

# 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

David Pannell  
Bunker Hill, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita  
Attorney General of Indiana

Frances Barrow  
Deputy Attorney General  
Indianapolis, Indiana

## IN THE COURT OF APPEALS OF INDIANA

David Pannell,  
*Appellant-Plaintiff,*

v.

Janna Carey, et al.,  
*Appellees-Defendants.*

July 27, 2022

Court of Appeals Case No.  
21A-PL-2224

Appeal from the Madison Circuit  
Court

The Honorable Stephen D. Clase,  
Judge

Trial Court Cause No.  
48C05-2104-PL-49

**Robb, Judge.**

## Case Summary and Issue

- [1] David Pannell filed a complaint against four Indiana Department of Correction (“DOC”) employees. The defendants filed a motion to screen and dismiss the complaint which was granted by the trial court. Pannell filed a motion to amend his complaint and a motion to correct error, both of which were denied. Pannell now appeals, raising multiple issues for our review; however, we find the following issue dispositive: whether Pannell’s appeal is forfeited because his motion to correct error was untimely. Concluding that Pannell’s motion to correct error was untimely, we dismiss his appeal.

## Facts and Procedural History

- [2] While incarcerated in the DOC, Pannell filed a complaint against law library supervisor Janna Carey, correctional officer Jaclyn Barker, disciplinary hearing officer Ronald Schildmeier, and warden Wendy Knight (collectively “Defendants”). On April 20, 2021, the trial court reviewed the complaint pursuant to Indiana Code chapter 34-58-1 and determined it could proceed. *See* Appellant’s Appendix, Volume II at 8.
- [3] On June 14, the Defendants filed a motion to screen and dismiss the complaint alleging Pannell had failed to state a claim upon which relief may be granted. On July 8, the trial court granted the Defendants’ motion and issued an order

dismissing Pannell's complaint.<sup>1</sup> Subsequently, Pannell filed a motion to amend his complaint and a proposed amended complaint. The trial court denied his motion. On August 15, Pannell filed a motion to correct error which was denied. Pannell now appeals. Additional facts will be provided as necessary.

## Discussion and Decision<sup>2</sup>

[4] A party has thirty days from the entry of final judgment to file a motion to correct error with the trial court or a notice of appeal. *See* Ind. Trial Rule 59(C); *see also* Ind. Appellate Rule 9(A)(1). Pannell chose to file a motion to correct error. However, when a motion to correct error is not timely filed, the right to appeal is not preserved. *Goodman v. State*, 581 N.E.2d 1259, 1260 (Ind. Ct. App. 1991). Here, entry of final judgment was noted in the Chronological Case Summary on July 9, 2021, thus Pannell's motion to correct error was due on August 9.<sup>3</sup> However, Pannell's motion to correct error was filed with the trial court on August 15. *See* Appellant's App., Vol. II at 72.

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<sup>1</sup> On June 18, Pannell filed a second supplemental complaint which the trial court treated as a response to the motion to dismiss. *See* Appellant's Appendix, Volume II at 29. Pannell did file a specific response to Defendants' motion to screen and dismiss; however, it was filed after the trial court's dismissal order.

<sup>2</sup> Pannell raised the following issues on appeal: (1) whether the trial court erred by granting the Defendants' motion to screen and dismiss; (2) whether the trial court erred by denying Pannell's motion to amend his complaint; and (3) whether the trial court improperly denied Pannell's motion to correct error.

<sup>3</sup> Thirty days from July 9 was August 8, a Sunday, so Pannell's motion was due on the next business day, Monday, August 9.

[5] Pannell contends that his motion to correct error was filed timely pursuant to the prison mailbox rule. Pursuant to the prison mailbox rule, a court shall deem a court filing timely if a pro se prisoner litigant submits the filing to prison officials for mailing on or before its due date, and the prisoner “provide[s] reasonable, legitimate, and verifiable documentation supporting a claim that a document was timely submitted to prison officials for mailing.” *Dowell v. State*, 922 N.E.2d 605, 607 (Ind. 2010).

[6] Here, Pannell points to no reasonable, legitimate, or verifiable documentation proving that he had submitted the required documents before the August 9 deadline. The only documentation provided by Pannell is a “Request for Remittance” form dated August 9 requesting first class postage to send a “Motion to Alter/Amend Judgment” to the trial court.<sup>4</sup> Appellant’s App., Vol. II at 71; *see also* Appellant’s Reply Brief at 7. Pannell’s request for remittance form indicates that he requested postage but does not show conclusively that he deposited his motion to correct error with prison officials on time. Further, the form lacks any corroboration from prison officials that the motion was deposited. Indiana courts have, in the past, recognized sworn affidavits from prison officials, legal mail logs from law librarians, and letterhead statements from prison personnel as examples of reasonable, legitimate, or verifiable documents that invoke the prison mailbox rule. *See Dowell*, 922 N.E.2d at 608; *see also Harkins v. Westmeyer*, 116 N.E.3d 461, 469-70 (Ind. Ct. App. 2018).

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<sup>4</sup> We note that the request for remittance is also dated August 13. *See* Appellant’s App., Vol. II at 71.

Pannell has failed to provide any such documentation; therefore, we find that Pannell failed to submit a timely motion to correct error.

## Conclusion

[7] We conclude that Pannell's motion to correct error was untimely. Accordingly, we dismiss his appeal.

[8] Dismissed.

Pyle, J., and Weissmann, J., concur.