MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Aaron Abadi,
Appellant

v.

Indiana Civil Rights Commission, et al.,
Appellee.

December 20, 2023

Court of Appeals Case No. 23A-EX-1387

Appeal from the Office of the Administrative Law Proceedings

The Honorable LaKesha Triggs, Administrative Law Judge

Lower Court Cause No. ICRC-2203-404

Underlying Agency Action No. Paha21090390

Memorandum Decision by Judge Pyle

Judges Tavitas and Foley concur.

Pyle, Judge.

Statement of the Case

[1] Aaron Abadi ("Abadi"), pro se, appeals the Indiana Civil Rights Commission's ("the Commission") final order affirming summary judgment in favor of Apple, Inc. ("Apple"). Concluding that the Commission did not err when it granted summary judgment in favor of Apple, we affirm.

[2] We affirm.

Issue

Whether the Commission erred when it granted summary judgment in favor of Apple.

Facts[1]

[3] In response to the COVID-19 Pandemic, Apple closed its stores to the public in 2020. However, in May 2021, Apple reopened its stores and issued a policy requiring that all employees and visitors wear face coverings while shopping at its stores. Specifically, Apple's policy stated that "[f]ace coverings will be required for all of our teams and customers, and we will provide them to customers who don't bring their own." (Appellee's App. Vol. 2 at 71). Apple directed customers who did not want to wear a face covering or mask in its stores to alternatives such as shopping online with curb-side pickup, chatting with a specialist, and visiting nearby retailers without mask policies in order to interact with Apple products.

[4] In August 2021, Abadi, who was driving on the highway from Colorado back to his home in New York, telephoned the Apple store in Indianapolis. Abadi recorded his two phone calls with Apple. During the recorded phone call, Abadi informed the Apple store employee that he had a sensory processing disorder that gave him extreme sensitivity around his head. Abadi further explained that this disorder prevented him from wearing a mask. Abadi asked the Apple store employee if he could enter their store without a mask, and the Apple store employee denied him access to the store pursuant to Apple's policy.

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[1] Abadi failed to cite to the record in his statement of facts as required by Indiana Appellate Rule 46(A)(6). Abadi also failed to cite to relevant authority in the majority of his argument section as required by Indiana Appellate Rule 46(A)(8). Further, Abadi has failed to provide us with a complete appendix as required by Indiana Appellate Rule 50(A)(2)(f). Thus, our opinion will rely on and cite to the Appellee's appendix.

The Apple store employees referred Abadi to the alternative methods to access Apple products. When Abadi asked the employee to bring Apple products outside of the store for him to see them, the employee refused. Abadi's only interaction with the Apple store in Indianapolis was during these two phone calls.

[5] In September 2021, Abadi filed a claim with the Commission alleging that Apple had violated Title III of the Americans with Disabilities Act ("the ADA") and the Indiana Civil Rights Law ("the ICRL") when it had refused to allow Abadi to enter its store without a face mask or covering.[2] In March 2022, the Commission issued a probable cause finding, triggering an administrative hearing of Abadi's claims by an administrative law judge ("ALJ") pursuant to INDIANA CODE § 22-9-1-6. In December 2022, the Commission's counsels moved to withdraw their appearance from the case. In their motion, the Commission's counsels stated that they had "determined [that] there is no longer a public interest in pursuing this matter[.]" (Appellee's App. Vol. 2 at 36). The ALJ granted the Commission's counsels motion to withdraw, and Abadi continued to pursue his claim pro se.

[6] In a February 2023 deposition, Abadi stated that he had been driving on the highway when he had telephoned the Apple store and that he had never visited

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[2] Title III of the ADA protects individuals from discrimination on the basis of disability "in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation[.]" 42 U.S.C. § 12182(a). Under Title III of the ADA, private plaintiffs can only bring actions for injunctive relief. *See* U.S.C. § 12188(a)(1).

the store. Additionally, when Apple's counsel asked Abadi if he had ever been to the Apple store in Indianapolis in the past, Abadi responded, "I don't think so." (Appellee's App. Vol. 2 at 96). The following exchange occurred regarding Abadi's future plans to visit the Apple store in Indianapolis:

> Q. Do you have any . . . specific plan to return to . . . that specific Apple store as of today?
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> A. I travel a lot. A specific plan, I don't know about specifically Indiana, but I travel a lot and I go to the west, and I pass that area a lot. So if I need an Apple store and I'm in that region, the answer is I don't know, and if I don't, the answer is no.
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> Q. So I'm hearing you say you don't have any specific plan to return to that Apple location at any point; is that right?
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> A. I can't change my answer. I travel a lot. I pass through that area a lot. Today, do I have a plan to go in the next few weeks? No. But if I do go and I pass there and I need something from Apple, then I would go into the Apple store.

