MEMORANDUM DECISION

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IN THE
COURT OF APPEALS OF INDIANA

Charles Johnson,
Appellant-Defendant,

v.

Washington Police Department, Collin R. Cornelius, Sgt. Derrick R. Devine, Detective Sgt. Brandon M. Garland, Case A. Cummings, Daviess County Sheriff's Office, Sheriff's Deputy Keith Hinderliter, Sheriff's Deputy Steven M. Heshelman, Daviess County Prosecutor,
Appellees-Plaintiffs

March 24, 2022

Court of Appeals Case No. 21A-CT-1090

Appeal from the Daviess Circuit Court

The Honorable Gregory A. Smith, Judge

Trial Court Cause No. 14C01-2011-CT-673

Vaidik, Judge.

Case Summary

[1] In 2016, Charles Johnson was arrested in Daviess County and charged with two felonies and two misdemeanors, which were later dismissed. As a result of this arrest and prosecution, Johnson later filed a civil suit against the involved law-enforcement agencies, their employees, and the prosecutor. The trial court dismissed Johnson's case, finding in part that he failed to present a claim upon which relief can be granted. Johnson appeals, and we affirm.

Facts and Procedural History

[2] On May 5, 2016, Johnson was stopped by Officer Case Cummings of the Washington Police Department (WPD) for a traffic violation. During the stop, Officer Cummings's K-9 alerted to the passenger side of Johnson's car, and the car was searched. At some point, deputies from the Daviess County Sheriff's Office (DCSO) arrived to help with the search. As a result of the search, Johnson was arrested, and the Daviess County Prosecutor's Office charged him with Level 6 felony dealing in a synthetic drug or lookalike substance, Level 6 felony maintaining a common nuisance, Class A misdemeanor possession of a controlled substance, and Class C misdemeanor possession of paraphernalia. Johnson's initial hearing was held in August. Those charges were eventually dismissed in May 2019.

[3] In November 2020, Johnson, who was incarcerated on unrelated charges, filed a complaint, pro se, against WPD and four individual officers, DCSO and two individual deputies, and Daviess County Prosecutor Daniel Murrie ("the Prosecutor") (collectively, "Defendants"), alleging civil-rights violations, intentional infliction of emotional distress, invasion of privacy, malicious prosecution, civil conspiracy, defamation, and false arrest. *See* Appellees' Joint App. Vol. II pp. 2-18.

[4] The following month, the Prosecutor filed a motion to dismiss on a variety of grounds, including that Johnson failed to state a claim upon which relief could be granted under Indiana Trial Rule 12(B)(6) because the Prosecutor is immune

from Johnson's claims under the Indiana Tort Claims Act (ITCA) and the claims are barred by the statute of limitations. In January 2021, WPD and DCSO also filed separate motions to dismiss, both asserting, among other things, that Johnson's claims should be dismissed pursuant to Rule 12(B)(6) because the claims are time barred and the officers are immune from the claims under the ITCA. Johnson filed motions for extensions of time, asking the trial court for sixty days to respond to WPD's and DCSO's motions to dismiss, citing his pro se status and need to respond to multiple motions.[1] The trial court granted Johnson a sixty-day extension to respond to DCSO's motion and a thirty-day extension to respond to WPD's, and Johnson submitted both responses without requesting further extensions.

[5] In February, the trial court granted the Prosecutor's motion to dismiss under Rule 12(B)(6). The following month, Johnson filed a motion to correct error as to the dismissal of the Prosecutor. He also filed a motion for leave to amend his complaint and a proposed amended complaint, which detailed the same claims against Defendants but attempted to add several new parties, including the State of Indiana, the City of Washington, and several individually named deputy prosecutors at the Daviess County Prosecutor's Office. The trial court did not rule on either motion but that same month granted DCSO's and WPD's

[1] Johnson did not request an extension to respond to the Prosecutor's motion to dismiss.

motions to dismiss under Rule 12(B)(6). Johnson again filed motions to correct error.

