MEMORANDUM DECISION

APPELLANT PRO SE

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IN THE COURT OF APPEALS OF INDIANA

Kevin Martin,
Appellant-Plaintiff,

v.

J. Meek, et al.,
Appellees-Defendants

June 3, 2022

Court of Appeals Case No. 21A-MI-2481

Appeal from the Sullivan Circuit Court

The Honorable Lakshmi Reddy, Special Judge

Trial Court Cause No. 77C01-2106-MI-325

May, Judge.

[1] Kevin Martin appeals the dismissal of his complaint involving Department of Correction employees J. Meek, A. Gonthier, Sergeant Leflord, and Sergeant Drada (collectively, "DOC Parties"). We affirm.

Facts and Procedural History

[1] On June 8, 2021, in Sullivan Circuit Court, Martin filed an "information for count-I" alleging the DOC Parties committed Level 6 felony intimidation.[1] (Appellees' App. Vol. II at 2.) He alleged the DOC Parties "threat to have Martin killing if he dont drop the lawsuit and shut his mount intentionally put Martin life at risk inside this prison Kevin Martin will be killing get it on the record." (*Id.*) (errors in original). After recusal of the regular judge for that trial court, a special judge was appointed. She accepted the appointment on June 23, 2021. Martin served notice to the DOC Parties, but he did not serve the Attorney General's office.

[2] On September 8, 2021, Martin filed a motion for default judgment, as he had not received a response from the Attorney General's office. On October 6, 2021, the trial court entered an order denying Martin's motion for default judgment and dismissing his complaint. The trial court found "[t]he allegations brought be [sic] Plaintiff are criminal in nature and these must be brought by the

[1] Ind. Code § 35-45-2-1(b).

State of Indiana and not by Plaintiff as an individual. Plaintiff does not have standing to bring this action." (Notice of Appeal at 7.)[2]

Discussion and Decision

[3] As an initial matter, we note Martin appeared before the trial court and in this appeal pro se. It is well settled that pro se litigants are held to the same standards as licensed attorneys and are required to follow procedural rules. *Evans v. State*, 809 N.E.2d 338, 344 (Ind. Ct. App. 2004), *trans. denied*. Martin argues the trial court abused its discretion when it denied his motion for default judgment and erred when it dismissed his complaint.

[4] Martin contends the trial court erred in denying his motion for default judgment. We review a trial court's decision regarding a motion for default judgment for an abuse of discretion. *Morton-Finney v. Gilbert*, 646 N.E.2d 1387, 1388 (Ind. Ct. App. 1995), *trans. denied*. An abuse of discretion occurs when the trial court's decision is clearly against the logic and effect of the facts and circumstances before it. *Id*. Default judgments serve several important policy objectives including "maintaining an orderly and efficient judicial system, facilitating the speedy determination of justice, and enforcing compliance with procedural rules[.]" *Huntington Nat. Bank v. Car-X Assoc. Corp.*, 39 N.E.3d 652, 659 (Ind. 2015). However, these objectives "should not come at the expense of

[2] Neither party included the appealed order in their appendix as required by Indiana Appellate Rule 50(A)(2)(b).

professionalism, civility, and common courtesy." *Id*. As our Indiana Supreme Court has explained, "default judgment 'is not a trap to be set by counsel to catch unsuspecting litigants' and should not be used as a 'gotcha' device[.]" *Id*. (quoting *Smith v. Johnston*, 711 N.E.2d 1259, 1264 (Ind. 1999)). "Indiana law strongly prefers disposition of cases on their merits." *Coslett v. Weddle Bros. Const. Co.*, 798 N.E.2d 859, 861 (Ind. 2003).

