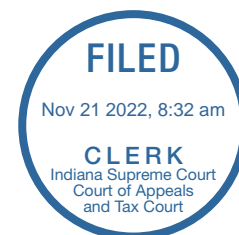


MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



APPELLANT PRO SE

Lee Evans Dunigan
Carlisle, Indiana

IN THE COURT OF APPEALS OF INDIANA

Lee Evans Dunigan,
Appellant-Defendant,

v.

Charlotte Ray, LMHC Mary
Holmes,
Appellee-Plaintiff.

November 21, 2022

Court of Appeals Case No.
22A-PL-1429

Appeal from the Hendricks
Superior Court

The Honorable Robert W. Freese,
Judge

Trial Court Cause No.
32D01-2109-PL-124

Tavitas, Judge.

Case Summary

- [1] Lee Evans Dunigan appeals the trial court’s orders denying his motion for default judgment and dismissing his complaint. Because we find that Dunigan’s appeal is untimely, we dismiss.¹

Issue

- [2] Dunigan raises two issues on appeal. We sua sponte address one dispositive issue: whether Dunigan’s appeal was timely.

Facts

- [3] Dunigan filed a complaint against Charlotte Ray and LMHC Mary Holmes on September 14, 2021. On December 30, 2021, Dunigan filed his first motion for default judgment. The trial court denied Dunigan’s motion on January 3, 2022.² On February 14, 2022, Dunigan filed his second motion for default judgment, which the trial court denied that same day.

¹ We take judicial notice that Dunigan has demonstrated a lengthy track record of filing frivolous lawsuits and has been sanctioned by this Court accordingly. See, e.g., *Dunigan v. Tippecanoe Cty. Pub. Def.’s Off.*, No. 21A-CT-678, 187 N.E.3d 964 (Ind. Ct. App. Apr. 28, 2022); *Dunigan v. State*, 191 N.E.3d 851, 857 (Ind. Ct. App. 2022) (“Given the sheer number of pending suits filed by Dunigan, or suits already decided by trial courts but not yet appealed, we do not anticipate that Dunigan’s pen will soon run shy of ink.”), *reh’g denied*; *Dunigan v. Wexford of Ind., LLC*, No. 21A-CT-2379, 190 N.E.3d 973 (Ind. Ct. App. June 23, 2022); *Dunigan v. State*, 22A-CT-947, 2022 WL 4295428 (Ind. Ct. App. Sep. 19, 2022); *Dunigan v. Young*, No. 20A-DN-2273, 171 N.E.3d 630 (Ind. Ct. App. May 7, 2021), *aff’d on reh’g*, 184 N.E.3d 674 (Ind. Ct. App. Feb. 22, 2022), *trans. denied*; *Dunigan v. State*, No. 20A-CR-1301, 178 N.E.3d 845 (Ind. Ct. App. Nov. 30, 2021).

² The chronological case summary shows that, on January 3, 2022, shortly before the trial court denied Dunigan’s first motion for default judgment, the trial court also granted that motion. We find this entry of an order granting default judgment to be a clerical error, as our review of the case documents on Odyssey does not reveal any order granting default judgment, but only one denying the same.

[4] On May 9, 2022, the trial court dismissed Dunigan’s complaint sua sponte pursuant to Indiana Code Sections 34-58-1-1 and -2. The trial court found that Dunigan’s complaint was “frivolous” and “not a claim upon which relief may be granted.” Appellant’s App. Vol. II p. 30. On June 3, 2022, Dunigan filed his third motion for default judgment. On June 6, 2022, the trial court denied Dunigan’s third motion for default judgment because the trial court had already dismissed the case. On June 15, 2022, Dunigan filed his notice of appeal.

Discussion and Decision

[5] Dunigan’s appeal of the trial court’s dismissal of his complaint was not timely filed. “[A] dismissal made pursuant to Indiana Code § 34-58-1-2 is with prejudice.” *Smith v. Huckins*, 850 N.E.2d 480, 483 (Ind. Ct. App. 2006). “[A] dismissal with prejudice is a final judgment.” *In re Estate of Hurwich*, 103 N.E.3d 1135, 1139 (Ind. Ct. App. 2018) (quoting *In re Scott David Hurwich 1986 Irrevocable Tr.*, 59 N.E.3d 977, 980 (Ind. Ct. App. 2016)), *aff’d on reh’g*. The dismissal of Dunigan’s complaint was, thus, a final judgment.

[6] Indiana Appellate Rule 9(A)(1) requires appellants to file their notice of appeal “within thirty (30) days after the entry of a Final Judgment is noted in the Chronological Case Summary.” “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 *In re Adoption of O.R.*, 16 N.E.3d at 971).

[7] Here, the trial court dismissed Dunigan’s complaint on May 9, 2022, and Dunigan, thus, had until June 8, 2022, to file his notice of appeal. Dunigan did not file his notice of appeal until June 15, 2022. Dunigan, thus, forfeited his right to appeal.³ Dunigan fails to argue that any extraordinarily compelling reasons apply here, nor do we discern any. Accordingly, we dismiss Dunigan’s appeal.⁴

Conclusion

[8] Dunigan’s appeal of the trial court’s dismissal of his complaint was not timely filed. Accordingly, we dismiss.

[9] Dismissed.

Brown, J., and Altice, J., concur.

³ Dunigan’s third motion for default judgment, which was not a motion to reconsider or motion to correct error, did not restart his deadline to file his notice of appeal.

⁴ We recognize that Dunigan has elected to represent himself. The timelines regarding an appeal, however, apply equally to all litigants. *See, e.g., Peters v. Perry*, 873 N.E.2d 676, 679 (Ind. Ct. App. 2007) (dismissing untimely appeal filed by self-represented party and noting that “a litigant who chooses to proceed pro se will be held to the same rules of procedure as trained legal counsel and must be prepared to accept the consequences of his action.”), *aff’d on reh’g*.