[6] In April, the trial court denied Johnson's motion to correct error as to the dismissal of the Prosecutor. The following month, in response to a motion to clarify from the Prosecutor, the trial court stated it had "not granted leave" for Johnson to file his amended complaint and the only pending motions were the motions to correct error as to the dismissal of DCSO and WPD. Appellant's App. Vol. II p. 18. Later that month, the court denied Johnson's remaining motions to correct error.

[7] Johnson, pro se, now appeals.

Discussion and Decision

I. Waiver

[8] As an initial matter, Defendants argue Johnson has waived his claims due to the deficient nature of his brief. Johnson spends a great deal of time in his brief arguing he should be shown leniency due to his status as a pro se litigant. But it is well settled 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, including waiver. *Basic v. Amouri*, 58 N.E.3d 980, 983-84 (Ind. Ct. App. 2016). We will not become an "advocate for a party, or address arguments that are inappropriate or too poorly developed or expressed to be understood." *Id.* at 984.

[9] We agree with Defendants that it is difficult to discern Johnson's exact arguments due to the many deficiencies in his appendix and brief. Most notably, Johnson's appendix does not contain his complaint or any of the briefing for the motions to dismiss. *See* Ind. Appellate Rule 50 (appellant's appendix shall contain pleadings and other documents necessary for the resolution of issues raised on appeal). The deficiencies in his briefing begin with his statement of the case, in which he provides no page references and fails to explain the course of the proceeding or the disposition of issues. *See* App. R. 46(A)(5) (noting the statement of the case should contain a description of the nature of the case, the course of proceedings relevant to the issues, and the disposition of those issues and citations to the record). The same can be said for his statement-of-facts and argument sections, neither of which contain any citation to the record or the substance required by the rules, namely, a description of the facts surrounding Johnson's stated issues and a cogent legal argument citing relevant legal authority. *See* App. R. 46(A)(6) (statement of facts shall describe facts relevant to review and include citations to the record), App. R. 46(A)(8) (argument shall contain cogent reasoning, citations to the record, and citations to relevant legal authority).

[10] Nonetheless, we prefer to address claims on their merits, and because we do not feel these deficiencies significantly impede our review, we do so below.

II. Motion for Extension of Time

[11] Johnson argues the trial court erred in not granting him a sixty-day extension to respond to WPD's motion to dismiss. A trial court has the discretion to grant or deny a request for extension of time, and its decision will not be overturned absent clear abuse of that discretion. *Scott v. Corcoran*, 135 N.E.3d 931, 939 (Ind. Ct. App. 2019).

[12] Johnson requested a sixty-day extension to respond to WPD's and DCSO's motions to dismiss, and the trial court granted him sixty days to respond to DCSO's motion but only thirty days to respond to WPD's. In support of his requests, Johnson noted he is a pro se litigant and had multiple motions to respond to. While the trial court could have granted Johnson the full sixty-day extension, it was not required to. *See McGuire v. Century Surety Co.*, 861 N.E.2d 357, 360 (Ind. Ct. App. 2007) "(A general claim of being too busy to timely respond to another party's motion does not require a court to grant a motion for an extension of time to file a response, although it may permit a trial court to grant such a motion."). Notably, Johnson filed both responses without asking for further extension, and he does not cite any harm from not having an additional thirty days to respond to WPD.

[13] Under these circumstances, we cannot say the trial court abused its discretion by granting Johnson a thirty-day extension, rather than the sixty-day extension he requested.

