

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.



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IN THE COURT OF APPEALS OF INDIANA

Mario Sims,
Appellant-Plaintiff,

v.

Pete Buttigieg; Mike Schmul;
Tim Corbett; City of South
Bend, Indiana; Stephanie Steele
as Corporation Counsel for the
City of South Bend, Indiana;
Tasha Reed Outlaw; Ann-Carol
Nash; and Cristal Brisco,

April 14, 2021

Court of Appeals Case No.
20A-CT-2390

Appeal from the St. Joseph
Superior Court and the Marshall
Circuit Court

The Hon. David C. Chapleau,
Judge

The Hon. Curtis Palmer, Judge

Trial Court Cause Nos.
71D06-2001-CT-24
50C01-2002-CT-16

Bradford, Chief Judge.

Case Summary

- [1] In 1995, Mario Sims was convicted of burglary, rape, and criminal deviate conduct (“the 1995 convictions”). In the years following, Sims filed numerous lawsuits seeking to establish that the 1995 convictions were the result of an official conspiracy against him, which culminated in our 2003 order that Sims was required to satisfy several requirements before he could file another lawsuit regarding the alleged conspiracy. In 2020, Sims filed yet another lawsuit in St. Joseph Superior Court against several defendants (“Defendants”) alleging that the 1995 convictions were the result of an official conspiracy against him, including new allegations of official misconduct. The St. Joseph Superior Court granted Defendants’ motion to dismiss and transferred the case to Marshall Circuit Court for further proceedings. The Marshall Circuit Court concluded that Defendants were entitled to dismissal of Sims’s lawsuit with prejudice and denied his second motion for change of venue. Sims contends that both trial courts erred in dismissing his claim, that the St. Joseph Superior Court abused its discretion in dismissing his claim before ruling on his first motion for change of venue, and that the Marshall Circuit Court abused its discretion in denying his second motion for change of venue. Because we conclude that the St. Joseph Superior Court properly dismissed Sims’s

complaint but that all subsequent rulings should be considered nullities, we affirm in part and reverse in part.

Facts and Procedural History

[2] This legal proceeding, like many others before it, is based on Sims's contention that the 1995 convictions were the result of a wide-ranging, long-term conspiracy involving several public officials. By October of 2003, Sims had prosecuted at least forty-seven state court appeals, both civil and criminal, related to those convictions. *Sims v. Bramer*, 827 N.E.2d 1187, 1188 (Ind. Ct. App. 2005), *trans. denied*. As a result of what we concluded to be Sims's "abuse of the judicial system[,]" *Sims v. Scopelitis*, 797 N.E.2d 348, 352 (Ind. Ct. App. 2003), *trans. denied*, we ordered the following in October of 2003:

With respect to any future lawsuits that arise directly or indirectly from any alleged conspiracy by public officials related to Sims'[s] arrest, prosecution, conviction or confinement for burglary, rape, and criminal deviate conduct, we impose the following conditions upon Sims: (1) Prior to filing any such lawsuit, Sims shall submit to the trial court a copy of the complaint he wishes to file; (2) Sims shall also file a copy of all of the relevant documents pertaining to the ultimate disposition of each and every previous case instituted by Sims against the same defendant or emanating, directly or indirectly, from any alleged conspiracy by public officials. This includes, but is not limited to, the complaint, any motions to dismiss or motions for summary judgment filed by the defendants in those actions, the trial court order announcing disposition of the case, and any opinions issued in the case by any appellate court; (3) Sims shall file a legal brief, complete with competent legal argument and citation to authority, explaining to the court why the new action is not subject to dismissal by application of the doctrines of *res judicata*,

collateral estoppel, or law of the case. If, after reviewing these materials, the trial court determines that the proposed lawsuit is frivolous, malicious, fails to state a claim upon which relief may be granted, or is otherwise utterly without merit, the court shall dismiss with prejudice the proposed complaint; (4) Sims is required to verify his new complaint pursuant to Indiana Trial Rule 11(B); and (5) Sims is specifically instructed to attach to such complaint a separate copy of this final section of the instant opinion.

