

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

James Edgar Lundeen, Sr.,
Appellant-Plaintiff,

v.

Theodore E. Rokita, John Strobel,
M.D., and Lindsay Hyer,
Appellees-Defendants.

October 31, 2023

Court of Appeals Case No.
23A-MI-1647

Appeal from the Marion Superior
Court

The Honorable Kurt M. Eisgruber,
Judge

Trial Court Cause No.
49D06-2207-MI-23426

Memorandum Decision by Judge Tavitas
Judges Pyle and Foley concur.

Tavitas, Judge.

Case Summary

- [1] James Edgar Lundeen, Sr., appeals the trial court’s denial of his motion for relief from judgment in his action against Theodore Rokita, Attorney General of Indiana; John Strobel, M.D., President of the Indiana Medical Licensing Board; and Lindsay Hyer¹, Executive Director of the Indiana Professional Licensing Agency (“Defendants”). Defendants argue that Lundeen’s appeal should be dismissed as untimely. We agree with Defendants, and accordingly, we dismiss.

Issue

- [2] Lundeen raises multiple issues, but we address one dispositive issue, which we restate as whether Lundeen’s appeal should be dismissed as untimely.

Facts

- [3] In 2012, the Indiana Medical Licensing Board suspended Lundeen’s medical license after the State of Ohio permanently revoked Lundeen’s license to practice medicine and surgery in Ohio. On July 13, 2022, Lundeen filed a complaint against Defendants, which he later amended. Lundeen argued that the Indiana Medical Licensing Board did not have subject matter jurisdiction to suspend his medical license; the evidence was insufficient to suspend his license; and Indiana Code Section 25-1-9-4, which authorizes disciplinary

¹ Lundeen’s complaint was originally filed against Deborah Frye, the former Executive Director.

sanctions against health practitioners who engage in unprofessional conduct, is facially unconstitutional.

[4] In February 2023, Defendants filed a motion to dismiss. On March 23, 2023, the trial court granted Defendants’ motion to dismiss. The trial court found: (1) all of Lundeen’s claims should have been raised in a judicial review action; (2) the Medical Licensing Board had subject matter jurisdiction to suspend Lundeen’s medical license; and (3) Indiana Code Section 25-1-9-4(a)(7)² is not unconstitutional. The trial court then dismissed Lundeen’s amended complaint “with prejudice.” Appellant’s App. Vol. II p. 11.

[5] Lundeen filed a second amended complaint and later a motion for default judgment. On April 25, 2023, the trial court denied Lundeen’s motion for default judgment and noted: “This Court granted Defendants’ Motion to Dismiss The dismissal was granted with prejudice. This case is dismissed and closed. Pursuant to the Indiana Trial Rules, Plaintiff had 30 days from the date of the Order to file a Notice of Appeal. That window has also passed.” *Id.* at 13.

[6] Lundeen filed a motion for relief from judgment pursuant to Indiana Trial Rule 60(B) on April 26, 2023. Lundeen argued that the March 23, 2023 order of dismissal should have been entered without prejudice and that the trial court

² Indiana Code Section 25-1-9-4(a)(7) authorizes the Indiana Medical Licensing Board to discipline a health practitioner who “has had disciplinary action taken against the practitioner or the practitioner’s license to practice in any state or jurisdiction on grounds similar to those under this chapter[.]”

should have granted Lundeen’s motion for default judgment. The trial court denied the motion on May 4, 2023, noting: “This matter is closed with prejudice.” *Id.* at 23.

- [7] Lundeen then filed a second motion for relief from judgment pursuant to Indiana Trial Rule 60(B)(6) on June 14, 2023. Lundeen again argued that the March 23, 2023 order of dismissal should have been entered without prejudice and that the trial court should have granted Lundeen’s motion for default judgment. Lundeen also contended that the trial court failed to follow the trial rules, which violated his due process rights, and that a judgment is void if entered without due process. On June 28, 2023, the trial court denied the second motion and found: “[T]his Court has dismissed this case. Your remedy, if available, lies not with this Court, but with the Court of Appeals.” *Id.* at 2. Lundeen filed his notice of appeal on July 18, 2023.

Discussion and Decision

- [8] Defendants argue that Lundeen’s appeal was untimely and that we should dismiss this appeal. We agree.
- [9] We begin by noting that Lundeen proceeds pro se. We reiterate that “a pro se litigant is held to the same standards as a trained attorney and is afforded no inherent leniency simply by virtue of being self-represented.” *Zavodnik v. Harper*, 17 N.E.3d 259, 266 (Ind. 2014). “This means that 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.” *Picket Fence Prop. Co. v. Davis*,

109 N.E.3d 1021, 1029 (Ind. Ct. App. 2018) (citing *Basic v. Amouri*, 58 N.E.3d 980, 983-84 (Ind. Ct. App. 2016)), *trans. denied*.

[10] Indiana Appellate Rule 9(A)(1) requires a party to initiate an appeal within thirty days after the entry of final judgment. Lundeen did not appeal the trial court's dismissal of his action with prejudice. Rather, Lundeen filed a motion for relief from judgment, which the trial court denied. Lundeen did not appeal the trial court's denial of his motion for relief from judgment; instead, Lundeen merely filed a second motion for relief from judgment. The issues raised in Lundeen's second motion for relief from judgment were nearly identical to the issues raised in his first motion for relief from judgment.

[11] Indiana Trial Rule 53.4(A) provides, in relevant part, that repetitive motions "shall not delay the trial or any proceedings in the case, or extend the time for any further required or permitted action, motion, or proceedings under these rules." We have held that, under Trial Rule 53.4, a repetitive motion does not extend the time to file a notice of appeal. *See, e.g., Walters v. Austin*, 968 N.E.2d 233, 235 (Ind. Ct. App. 2012) ("We conclude that the amended motion to correct error was a repetitive motion and, therefore, the filing of the amended motion did not change the date for filing the notice of appeal."), *trans. denied*.

[12] Lundeen's second motion for relief from judgment was a repetitive motion and, therefore, the filing of the second motion did not extend the date for filing the notice of appeal. Lundeen's notice of appeal was not filed until July 18, 2023,

long after the trial court’s May 4, 2023 denial of Lundeen’s first motion for relief from judgment. Accordingly, Lundeen’s appeal was untimely.

[13] “Unless the Notice of Appeal is timely filed, the right to appeal shall be forfeited” *In re Adoption of O.R.*, 16 N.E.3d 965, 970 (Ind. 2014) (quoting Ind. App. R. 9(A)(5)) (emphasis original). “To reinstate a forfeited appeal, an appellant must show that there are ‘extraordinarily compelling reasons why this forfeited right should be restored.’” *Cooper’s Hawk Indianapolis, LLC v. Ray*, 162 N.E.3d 1097, 1098 (Ind. 2021) (citing *O.R.*, 16 N.E.3d at 971). We do not discern any extraordinarily compelling reasons why Lundeen’s right to appeal should be restored. Accordingly, we dismiss Lundeen’s appeal.

Conclusion

[14] Because Lundeen’s appeal is untimely, we dismiss.

[15] Dismissed.

Pyle, J., and Foley, J., concur.