MEMORANDUM DECISION

IN THE

Court of Appeals of Indiana

Keith Ball,

Appellant-Plaintiff

v.

John Plasse and Vigo County Commissioners,

Appellees-Defendants

April 1, 2024

Court of Appeals Case No.
23A-SC-1366

Appeal from the Vigo Superior Court

The Honorable Charles Bridges, Special Judge

Trial Court Cause No.
84D04-2302-SC-934

Memorandum Decision by Judge Bradford
Chief Judge Altice and Judge Felix concur.

Bradford, Judge.

Case Summary

[1] While Keith Ball was an inmate at the Vigo County Jail ("the Jail"), another inmate allegedly fell on him and injured him. Ball claimed that his injuries were a result of jail overcrowding and attempted to file a tort claim against Vigo County Sheriff John Plasse and the Vigo County Commissioners ("the Commissioners") (collectively, "the Appellees"). Plasse and the Commissioners moved to dismiss Ball's claim because Ball had allegedly not adhered to the notice requirements of the Indiana Tort Claims Act ("the ITCA"), which motion the trial court granted. Ball contends that the trial court erred in dismissing his case. We affirm.

Facts and Procedural History

[2] In March of 2022, Ball allegedly suffered a head wound when another inmate at the Jail fell on him. Ball claimed that "mass overcrowding" had caused his injury. Appellant's App. Vol. II p. 10. In July of 2022, Ball prepared a notice of claim using a City of Indianapolis form. That same month, Ball sent this tort-claim notice by certified mail to the Commissioners and the City of Indianapolis. Vigo County claims to have no record of Ball's tort-claim notice. Ball neglected to send a tort-claim notice to Plasse.

[3] In April of 2023, the Appellees moved to dismiss Ball's claim due to Ball's failure to state a claim on which relief could be granted. Additionally, the Appellees claimed, among other things, that Ball had filed no tort-claim notice

with the Indiana political subdivision risk-management commission, as required by the ITCA. The trial court granted the Appellees' motion.

Discussion and Decision

[4] "The standard of review on appeal of a trial court's grant of a motion to dismiss for the failure to state a claim is de novo and requires no deference to the trial court's decision." *Bellows v. Bd. of Comm'rs of Cnty. of Elkhart*, 926 N.E.2d 96, 110 (Ind. Ct. App. 2010). The grant or denial of a motion to dismiss depends only on the legal sufficiency of the claim and does not necessitate any findings of fact. *Id*. A trial court's grant of a motion to dismiss "is proper if it is apparent that the facts alleged in the complaint are incapable of supporting relief under any set of circumstances." *Lawson v. 1st Union Mortg. Co*., 786 N.E.2d 279, 282 (Ind. Ct. App. 2003). When evaluating whether any facts support the claim, "we look only to the complaint and may not resort to any other evidence in the record." *Id*.

[5] When it comes to the ITCA, like any statute in derogation of the common law, it "must be strictly construed against limitations on the claimant's right to bring suit." *Hinshaw v. Bd. of Comm'rs of Jay Cnty*., 611 N.E.2d 637, 639 (Ind. 1993). The ITCA endeavors to "advise the city of the accident so that it may promptly investigate the surrounding circumstances." *Collier v. Prater*, 544 N.E.2d 497, 498 (Ind. 1989). Consequently, "a claim against a political subdivision is barred unless notice is filed with: (1) the governing body of that political subdivision; and (2) […] the Indiana political subdivision risk management

commission[.]" Ind. Code § 34-13-3-8. The notice "must be in writing and must be delivered in person or by registered or certified mail." Ind. Code § 34-13-3-12. We will conclude that a claimant has substantially complied with the ITCA's notice requirement where "a notice is timely filed, operates to inform the municipality of the claimant's intent to pursue the claim, and contains sufficient information which reasonably affords the municipality an opportunity to promptly investigate the claim." *City of Indpls. v. Buschman*, 988 N.E.2d 791, 794 (Ind. 2013).

[6] The ITCA requires that a claimant provide notice to not only the governing body of the political subdivision against which he is pursuing a claim but also to the Indiana political subdivision risk management commission. *See* Ind. Code § 34-13-3-8; *see also Town of Cicero v. Sethi*, 189 N.E.3d 194, 203 (Ind. Ct. App. 2022), *trans. denied*. Ball has failed to establish that he satisfied this second requirement. The Vigo County attorney averred that the "Indiana political subdivision risk management commission has no record of Ball filing a tort claim notice against Plasse, the Sheriff's Department or Vigo County." Appellant's App. Vol. II p. 20. Moreover, Ball does not provide any evidence that he served the Indiana political subdivision risk management commission, only that he served the City of Indianapolis. Ball has failed to establish that he satisfied the notice requirement, and we consequently conclude that the trial court did not err in dismissing his claim.

[7] The judgment of the trial court is affirmed.

Altice, C.J., and Felix, concur.

APPELLANT *PRO SE*

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