Id. We reiterated the *Scopelitis* order and affirmed the dismissal of another of Sims’s complaints in *Bramer*, 827 N.E.2d at 1189.

[3] On January 18, 2020, Sims filed a complaint in St. Joseph Superior Court again alleging a decades-long conspiracy of evidence tampering and other official misconduct related to the 1995 convictions.¹ On January 21, 2020, Sims moved for a change of venue, which Defendants opposed on the bases that Sims had not shown he was unlikely to receive a fair trial on account of local prejudice and that St. Joseph County was not a party to the lawsuit. On January 26, 2020, Sims filed an amended complaint, in which he named “St. Joseph County” as a defendant but not its board of commissioners. On January 29, 2020, Defendants filed a motion to dismiss and for sanctions, arguing that Sims’s complaint was based on the 1995 convictions and had failed to comply with the requirements of *Scopelitis* and *Bramer*. Defendants requested sanctions and attorney’s fees against Sims and his counsel for filing a pleading in direct

¹ Although Sims’s original complaint does not appear in the record, there is no dispute that it involved an allegation of an official conspiracy related to the 1995 convictions.

violation of *Scopelitis* and *Bramer* and for filing an amended complaint improperly naming “St. Joseph County” as a defendant without naming its board of commissioners.

- [4] On February 12, 2020, the St. Joseph Superior Court dismissed Sims’s complaint and reserved the issues of whether the dismissal was to be with or without prejudice and whether to impose sanctions for the Marshall Circuit Court, where the case was transferred. On December 4, 2020, Sims moved for another change of venue. On December 11, 2020, the Marshall Circuit Court denied Sims’s motion for change of venue, ruled that Sims’s complaint was dismissed with prejudice, and found Sims and his counsel jointly and severally liable for \$11,025.00 in attorney’s fees and the \$157.00 fee to transfer the case to Marshall Circuit Court, which Defendants had paid to “move the case along[.]” Appellant’s App. Vol. II p. 14.

Discussion and Decision

- [5] “There is no right to engage in abusive litigation, and the state has a legitimate interest in the preservation of valuable judicial and administrative resources.” *Zavodnik v. Harper*, 17 N.E.3d 259, 264 (Ind. 2014). Both Indiana statute and Supreme Court rules protect the judicial system and the rights of good-faith litigants. *Id.* However, “courts have inherent authority to impose reasonable restrictions on any abusive litigant.” *Id.* The Indiana Supreme Court has provided the following guidance:

After due consideration of a litigant’s history of abuse, a court may be justified in imposing restrictions such as the following:

- Require the litigant to accompany future pleadings with an affidavit certifying under penalty of perjury that the allegations are true to the best of the litigant’s knowledge, information, and belief.
- Direct the litigant to attach to future complaints a list of all cases previously filed involving the same, similar, or related cause of action.
- Direct that future pleadings will be stricken if they do not meet the requirements that a pleading must contain “a short and plain statement of the claim showing that the pleader is entitled to relief” and that “[e]ach averment of a pleading shall be simple, concise, and direct.” T.R. 8(A)(1) and (E)(1).
- Require the litigant to state clearly and concisely at the beginning of a motion the relief requested.
- Require the litigant to provide specific page citations to documents alleged by the litigant to support an argument or position.
- Limit the litigant’s ability to request reconsideration and to file repetitive motions.
- Limit the number of pages or words of pleadings, motions, and other filings.
- Limit the length of the title that may be used for a filing.
- Limit the amount or length of exhibits or attachments that may accompany a filing.
- Instruct the clerk to reject without return for correction future filings that do not strictly comply with applicable rules of procedure and conditions ordered by the court.

Id. at 268–69. In announcing the reasonable restrictions that may be placed on abusive litigants pursuant to a court’s inherent powers to do so, the Indiana Supreme Court specifically quoted with approval our order in *Scopelitis*. *Id.* at

265 (quoting *Scopelitis*, 797 N.E.2d at 352). With this in mind, we move on to Sims’s specific claims.

