

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Thomas DeCola,
Appellant-Plaintiff,

v.

State of Indiana Department of
Natural Resources, Starke
County Commissioners and
Auditor thereof, The World et al.
Unknown (assigns, heirs, agents,
etc. thereof),
Appellees-Defendants

December 28, 2023

Court of Appeals Case No.
23A-PL-1926

Appeal from the Starke Circuit
Court

The Honorable Mary C. Welker,
Special Judge

Trial Court Cause No.
75C01-2211-PL-19

Memorandum Decision by Judge Weissmann
Chief Judge Altice and Judge Kenworthy concur.

Weissmann, Judge.

- [1] Thomas DeCola, a veteran pro se litigant, sued Starke County, the State of Indiana, and “the World” to quiet title to a parcel of land he purportedly owned. As an affirmative defense, the State claimed an interest in the land and asserted that DeCola’s lawsuit was barred by an Indiana statute prohibiting adverse possession claims against State properties.
- [2] After giving DeCola months to cure defects in his lawsuit and to counter the State’s statutory defense, the trial court ultimately dismissed his lawsuit when he failed to comply. DeCola appeals, claiming the dismissal violated his constitutional rights. We conclude DeCola’s claims are unmeritorious or waived and therefore affirm.

Facts

- [3] In his complaint to quiet title, DeCola effectively named the State, Starke County, and the World as parties that may have an interest in land DeCola purported to own in Starke County. The State answered DeCola’s complaint, raising as affirmative defenses that it indeed had an interest in the land under the Arkansas and Other States Swamp Lands Treaty of 1850 and that the

Indiana Code barred DeCola from bringing an adverse possession case against the State.¹

[4] Starke County and the World did not answer DeCola's complaint, and the trial court appeared to notice that DeCola failed to serve them properly as required by the Indiana Rules of Trial Procedure. The court ordered that DeCola comply with the rules, but he did not. Instead, he moved for default judgment against those defendants several times and requested various hearings, all of which the court denied.

[5] The court also ordered DeCola to respond to the State's affirmative defenses. In his response to that order, DeCola claimed—without elaboration—that the State “does not have a vested in-possession claim over the legal description under quiet title action in suit herein.” App. Vol. II, p. 69. DeCola also claimed the State “has not shown a constructively noticed claim to support any averment of the [State].” *Id.* As to the rest of the State's affirmative defenses, DeCola asserted that he was without sufficient knowledge to “effectively” reply. *Id.* His filing did not contain citations to any legal authority, contrary to the court's order.

¹ The State cited Indiana Code § 32-21-7-2, which provides:

- (a) Title to real property owned by the state or a political subdivision (as defined in [IC 36-1-2-13](#)) may not be alienated by adverse possession.
- (b) A cause of action based on adverse possession may not be commenced against a political subdivision (as defined in [IC 36-1-2-13](#)) after June 30, 1998.

[6] After reviewing DeCola's response, the trial court issued an order stating:

The Court now Finds:

1. This Filing has been pending since November 2022 (almost 6 months);
2. Plaintiff was made aware his Filing failed to comply with Indiana Trial Rules on January 17, 2023 . . .
4. The Plaintiff has continued in his failure to comply with Indiana Trial Rules.
5. This Court required Plaintiff to provide specific information which he has failed to provide.
6. Plaintiff is given 60 days from this date to correct his failure to comply with Indiana Trial Rules.

Id. at 75.

[7] DeCola sought a change of judge. When that effort failed, DeCola filed several motions for hearings as well as documents seemingly intended to cure the service defects but failing to do so. Throughout that period, the trial court reminded him of the 60-day deadline, identified the documents that were faulty, and noted its unwillingness to set his case for hearing until he had cured the defects. In one order, the trial court noted:

The Court has attempted to give Plaintiff additional time; and direction as to the requirements with which he has failed to comply. He has yet to comply with both service and providing to the Court law (statute or Case), as directed, to show he can overcome the State's filing (indicating he cannot use this suit to divest the State of Indiana . . . of ownership of real estate).

The 60 days granted for him to do so continues to run.

Id. at 134.

- [8] DeCola never cured the service defects or offered any authority to refute the State’s claim that his action was statutorily barred. The trial court therefore dismissed DeCola’s lawsuit. After noting all of DeCola’s opportunities to correct the defects in his filings, the court concluded:

At no time has Plaintiff filed the appropriate Publisher’s Certificate. At no time has the Plaintiff addressed the State of Indiana’s legal prohibition of his filing.

The Plaintiff has filed multiple filings. His filings have failed to comply with the Indiana Trial Rules; and has failed to appropriately address the State of Indiana’s legal impediment to his claim . . .