III. Motions to Dismiss

[14] Johnson argues the trial court erred in granting Defendants' motions to dismiss. A civil action may be dismissed under Indiana Trial Rule 12(B)(6) for "failure to state a claim upon which relief can be granted." Such a motion tests the legal sufficiency of the claim, not the facts supporting it. *Charter One Mortg. Corp. v. Condra*, 865 N.E.2d 602, 604 (Ind. 2007). Thus, our review of a trial court's grant or denial of a Rule 12(B)(6) motion is de novo. *Id.* When reviewing a motion to dismiss, we view the pleadings in the light most favorable to the nonmoving party, with every reasonable inference construed in the nonmovant's favor. *Id.* at 605. A complaint may not be dismissed for failure to state a claim upon which relief can be granted unless it is clear on the face of the complaint that the complaining party is not entitled to relief. *Id.*

A. Malicious-Prosecution Claim

[15] Johnson first asserts the trial court erred in dismissing his malicious-prosecution claim against Defendants. Defendants argue they are immune from Johnson's malicious-prosecution claim and thus dismissal was proper. We agree.

[16] The ITCA "extend[s] immunity to the State of Indiana and other political subdivisions and their police officers in actions for malicious prosecution." *Livingston v. Consolidated City of Indianapolis*, 398 N.E.2d 1302, 1305 (Ind. Ct. App. 1979). The ITCA provides in part, "A governmental entity or an employee acting within the scope of the employee's employment is not liable if

a loss results from . . . [t]he initiation of a judicial or an administrative proceeding." Ind. Code § 34-13-3-3.

[17] The factual basis for Johnson's malicious-prosecution claim is the law-enforcement officers with WPD and DCSO unjustly stopped his vehicle, searched it, and arrested him, and the prosecutor later initiated criminal proceedings based on this incident. This is precisely the type of claim the ITCA shields. *See Donovan v. Hoosier Park, LLC*, 84 N.E.3d 1198, 1208 (Ind. Ct. App. 2017) (noting to the extent officers' actions in arresting plaintiff could satisfy a claim of malicious prosecution, the claim is barred by the ITCA). And Johnson does not allege the law-enforcement officers or the Prosecutor were acting outside the scope of their employment. In fact, his claim clearly involves actions within their employment—the law-enforcement officers in arresting him and the Prosecutor in bringing charges. *See id.* (action of arresting plaintiff was within the scope of officer's employment); *Buchanan v. State*, 122 N.E.3d 969, 974 (Ind. Ct. App. 2019) (prosecutor was acting within the scope of his employment when he filed criminal charges against the plaintiff), *trans. denied*. Accordingly, Defendants are immune from Johnson's claim under the ITCA, and he has failed to state a claim upon which relief can be granted. *See Buchanan*, 122 N.E.3d at 974 (affirming trial court's dismissal of malicious-prosecution claim under Rule 12(B)(6) where defendants were immune under the ITCA).

[18] The trial court did not err in dismissing Johnson's malicious-prosecution claim.

B. Remaining Claims

[19] Aside from his malicious-prosecution claim, Johnson argues the trial court erred in dismissing his many other claims, namely civil conspiracy, intentional infliction of emotional distress, defamation, invasion of privacy, false arrest, and civil-rights violations. The trial court dismissed these claims in part under Rule 12(B)(6) for failure to state a claim upon which relief can be granted. Defendants argue these claims are time-barred, and we agree.

[20] An action for an injury to a person or personal property must be commenced within two years "after the cause of action accrues." I.C. § 34-11-2-4. All of Johnson's claims are subject to a two-year statute of limitations. *See Johnson v. Blackwell*, 885 N.E.2d 25, 30 (Ind. Ct. App. 2008) (applying two-year statute of limitation to claims of civil-rights violations, invasion of privacy, wrongful infliction of emotional distress, and false arrest); *Kelley v. Vigo Cnty. School Corp.*, 806 N.E.2d 824, 830 (Ind. Ct. App. 2004) ("[T]he statute of limitations for a defamation claim in Indiana is two years"), *trans. denied*. "In general, the cause of action of a tort claim accrues and the statute of limitations begins to run when the plaintiff knew or, in the exercise of ordinary diligence, could have discovered that an injury had been sustained as a result of the tortious act of another." *Filip v. Block*, 879 N.E.2d 1076, 1082 (Ind. 2008).