(Appellee's App. Vol. 2 at 96-97). When Apple's counsel asked Abadi if he had ever been to the Keystone Fashion Mall, where the Apple store is located, Abadi replied, "not in the last 10 years." (Appellee's App. Vol. 2 at 111).

[7] In April 2023, Apple moved for summary judgment on Abadi's claim. Specifically, Apple argued that: (1) Abadi's claim was moot because the Apple store no longer has a policy requiring customers to wear a mask; (2) Abadi did not have standing to pursue his claim; and (3) Apple did not violate the ADA and the ICRL. Apple included Abadi's February 2023 deposition in its

designated evidence. In May 2023, the ALJ recommended granting Apple's summary judgment motion, concluding that Abadi's claim was moot, Abadi did not have standing to pursue his claim, and that Apple had not violated the ADA or the ICRL. The ALJ's recommended order stated, in relevant part, as follows:

> 11. The party invoking a court's jurisdiction bears the burden to prove standing. *Solarize Indiana, Inc. v. S. Indiana Gas & Elec. Co.*, 182 N.E.3d 212, 215 (Ind. 2022).
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> 12. Indiana courts follow federal law principles when determining whether a litigant has standing. *City of Gary v. Nicholson*, 190 N.E.3d 349, 351 (Ind. 2022) (citing and applying *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992)).
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> 13. To establish standing under the Americans with Disabilities Act ("ADA"), a claimant must demonstrate "an intent to return to the building or facility in the near future." *Ass'n. for Disabled Am. v. Claypool Holdings,* [*LLC*], No. IP00-0344-C-T/G, 2001 WL 1112109, at *20 (S.D. Ind. Aug. 6, 2001[)]; *see Deck v. Am. Hawaii Cruises*, *Inc.*, 121 F.Supp. 2d 1292, 1299 (D.Haw. 2000) (concluding plaintiff lacked standing because she did not allege any plans to use the defendant's ship in the future and her statement in her declaration that she would "look into" another cruise was too speculative and conditional).
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> 14. In this case, complainant is a New York resident and has no plans to return to Indiana, or to the Apple store in the Fashion Mall at Keystone. Therefore complainant lacks standing to pursue his claims under the ADA and ICRL.

(Appellee's App. Vol. 2 at 14-15). The Commission issued its final order affirming the ALJ's findings and recommendations.

[8] Abadi now appeals.

Decision

[9] At the outset, we note that Abadi has chosen to proceed pro se. It is well settled that pro se litigants are held to the same legal standards as licensed attorneys. *Evans v. State*, 809 N.E.2d 338, 344 (Ind. Ct. App. 2004), *trans. denied*. Thus, pro se litigants are bound to follow the established rules of procedure and must be prepared to accept the consequences of their failure to do so. *Id.* "We will not become a party's advocate, nor will we address arguments that are inappropriate, improperly expressed, or too poorly developed to be understood." *Barrett v. State*, 837 N.E.2d 1022, 1030 (Ind. Ct. App. 2005), *trans. denied*.

