# MEMORANDUM DECISION



IN THE

# Court of Appeals of Indiana



Dale Williamson,

*Appellant*

v.

Ivy Tech Community College,

*Appellee*

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July 15, 2024

Court of Appeals Case No.
24A-PL-266

Appeal from the Floyd Superior Court

The Honorable Bradley B. Jacobs, Judge

Trial Court Cause No.
22D01-2010-PL-1144

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**Memorandum Decision by Judge Bailey**
Chief Judge Altice and Judge Mathias concur.

**Bailey, Judge.**

# Case Summary

[1] Pro-se Appellant-Plaintiff Dale Williamson ("Williamson") filed a six-count complaint against Ivy Tech Community College ("Ivy Tech"), including tort, breach-of-contract, and statutory claims. The complaint was dismissed, and Williamson appealed. This Court reversed in part and remanded for proceedings on the breach-of-contract count and those counts alleging violations of the Americans with Disabilities Act ("ADA") and the Rehabilitation Act of 1973 ("RA").[1] The parties then filed cross-motions for summary judgment. The trial court granted summary judgment and $5,788.50 in attorney's fees, as a discovery sanction, to Ivy Tech and denied Williamson's motion for summary judgment.

[2] Williamson appeals but fails to articulate a specific issue for review. However, in the "closing" portion of his brief, Williamson asks that this Court "correct the lower court's injustice of dismissing [his] complaint." Appellant's Brief at 13. We restate the issue as whether the trial court improvidently granted summary judgment to Ivy Tech and not to Williamson. We affirm.

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[1] *Williamson v. Ivy Tech Cmty. Coll.*, 186 N.E.3d 601, 2022 WL 729130 (Ind. Ct. App. Mar. 11, 2022), *trans. denied*.

# Facts and Procedural History

[3] The underlying facts were summarized in Williamson's prior appeal as follows:

> Ivy Tech is a community college system and instrumentality of the State of Indiana ("the State"). . . . Williamson enrolled at Ivy Tech in 2015 and was provided reasonable educational accommodations in accordance with his diagnosed learning disabilities. In 2016, however, an Ivy Tech professor allegedly refused to provide Williamson's designated educational accommodations, specifically extra time on the submission of a writing assignment and the opportunity for a faculty member to read over his writing assignment and provide constructive feedback. Williamson also alleged that the professor had refused to give him a letter grade for the writing assignments that he had turned in. Williamson filed an internal grievance with Ivy Tech for its alleged refusal to provide him his educational accommodations in his English 111 course. In response, Ivy Tech refunded Williamson's course fee for English 111 and assured him that Ivy Tech would continue to provide reasonable educational accommodations.
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> In 2017, Williamson was enrolled in English 112 at Ivy Tech. At some point, Williamson's English professor learned that he had been using his laptop computer during class for purposes other than taking notes. The professor requested a meeting with Williamson to discuss the use of a laptop computer in class. Williamson filed an internal grievance alleging that Ivy Tech had failed to provide his educational accommodations for English 112 and, when the results of the grievance procedure were deemed unsatisfactory, filed a complaint with the [United States Department of Education Office of Civil Rights] DOE OCR. The DOE OCR opened an investigation into Ivy Tech and eventually entered an agreement with it in 2018, pursuant to which the DOE OCR would discontinue its investigation and Ivy Tech would agree to a list of terms without admitting to a

violation. One of the terms of the agreement was that Ivy Tech would provide Williamson access to his reasonable educational accommodations in English 112. As it happened, however, Williamson left Ivy Tech in 2017 and has never re-enrolled.

Williamson approached Ivy Tech in 2020 to discuss the possibility of re-enrollment and to see if Ivy Tech would abide by their previous offer to allow him to retake English 112 at no cost. Ivy Tech's Vice Chancellor and Dean of Students responded to Williamson and stated that he would not be charged tuition for English 112. Williamson contacted Ivy Tech's Office of Disability Support Services ("ODSS") to provide his list of chosen educational accommodations. Williamson sought assurances from ODSS that his list of chosen educational accommodations would be available to him in English 112 regardless of professor or assignment. ODSS responded with its internal procedure for obtaining accommodations on assignments and in the classroom. Williamson again filed an internal grievance alleging that Ivy Tech had denied him access to his educational accommodations, followed by a second complaint with DOE OCR. DOE OCR's investigation was put on hold pending the outcome of a mediation with Williamson and Ivy Tech. Mediation was held on September 12, 2020, but was unsuccessful.