[5] On September 8, 2021, Martin filed a motion for default judgment because the Attorney General had not responded to the alleged criminal charges that he filed against the DOC Parties on June 8, 2021. However, Martin did not serve notice to the Attorney General pursuant to Indiana Code section 4-6-4-1, which states in relevant part:

> Whenever any action, counter-claim, petition, or cross-complaint is filed in any court in this state in which the state of Indiana or any board, bureau, commission, department, division, agency, or officer or employee in the employee's capacity as an employee of the state of Indiana is a party and the attorney general is required or authorized to appear or defend, or when the attorney general is entitled to be heard, a copy of the complaint, cross-complaint, petition, bill, or pleading shall be served on the attorney general and the action, cross-action, or proceeding shall not be considered to be commenced as to the state or any board, bureau, commission, department, division, agency, or officer or employee in the employee's capacity as an employee of the state of Indiana until service.

Martin did not serve the Attorney General as required, and thus the Attorney General was unable to respond to his complaint. Therefore, the trial court did not abuse its discretion when it denied Martin's motion for default judgment.

See, e.g., Front Row Motors LLC v. Jones, 5 N.E.3d 753, 758 (Ind. 2014) (default judgment entered against Front Row Motors was void because Jones knew he did not send notice to the proper address).

[6] Moreover, pursuant to Indiana Code section 34-58-1-2(a)(2), "[a] court shall review a complaint or petition filed by an offender and shall determine if the claim may proceed. A claim may not proceed if the court determines that the claim: . . . is not a claim upon which relief may be granted." As we explained in *Daher v. Sevier*:

> When reviewing the dismissal of an offender's claim pursuant to I.C. § 34-58-1-2, we employ a de novo standard of review. *Smith v. Donahue*, 907 N.E.2d 553 (Ind. Ct. App. 2009), *trans. denied*, *cert. dismissed*, 558 U.S. 1074, 130 S. Ct. 800, 175 L.Ed.2d 556. We look only to the well-pleaded facts contained in the complaint or petition. *Id*. Moreover, we determine whether the complaint or petition contains allegations concerning all of the material elements necessary to prevail in the action under some viable legal theory. *Id*.

954 N.E.2d 469, 472 (Ind. Ct. App. 2011). Regarding the dismissal of his complaint, the trial court found Martin lacked standing as an individual to bring a criminal complaint. Standing is a "party's right to make a legal claim or seek judicial enforcement of a duty or right." *Black's Law Dictionary* (11th ed. 2019). Pursuant to Indiana Code section 35-34-1-1:

> (a) All prosecutions of crimes shall be brought in the name of the state of Indiana. Any crime may be charged by indictment or information.

> (b) Except as provided in IC 12-15-23-6(d),[3] all prosecutions of crimes shall be instituted by the filing of an information or indictment by the prosecuting attorney, in a court with jurisdiction over the crime charged.

Based thereon, Martin did not have the legal authority to file criminal charges against the DOC parties and thus he did not assert a claim upon which relief can be granted. *See, e.g., Ball v. City of Indianapolis*, 760 F.3d 636, 646 (7th Cir. 2014) (Ball lacked standing to pursue claims against state officials for alleged violations of the Indiana criminal code). Accordingly, we hold the trial court did not err when it dismissed his complaint.[4]

Conclusion

[7] The trial court did not abuse its discretion when it denied Martin's motion for default judgment because Martin had not properly served the Attorney General as required by statute. Additionally, Martin's claim was properly dismissed for failure to state a claim upon which the trial court can grant relief, as he did not have standing to file criminal charges against the DOC Parties. Accordingly, we affirm.

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[3] Indiana Code section 12-15-23-6(d) authorizes the Attorney General's office to act in cases of alleged Medicaid fraud, which is not relevant here.

[4] We have attempted to address the issues raised in Martin's brief, though his argument is mostly indiscernible. To the extent he attempted to make any additional arguments, they are waived for failure to present a cogent argument pursuant to Indiana Appellate Rule 46(A)(8)(a). *See Matheney v. State*, 688 N.E.2d 883, 907 (Ind. 1997) (failure to make a cogent argument waives issue from consideration on appeal).

[8] Affirmed.

Riley, J., and Tavitas, J., concur.