit set forth in Indiana Code section 34-10-1-3 was constitutional), *trans. denied*.

[15] The judgment of the trial court is affirmed in part, reversed in part, and remanded for further proceedings.

Vaidik, J., and Brown, J., concur.