Williamson filed suit against Ivy Tech on October 8, 2020, raising six claims.[2] Williamson's claims arose from an allegation that Ivy Tech and the State had refused to comply with their obligations pursuant to [the] ADA and RA when he approached Ivy Tech on June 2, 2020, to inquire about reenrolling for the Fall 2020 semester and asked how his

[2] Williamson denominated his claims as: Count I: Intent; Count II: Disability Discrimination; Count III: Breach of Contract; Count IV: Hostile Learning (Work) Environment; Count V: Retaliation; and Count VI: Third Party Contract Interference.

> disabilities would be accommodated. Williamson made claims of ADA and RA violations, a breach-of-contract claim, and tort claims. The State was dismissed as a party to this suit on December 23, 2020.
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> On January 4, 2021, Ivy Tech filed its motion to dismiss, arguing, inter alia, that Williamson had failed to state any claims upon which relief could be granted. A hearing was held on Ivy Tech's motion to dismiss on April 29, 2021. Ivy Tech filed its supplemental brief to its motion to dismiss on May 12, 2021. A hearing on Ivy Tech's supplemental brief to its motion to dismiss was held on May 20, 2021. The trial court granted Ivy Tech's motion to dismiss in full and issued its findings of fact and conclusions thereon on June 3, 2021.

*Williamson*, slip op. at 1-2 (internal citation omitted.)

[4] On appeal of the dismissal, a panel of this Court first considered Ivy Tech's contention that dismissal of the ADA and RA claims was appropriate because those claims were barred by sovereign immunity. The Court found it to be "premature to address this potential affirmative defense," observing:

> To the extent that Williamson mentions sovereign immunity, it is to allege that Ivy Tech does not have it. Because there is nothing on the face of Williamson's complaint that leads to the inescapable conclusion that his ADA and RA complaints are barred by sovereign immunity, we conclude that the trial court erred in granting Ivy Tech's motion to dismiss Williamson's ADA and RA claims for failure to state a complaint.

*Id.* at 3.

[5] The Court next considered whether Williamson had sufficiently pled a breach-of-contract claim, observing that '"to recover for a breach of contract, a plaintiff must prove that: (1) a contract existed, (2) the defendant breached the contract, and (3) the plaintiff suffered damage as a result of the defendant's breach."' *Id.* (quoting *Collins v. McKinney*, 871 N.E.2d 363, 370 (Ind. Ct. App. 2007)). Taking the factual assertions of the complaint as true, the Court observed that Williamson had "pled the existence of a contract between him and Ivy Tech in 2020, that he fulfilled his obligations thereunder, that Ivy Tech breached the contract by failing to fulfill its contractual obligations to him, and that he suffered damages as a result." *Id.* at 4. The Court concluded that the trial court erred in dismissing the breach-of-contract claim for failure to state a claim upon which relief could be granted. *Id.*

[6] Finally, the Court found that dismissal of the tort claims was proper because Williamson had failed to provide a tort claims notice to the defendant, a governmental entity. *Id.* The case was remanded for further proceedings on the breach-of-contract, ADA, and RA claims.[3]

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[3] The Court described the law applicable to these claims as follows:

> Congress enacted the ADA to eliminate discrimination and to create causes of action for qualified persons who have faced discrimination. *See* 42 U.S.C. § 12101(b). The ADA contains three main titles, with Title II addressing public services, including those provided by a state university like Ivy Tech. *See* 42 U.S.C. §§ 12131-165. The ADA provides, in part, that "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." 42 U.S.C. § 12132. The ADA requires that the public entity make "reasonable accommodation" to allow the disabled person to receive the services or to participate in the public entity's programs. 28 C.F.R. § 35.130(b)(7).