[21] A review of Johnson's complaint shows all these claims are based on the traffic stop, search, and his arrest on May 5, 2016. Thus his claims for invasion of privacy, wrongful infliction of emotional distress, defamation, civil conspiracy

and civil-rights violations accrued on that date, and his claim for false arrest accrued at the latest in August when the initial hearing was held. *See Johnson*, 885 N.E.2d at 30 (plaintiff's claims for invasion of privacy, wrongful infliction of emotional distress, and civil-rights violations, which were based upon the search of his home and his subsequent arrest, accrued on the date of the search and arrest); *Fox v. Rice*, 936 N.E.2d 316, 322 (Ind. Ct. App. 2010) (claim for false arrest accrues when defendant "becomes held pursuant to [the] legal process"). Johnson did not file his complaint until November 2020, well after the deadlines. His claims are barred by the statute of limitations.

[22] The trial court did not err in dismissing Johnson's remaining claims.[2]

IV. Motion to Amend Complaint

[23] Finally, Johnson argues the trial court erred in not granting him leave to amend his complaint. "Indiana Trial Rule 15(A) provides that '[a] party may amend his pleading once as a matter of course' if within a certain time frame." *Hilliard v. Jacobs*, 927 N.E.2d 393, 398 (Ind. Ct. App. 2010), *trans. denied*. "Otherwise a party may amend his pleading only by leave of court or by written consent of the adverse party; and leave shall be given when justice so requires." Ind. Trial

[2] Malicious-prosecution claims also have a two-year statute of limitations. But unlike the remaining claims, Johnson's malicious-prosecution claim did not accrue until the charges were dismissed in May 2019. *See Commercial Credit Corp. v. Ensley*, 264 N.E.2d 80 (Ind. Ct. App. 1970) (malicious-prosecution claims do not accrue, for purposes of statute of limitations, until final termination of proceedings in favor of the plaintiff.). Therefore, his malicious-prosecution claim was within the statute of limitations when Johnson filed his complaint in November 2020.

Rule 15(A). "Although amendments to pleadings are to be liberally allowed, the trial court retains broad discretion in granting or denying amendments to pleadings." *Hilliard*, 927 N.E.2d at 398. We will reverse a trial court's ruling on a motion to amend only upon a showing of an abuse of that discretion, which occurs if the trial court's decision is clearly against the logic and effect of the facts and circumstances before the court, or if the court has misinterpreted the law. *Id.* Our Court reviews whether a trial court's ruling on a motion to amend is an abuse of discretion by evaluating a number of factors, including "undue delay, bad faith, or dilatory motive on the part of the movant, repeated failure to cure deficiency by amendment previously allowed, undue prejudice to the opposing party by virtue of the amendment, and futility of the amendment." *Id.* (cleaned up).

[24] Defendants argue the trial court did not abuse its discretion in not granting Johnson leave to amend his complaint because any amendment would have been futile. We agree. As noted above, Defendants are immune from Johnson's malicious-prosecution claim under the ITCA, as are the parties Johnson's proposed amended complaint attempted to add—the State, City of Washington, and other prosecutors—all of whom are government entities or employees. *See Stone v. Wright*, 133 N.E.3d 210, 220 (Ind. Ct. App. 2019) (holding both individual officer and the city were immune from malicious-prosecution claim under ITCA because officer's actions were within scope of his employment). And even in Johnson's proposed amended complaint, he does not assert the alleged acts fall outside the scope of employment. So the

proposed amendment would be futile. *See id.* (trial court did not abuse its discretion in denying plaintiff leave to amend complaint involving malicious-prosecution claim where plaintiff failed to allege the alleged acts fell outside the scope of the defendant's employment). As to the remaining claims, amendment would be futile as these claims are barred by the statute of limitations. *See Kelley,* 806 N.E.2d at 831 (finding court did not abuse its discretion in not allowing plaintiff to amend complaint where claims were outside of statute of limitations and therefore futile).

[25] The trial court did not abuse its discretion in not granting Johnson leave to amend his complaint.

[26] Affirmed.

Najam, J., and Weissmann, J., concur.