This Court has given Plaintiff seven months to correct such filings[,] and he has failed to do so. Therefore[,] the Court now dismisses the case.

Id. at 138.

- [9] DeCola filed a motion to correct error, which the trial court denied. DeCola now appeals.

Discussion and Decision

- [10] We review the trial court’s denial of a motion to correct errors for an abuse of discretion. *Bruder v. Seneca Mortg. Servs., LLC*, 188 N.E.3d 469, 471 (Ind. 2022).

An abuse of discretion occurs when the trial court’s decision is contrary to the logic and effect of the facts and circumstances before the court or when the court misinterprets the law. *Id.* We find no abuse of discretion here.

[11] DeCola claimed in his motion to correct error that the trial court violated his right to due process by failing to set his case for hearing and by dismissing it. The trial court appears to have dismissed DeCola’s complaint partly for failing to state a claim on which relief may be granted. *See* Ind. Trial Rule 12(B)(6).

[12] A motion to dismiss under Trial Rule 12(B)(6) tests the legal sufficiency of plaintiff’s claim rather than the facts supporting it. *Bellwether Props., LLC v. Duke Energy Ind., Inc.*, 87 N.E.3d 462, 466 (Ind. 2017). We therefore review such a dismissal de novo and affirm when it is clear from the face of the complaint that the complaining party is not entitled to relief. *Id.* A dismissal may be affirmed on any sustainable theory. *McCain as Tr. of 237 Columbia St. Land Trust v. Town of Andrew*, 182 N.E.3d 229, 231 (Ind. Ct. App. 2021).

[13] In challenging the dismissal on appeal, DeCola claims the trial court “departed from prevailing pre-trial practice of quieting actions by producing non-sensical orders that failed to elucidate the substance of their reason to correct an alleged defect.” Appellant’s Br., p. 7. He also claims the trial court “operated in sham or was influenced by fraud in some unbeknownst manner” and that the trial court’s orders “were intentionally designed to deprive DeCola of his due process rights.” *Id.* The claims in DeCola’s reply brief are more direct. Without

citing any supporting facts, he accuses the trial court and the State of colluding criminally to deprive him of his rights. Appellant's Reply Br., p. 4 n.4.

[14] DeCola's challenges to the adequacy of the orders are unavailing. The trial court repeatedly informed DeCola of the nature of the defects and did so in easily understood orders. In some orders, the court also informed DeCola about how to fix the defect, such as by filing a complete Publisher's Certificate to show that he had properly served some defendants by publication. *See* Ind. Trial Rule 4.13(C) and (E). DeCola merely filed a newspaper's bill for publication that lacked some assertions required by Indiana Trial Rule 4.13. The trial court also found DeCola's "cut out" of the advertisement inadequate. App. Vol. II, p. 94. In fact, DeCola acknowledged afterward that he had not served at least some defendants. *Id.* at 126. Shortly before the dismissal, he attempted to rectify that omission through purported personal service on some defendants. The trial court found DeCola's belated attempt at personal service ineffective, as well.

[15] DeCola cannot blame the trial court for his own failings. As a pro se litigant, DeCola 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). He had multiple opportunities over seven months to correct the defects in his filings and failed to do so.

[16] DeCola has waived the rest of his claims. Although DeCola cites various constitutional provisions that he alleges were violated, he never raised most of the constitutional arguments in the trial court. *See Stephens v. Hart*, 198 N.E.3d

376, 383 (Ind. Ct. App. 2022) (finding waiver when constitutional claim was raised for first time on appeal). And he offers no supporting analysis establishing any constitutional violations.

[17] For instance, DeCola cites the standard for assessing a due process claim but then fails to analyze the facts of his case under that standard. *See* Ind. Appellate Rule 46(A)(8)(a) (“The argument [in Appellant’s Brief] must contain the contentions of the appellant on the issues presented, supported by cogent reasoning” along with “a brief statement of the procedural and substantive facts necessary for consideration of the issues presented on appeal.”). DeCola also offers no supporting authority for anything other than the due process standard of review. *See id.* (requiring that “[e]ach contention [in the argument section of Appellant’s Brief] must be supported by citations to the authorities, statutes, and the Appendix or parts of the Record on Appeal relied upon . . .”).

[18] DeCola’s failure to argue cogently with citations to supporting authority waives his claims. *Reid v. Reid*, 980 N.E.2d 277, 297 (Ind. Ct. App. 2012) (finding appellate claims waived through arguments lacking cogency and citations to authority). Given this waiver, we need not address DeCola’s remaining claims.

[19] We affirm the trial court’s judgment.

Altice, C.J., and Kenworthy, J., concur.