[7] On August 11, 2023, each of the parties filed a motion for summary judgment. On August 31, 2023, the trial court conducted a hearing by Zoom to afford Williamson the opportunity to orally summarize his 516-page motion. Williamson and Ivy Tech were unified in their positions that a request for accommodation was reasonable, Ivy Tech did not consider Williamson's requests to cause an undue burden, and an agreement for re-enrollment had been reached. But Williamson contended that he had encountered unredressed difficulty in the re-enrollment process. According to Williamson, one of the Ivy Tech professors had engaged in "childish behavior" and "professional misconduct" and had "implied[ly]" altered "[the] wording" of an accommodation agreement and "added directives" by informing Williamson via email that a desired option [fixing extra time at 1.5 of the base time] was not a part of a stated policy and "not listed in their drop-down menu." (Tr. Vol. II, pgs. 202-03.)

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> Similarly, Section 504 of the RA provides that "[n]o otherwise qualified individual with a disability […] shall, solely by reason of her or his disability, be excluded from the participation in or be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." 29 U.S.C. § 794(a). "[A]lthough there are subtle differences between these disability acts, the standards adopted by Title II of the ADA for state and local government services are generally the same as those required under section 504 of federally assisted programs and activities." *Henrietta D. v. Bloomberg*, 331 F.3d 261, 271 (2nd Cir. 2003).

*Williamson*, slip op. at 2-3.

[8] On November 6, 2023, the trial court conducted a hearing at which it denied Williamson's request for a change of judge and request for transfer to the Indiana Supreme Court to exercise original jurisdiction over the matter. On December 11, a final hearing on the cross-motions for summary judgment was conducted. Ivy Tech declined to offer oral argument, instead relying on its written brief and designations of evidence. Williamson presented the following argument:

> The defendant has failed to raise a genuine dispute in the case that they have acknowledged that the violations had occurred in 2016 and a party resolution agreement was made. Again in 2017 they've acknowledged the violation and party resolution agreements were made. They have failed to explain why they have not updated Ivy Tech's policy to include reasonable disability accommodations extended [sic] time for the submitting of assignments to their policies. To this day they still have not undated [sic] their policies to include that and they've admitted to using other rules to allow professors and other staff to give directive after the intake process over disability accommodations. Which is a violation of the other rule usage.

(*Id.* at 218.)

[9] On January 5, 2024, the trial court denied Williamson's motion for summary judgment and granted Ivy Tech's motion. In pertinent part, the trial court concluded that Williamson's discrimination claims from 2016 and 2017 arose more than two years before the filing of his complaint and were time-barred. As to the events of 2020, the trial court found that undisputed evidence showed that Ivy Tech offered accommodation and attempted to communicate with

Williamson regarding the process for accommodation. However, Williamson "withdrew from discussions, did not register for classes, and instead filed his complaint." Appealed Order at 5. The trial court characterized this as Williamson "caus[ing] the interactive process to break down," and concluded that he could not, as a matter of law, prevail on his claims of discrimination in those circumstances. *Id.* Additionally, the trial court's order stated that Williamson had no private right of action under the ADA or the RA to redress alleged policy deficiencies, and that Ivy Tech had taken no action to waive its sovereign immunity.

[10] Finally, the trial court addressed the breach of contract claim:

> The undisputed designated evidence establishes that every course for which Williamson paid, he was given a grade. The courses from which he withdrew, he was refunded his tuition. … [T]hrough deposition testimony, evidence shows there was discussion about accommodations and actions taken by Ivy Tech to conform to their policies and procedures as set for[th] [in] the DSS Manual. The designated evidence shows Ivy Tech had the intent to accommodate Williamson to the extent possible, but the evidence does not show an offer, acceptance, and consideration. This court finds that as [a] matter of law, there was no implied contract between Williamson and Ivy Tech.

*Id.* at 5-6.