[10] Abadi argues that the Commission erred when it granted summary judgment in favor of Apple. Summary judgment may be granted in an administrative proceeding. IND. CODE § 4-21.5-3-23(a). Summary judgment is appropriate only where the moving party has shown that there is no genuine issue of material fact and that it is entitled to judgment as a matter of law. *Hughley v. State*, 15 N.E.3d 1000, 1003 (Ind. 2014). A genuine issue of material fact exists where facts concerning an issue which would dispose of litigation are in dispute or where the undisputed facts are capable of supporting conflicting inferences on such an issue. *Indiana Dep't of Environmental Mgmt. v. Schnippel Constr., Inc.*,

778 N.E.2d 407, 412 (Ind. Ct. App. 2002) (cleaned up), *trans. denied*. "The moving party bears the initial burden of making a prima facie showing that there are no genuine issues of material fact and that it is entitled to judgment as a matter of law." *Chmiel v. US Bank Nat'l Ass'n*, 109 N.E.3d 398, 407 (Ind. Ct. App. 2018) (citing *Gill v. Evansville Sheet Metal Works, Inc.*, 970 N.E.2d 633, 637 (Ind. 2012)). "If the moving party meets this burden, the nonmoving party must designate evidence demonstrating a genuine issue of material fact." *Id.*

[11] Abadi challenges the Commission's finding that: (1) Abadi's claim of discrimination was moot; (2) Abadi did not have standing to pursue his claim; and (3) Apple did not violate the ADA and ICRL by denying Abadi access to the Apple store without a mask. We address the threshold issue of standing.

[12] Abadi argues that the Commission erred in determining that he did not have standing to pursue his claim. Whether a party has standing is a pure question of law that we review de novo. *Hulse v. Indiana State Fair Bd.*, 94 N.E.3d 726, 730 (Ind. Ct. App. 2018). Indiana courts follow federal principles when determining whether a litigant has standing. *City of Gary v. Nicholson*, 190 N.E.3d 349, 351 (Ind. 2022) (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992)). Article III of the United States Constitution provides that "[t]he judicial power shall extend to all [c]ases . . . [and] [c]ontroversies[.]" U.S. Const., Art. III, sec. 2. Standing to bring and maintain a suit is an essential component of this case-or-controversy requirement. *Lujan*, 504 U.S. at 560. A plaintiff must meet three key requirements to establish standing: the plaintiff must show (1) injury in fact, which must be concrete and particularized, and

actual and imminent, not conjectural or hypothetical; (2) a causal connection between the injury and the defendant's conduct; and (3) redressability. *Id.* at 560-61 (cleaned up). To establish injury in fact when seeking prospective injunctive relief, a plaintiff must allege a real and immediate threat of future violations of their rights. *Scherr v. Marriott Intern, Inc.*, 703 F.3d 1069, 1074 (7th Cir. 2013) (citing *City of Los Angeles v. Lyons*, 461 U.S. 95, 102 (1983)). "Past exposure to illegal conduct does not in itself show a present case or controversy regarding injunctive relief . . . if unaccompanied by any continuing, present adverse effects." *Lujan*, 504 U.S. at 564 (internal quotation marks omitted). The 7th Circuit has explained that:

> plaintiffs' professions of an intent to return to the places they had visited before -- where they will presumably, this time, suffer the same injury they suffered before -- is simply not enough. Such some day intentions -- without any description of concrete plans, or indeed even any specifications of when the some day will be -- do not support a finding of the actual or imminent injury that our cases require.

Scherr, 703 F.3d at 1074 (cleaned up).

[13] Here, our review of Abadi's deposition reveals that Abadi, a resident of New York, stated that he had not been at the Apple store or the Fashion Mall at Keystone in over ten years. Further, Abadi stated that he had no concrete plans to visit the Apple store or Indiana in the future. Specifically, Abadi said "I don't know" when he was asked about any future plans to visit the Apple store in Indianapolis. (Appellee's App. at 97). Abadi's contention that he *would* go

to the Apple store *if* he was driving through Indiana in the future does not satisfy the actual or imminent standing requirement. *Scherr*, 703 F.3d at 1074. Further, due to the Apple store no longer requiring face masks or coverings to enter the store, Abadi cannot show "any continuing, present adverse effects" necessary to demonstrate standing. *Lujan*, 504 U.S. at 564 (internal quotation marks omitted). Therefore, we find no error in the Commission's finding that Abadi did not have standing to pursue his claim. Accordingly, we affirm the Commission's order granting summary judgment to Apple.

[14] Affirmed.[3]

Tavitas, J., and Foley, J., concur.

[3] Because we hold that the Commission did not err when it found that Abadi did not have standing to pursue his claim against Apple, we need not review Abadi's challenges to the Commission's findings on mootness or Title III of the ADA.