I. Motion to Dismiss

[6] Sims appeals from the decision of the St. Joseph County Superior Court’s dismissal of his complaint. Sims does not dispute that this lawsuit concerns an alleged conspiracy surrounding the 1995 convictions. Sims nonetheless claims that *Scopelitis* does not apply to *this* lawsuit because he is no longer incarcerated, he is represented by counsel, he is not indigent, and the lawsuit is based on new allegations of official misconduct. None of these circumstances, however, relieve Sims of his obligation to adhere to the requirements of *Scopelitis*. As mentioned, we defined the scope of our order in that case as applying to “*any future lawsuits* that arise directly or indirectly from any alleged conspiracy by public officials related to Sims’[s] arrest, prosecution, conviction or confinement for burglary, rape, and criminal deviate conduct[.]” *Scopelitis*, 797 N.E.2d at 352 (emphasis added). To get straight to the point, nothing in *Scopelitis* indicates—or even suggests—that it only applies to lawsuits filed while Sims was still incarcerated, *pro se* lawsuits, or lawsuits filed by appointed counsel or that it does not apply to lawsuits based on new allegations. Moreover, because *Scopelitis* provides that its requirements be satisfied “[p]rior to filing any such lawsuit,” *id.*, this lawsuit should never even have been filed.

[7] Sims’s legal arguments are similarly unconvincing. First, Sims’s reliance on the Indiana Supreme Court’s decision in *Smith v. Indiana Department of Correction*, 883 N.E.2d 802 (Ind. 2008), is unavailing. In that case, the Indiana Supreme

Court struck down Indiana’s so-called “three strikes” law regarding inmate litigation because, when triggered, it operated as a “complete ban on filing based on the plaintiff’s prior litigation.” *Id.* at 809. Our order in *Scopelitis*, however, is not a complete ban; Sims may file claims related to the 1995 convictions so long as he complies with its requirements.

[8] Sims also seems to contend that the St. Joseph Superior Court dismissed his claim pursuant to Indiana Code sections 34-58-1-1 and -2, which concern inmate lawsuits which are frivolous and/or filed by persons falsely claiming to be indigent. There is no indication that this is the case. The St. Joseph Superior Court did not cite to either of the statutes in question, instead relying only on our decisions in *Scopelitis* and *Bramer*. Finally, we reject Sims’s argument that *Scopelitis* applies only when he is proceeding *pro se* and places no burden on his counsel when he has representation; the order applies to *all* future lawsuits based on the 1995 convictions without regard to whether Sims is represented by counsel. We conclude that the St. Joseph Superior Court did not clearly err in this regard.

II. Change of Venue

[9] Sims contends that the St. Joseph Superior Court abused its discretion in not ruling on his first motion for change of venue before granting Defendants’ motion to dismiss and that the Marshall Circuit Court abused its discretion in denying his second motion for change of venue. We need not address the merits of this argument. Because the requirements of *Scopelitis* were not satisfied, this lawsuit was properly dismissed and, indeed, should never have

been filed in the first place. In our view, the disposition most consistent with the intent and spirit of our order in *Scopelitis* (which, in part, is to dispose of frivolous litigation as quickly as possible) is that the dismissal should have been the end of it and any rulings that occurred afterwards should be considered nullities. These rulings include the transfer to Marshall Circuit Court and the award of attorney’s fees to Defendants and other sanctions against Sims. *See* Ind. Appellate Rule 66(C)(10) (“The Court may, with respect to some or all of the parties or issues, in whole or in part [...] grant any other appropriate relief.”). Consequently, we affirm the St. Joseph Superior Court’s dismissal of Sims’s complaint and reverse all subsequent rulings.²

[10] We affirm in part and reverse in part.

Vaidik, J., and Brown, J., concur.

² There is also a dispute regarding whether St. Joseph County was ever actually added as a party to Sims’s lawsuit. Our disposition renders this a moot question, so we assume, without deciding, that St. Joseph County, by its Board of Commissioners, was never a party below and is therefore not a party to this appeal.