[11] On January 8, the trial court entered an order vacating a jury trial setting, providing as the reason "Agreed Resolution." (App. Vol. II, pg. 31.) On January 11, Ivy Tech filed a motion to lift a stay that had been imposed upon a

discovery sanction, i.e., a $5,788.50 award of attorney's fees, to Ivy Tech. On the same day, the trial court lifted the stay, and ordered payment of the sanctions on or before April 11, 2024. Williamson appeals.[4]

# Discussion and Decision

## Summary Judgment Standard of Review

[12] We review summary judgment de novo, applying the same standard as the trial court. *Hughley v. State*, 15 N.E.3d 1000, 1003 (Ind. 2014). Summary judgment is appropriate "if the designated evidentiary matter shows that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Ind. Trial Rule 56(C). We construe the evidence in favor of the nonmovant and resolve all doubts against the moving party. *Pfenning v. Lineman*, 947 N.E.2d 392, 397 (Ind. 2011) (quotation omitted).

[13] The party moving for summary judgment bears the initial burden to establish its entitlement to summary judgment. *Id.* at 396–97. Only then does the burden fall upon the nonmoving party to set forth specific facts demonstrating a genuine issue for trial. *Id.* at 397 (quotation omitted). A genuine issue of material fact exists where facts concerning an issue that would dispose of the litigation are in dispute or where the undisputed material facts are capable of

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[4] On February 8, 2024, Williamson filed a petition to transfer the appeal to the Indiana Supreme Court. On February 23, 2024, the Indiana Supreme Court denied the petition. Williamson filed motions for an expedited hearing in this Court and a motion for disability accommodations (waiver of rules requirements); this Court denied the motions.

supporting conflicting inferences on such an issue. *Huntington v. Riggs*, 862 N.E.2d 1263, 1266 (Ind. Ct. App. 2007), *trans. denied*.

[14] The summary judgment process is not a summary trial. *Hughley*, 15 N.E.3d at 1003-04. Indiana consciously errs on the side of letting marginal cases proceed to trial on the merits, rather than risk short-circuiting meritorious claims. *Id.* at 1004. Nevertheless, a grant of summary judgment is clothed with a presumption of validity, and the appellant bears the burden of demonstrating that the trial court erred. *Kramer v. Catholic Charities of Diocese of Fort Wayne-South Bend, Inc.*, 32 N.E.3d 227, 231 (Ind. 2015). The filing of cross-motions does not alter the standard of review or the analysis. *Erie Indemnity Co. v. Estate of Harris*, 99 N.E.3d 625, 629 (Ind. 2018).

## Analysis

[15] Williamson's claims are for breach of contract, violation of the ADA, and violation of the RA. A breach of contract claim is established by showing the existence of a contract, the defendant's breach, and damages suffered by the plaintiff as a result of the defendant's breach. *Collins*, 871 N.E.2d at 370. The ADA prohibits the exclusion of a disabled person, by reason of such disability, from services of a public entity. 42 U.S.C. § 12132. To succeed on an ADA Title II claim, a plaintiff must establish: (1) that he is a qualified individual with a disability; (2) that he was either excluded from participation in or denied the benefits of some public entity's services, programs, or activities or was otherwise discriminated against; and (3) that such exclusion, denial of benefits,

or discrimination was by reason of the plaintiff's disability. *Id.* The standards adopted by Title II of the ADA are generally the same as those of Section 504 of the RA, which prohibits discrimination against a disabled person or their exclusion from participation in a program or activity receiving federal financial assistance. *Henrietta D.*, 331 F.3d at 271.

[16] Williamson's argument at the summary judgment hearing suggests that he disagreed with a professor having flexibility in accommodation policies. According to Williamson, he was entitled to a specification of how much extra time he would be afforded – not fluctuating with a class or professor – prior to making his enrollment decision. As best we can discern Williamson's arguments at the hearing and on appeal, the crux of his complaint is that Ivy Tech has not "updated its disability policies" such that he is assured in advance of enrollment that he will be afforded an "extended time for the submission of writing assignments of 1.5 times." Appellant's Brief at 4.

[17] Certain facts are undisputed. Williamson requested the opportunity to retake an English class without additional tuition, and Ivy Tech agreed to provide that class without additional tuition, and with accommodations. Williamson has not been barred from any particular class or academically penalized. He was not denied extra time to complete assignments or tests. However, Ivy Tech has a stated policy that a student must consult with a professor regarding an extra-time accommodation for written assignments, and Ivy Tech has not at any point implemented a stated policy that extra time means 1.5 times the base time for completion.

