MEMORANDUM DECISION

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IN THE
COURT OF APPEALS OF INDIANA

David Pannell,
Appellant,

v.

Allison M. Everly, et al.,
Appellees,

September 15, 2021

Court of Appeals Case No. 19A-PL-962

Appeal from the LaPorte Superior Court

The Honorable Richard R. Stalbrink Jr., Judge

Trial Court Cause No. 46DO2-1801-PL-113

Robb, Judge.

Case Summary and Issue

[1] David Pannell, a prison inmate, sued several Department of Correction employees, alleging a due process violation during disciplinary proceedings at the Indiana State Prison. Pannell appeals the trial court's denial of his motion for relief from judgment. Concluding that the trial court did not err by denying Pannell's motion for relief from judgment, we affirm.

Facts and Procedural History

[2] On January 23, 2018, Pannell filed a complaint in LaPorte Superior Court against Allison Everly, Doreem Kirby, and Ron Neal (the "Defendants") alleging violations of 42 U.S.C. sections 1983, 1985, and 1986. Pannell alleged the Defendants' conduct surrounding a prison disciplinary proceeding violated his Fourteenth Amendment rights. The Defendants removed the action to federal district court. The district court dismissed Pannell's federal claims without prejudice, stating that "Pannell cannot litigate in this court because he is a restricted filer." Appellant's Appendix, Volume II at 17 (citing *Pannell v. Neal*, Case No. 17-1573 (7th Cir. April 11, 2017)). However, because the restriction did not preclude Pannell from litigating in state court, the district court remanded all state law claims to the LaPorte Superior Court. *See id.*

[3] On March 22, 2018, Pannell filed a motion requesting that the trial court reinstate the federal claims dismissed by the district court. The Defendants filed a motion to dismiss for lack of subject matter jurisdiction and failure to state a

claim, arguing that the district court dismissed all of Pannell's federal claims and Pannell failed to bring any state claims. On April 20, 2018, the trial court denied Pannell's motion to reinstate claims, granted the Defendants' motion to dismiss, and dismissed Pannell's claims with prejudice.

[4] On June 1, 2018, Pannell filed a notice of appeal challenging the trial court's order granting dismissal. On November 20, 2018, this court dismissed his appeal as untimely.

[5] On April 5, 2019, Pannell filed in the trial court a "Motion for Relief of Void Judgment Pursuant to Ind. TR. 60(B)(4)"[1] arguing that the federal district court's order dismissing his complaint was void and that the trial court should have adjudicated his constitutional claims. *See* Appellant's App., Vol. II at 48. The trial court denied the motion. Pannell now appeals.

Discussion and Decision

I. Standard of Review

[6] Although Pannell is proceeding *pro se*, such litigants are held to the same standard as trained attorneys and are afforded no inherent leniency simply by virtue of being self-represented. *Zavodnik v. Harper*, 17 N.E.3d 259, 266 (Ind.

[1] Pannell cited Indiana Trial Rule 60(B)(4) in the title of his motion, but that subsection governs "entry of default or judgment by default" against a party "without actual knowledge." Based on the substance of Pannell's arguments, we will address his challenge as if he had cited Indiana Trial Rule 60(B)(6).

2014). This court will "not become an advocate for a party, or address arguments that are inappropriate or too poorly developed or expressed to be understood." *Basic v. Amouri*, 58 N.E.3d 980, 984 (Ind. Ct. App. 2016) (internal quotations omitted).

[7] In general, we review a ruling on a Indiana Trial Rule 60(B) motion for relief from judgment under an abuse of discretion standard. *Breneman v. Slusher*, 768 N.E.2d 451, 461 (Ind. Ct. App. 2002), *trans. denied*. However, where, as here, a litigant claims an order is void under Indiana Trial Rule 60(B)(6), our review is de novo "because either the judgment is void or it is valid[,]" and there is "no discretion on the part of the trial court[.]" *Hotmix & Bituminous Equip., Inc. v. Hardrock Equip. Corp.*, 719 N.E.2d 824, 826 (Ind. Ct. App. 1999).

II. Motion for Relief from Judgment

[8] Pannell argues the trial court erred in denying his motion for relief from judgment. Specifically, Pannell contends that he is a restricted filer and although he "cannot file any 'New Civil Actions' in the district courts of the Seventh Circuit, he may file his 'New Civil Action' in State Court." Brief of Appellant at 12.

[9] However, Indiana Trial Rule 60(B) is meant to afford relief from circumstances which could not have been discovered during the period a motion to correct error could have been filed; it is not meant to be used as a substitute for direct appeal or to revive an expired attempt to appeal. *Bello v. Bello*, 102 N.E.3d 891,

894 (Ind. Ct. App. 2018). Here, Pannell attempts to circumvent his failure to timely appeal the trial court's order dismissing his complaint by filing a motion for relief from judgment.

[10] Further, Pannell's claim is without merit. In his motion for relief from judgment, Pannell argued the federal district court's order dismissing his Fourteenth Amendment claim was void because the district court failed to properly apply Seventh Circuit precedent regarding his status as a restricted filer. *See* Appellant's App., Vol. II at 49.[2] "A void judgment is a nullity, and typically occurs where the court lacks subject matter jurisdiction or personal jurisdiction." *Hays v. Hays*, 49 N.E.3d 1030, 1037 (Ind. Ct. App. 2016) (citation omitted). Here, however, Pannell fails to make an assertion that the district court lacked jurisdiction. Instead, he only argues that his federal claims should have been heard by the state court.[3]

[11] Pannell had an opportunity to appeal both the federal district court and the trial court decisions; he may not now convert his claim of mere error into a claim that the decision was void for lack of jurisdiction. *See, e.g.*, *Warner v. Young Am.*

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[2] Pannell cites *Support Sys. Int'l., Inc. v. Mack*, which addressed repetitive filings and the significant "cumulative effect in clogging the processes of the court and in burdening judges and staff to the detriment of litigants having meritorious cases[,]" 45 F.3d 185, 185 (7th Cir. 1995), but allowing an exception for filings related to criminal cases and applications for habeas corpus, *id.* at 186.

[3] To the extent Pannell's motion for relief of judgment challenges the order of the district court, this court will not review it. *See Woolery v. Grayson,* 110 Ind. 149, 150, 10 N.E. 935, 936 (1887*)* (noting that it "cannot be doubted that the state courts have no power to review, in any manner, the decisions of the federal court").

Volunteer Fire Dep't, 164 Ind. App. 140, 148-49, 326 N.E.2d 831, 836 (1975) (rejecting allegation that judgment was void because plaintiff lacked capacity to sue; defendant could have raised that defense during litigation but chose not to do so, and could not repackage the defense as a jurisdictional issue post-judgment).

Conclusion

[12] We conclude that the trial court did not err by denying Pannell's motion for relief from judgment. Accordingly, we affirm.

[13] Affirmed.

Bailey, J., and May, J., concur.