[18] As a general proposition, Williamson asserts that he – as opposed to Ivy Tech – is entitled to judgment as a matter of law and that no genuine issue of material fact precludes summary judgment. However, he largely disregards the procedural posture of the case, directs our attention to authority that lacks relevance, and fails to develop cogent argument with regard to the merits of the trial court's decision disposing of any of his claims. As such, he fails to comply with our appellate rules. *See* Ind. Appellate Rule 8(A)(6) providing in relevant part:

> (a) The argument must contain the contentions of the appellant on the issues presented, supported by cogent reasoning. Each contention must be supported by citations to the authorities, statutes, and the Appendix or parts of the Record on Appeal relied on, in accordance with Rule 22.
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> (b) The argument must include for each issue a concise statement of the applicable standard of review; this statement may appear in the discussion of each issue or under a separate heading placed before the discussion of the issues. In addition, the argument must include a brief statement of the procedural and substantive facts necessary for consideration of the issues presented on appeal, including a statement of how the issues relevant to the appeal were raised and resolved by any Administrative Agency or trial court.

Williamson's bald assertions that the trial court was confused, ignored the prior *Williamson* decision, and "disregarded all evidence and argument that Williamson … has made," *Id.* at 11, fall short of satisfying Williamson's burden to show that the trial court decision is erroneous. *See Kramer*, 32 N.E.3d at 231.

[19] Williamson appears persuaded that his claims have been subjected to successive dismissals, and that dismissal is proscribed by the prior appellate decision. Williamson observes that he "has the right to file [his] case in court" and reiterates that he "has [the] right to sue to enforce all parts of antidiscrimination statutes." Appellant's Brief at 8-9. He contends that the trial court "disregarded" the Court of Appeals decision by "allowing the defense to make a second and third pre-trial motion to dismiss." *Id.* at 11.

[20] As for his citations to authority, Williamson directs our attention to a series of federal cases dealing with employment actions, notwithstanding the undisputed fact that Williamson has never been employed by Ivy Tech. Pertaining to a summary judgment standard, Williamson does not recite Indiana's Trial Rule 56(C) or rely upon other Indiana authority. Rather, he purports to rely upon the federal summary judgment standard enunciated in *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986).[5] Absent any acknowledgment that the Indiana summary judgment standard differs from the federal standard, Williamson contends that

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[5] Our Indiana Supreme Court has recognized the divergence between federal and State standards:

> Indiana's summary judgment procedure abruptly diverges from federal summary judgment practice. Under the federal rule, the party seeking summary judgment is not required to negate an opponent's claim. The movant need only inform the court of the basis of the motion and identify relevant portions of the record "which it believes demonstrate the absence of a genuine issue of material fact." *Celotex Corp. v. Catrett* (1986), 477 U.S. 317, 323, 106 S.Ct. 2548, 2553, 91 L.E.2d 265, 272. The burden then rests upon the non-moving party to make a showing sufficient to establish the existence of each challenged element upon which the non-movant has the burden of proof. *Id.* Indiana does not adhere to Celotex and the federal methodology.

*Jarboe v. Landmark Community Newspapers of Indiana, Inc.*, 644 N.E.2d 118, 123 (Ind. 1994).

he filed a "valid prong Complaint" and a "valid prong motion for summary judgment." Appellant's Brief at 13.

[21] In his appellant's brief, Williamson does not argue that the designated materials established, prima facie, the elements of any of his claims; nor does he develop a cogent argument as to whether the designated materials negate an element of any of his claims. And Williamson wholly fails to address the merits of the trial court's summary judgment decision. His assertions of judicial incompetence and defense improprieties fall far short of showing that he is entitled to judgment as a matter of law or that Ivy Tech is not entitled to judgment.

[22] Simply put, Williamson does not cogently challenge the grant of summary judgment or the order for discovery sanctions. As previously stated, the appellant bears the burden of showing that the trial court erred. *Kramer*, 32 N.E.3d at 231. Williamson has presented no basis for reversal.

# Conclusion

[23] The trial court did not err in granting summary judgment to Ivy Tech and denying Williamson summary judgment. No error or abuse of discretion in the imposition of sanctions has been demonstrated.

[24] Affirmed.

Altice, C.J., and Mathias, J., concur.

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