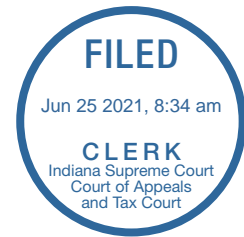


MEMORANDUM DECISION

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

Michael R. Jent,
Appellant-Petitioner,

v.

Indiana Bureau of Motor
Vehicles,
Appellee-Respondent,

June 25, 2021

Court of Appeals Case No.
20A-CT-2096

Appeal from the Marion Superior
Court

The Honorable Caryl Forsythe
Dill, Magistrate

Trial Court Cause No.
49D02-1908-CT-33611

Robb, Judge.

Case Summary and Issue

- [1] Michael Jent appeals the dismissal of his complaint against the Indiana Bureau of Motor Vehicles (“BMV”). Jent raises one issue for our review, which we restate as whether the trial court erred in dismissing Jent’s complaint with prejudice. Concluding that any error was harmless, we affirm.

Facts and Procedural History

- [2] On October 11, 2013, Tammy Raab initiated a class action in Marion County against the BMV in *Tammy Raab v. Peter L. Lacy, Indiana Bureau of Motor Vehicles*, Cause No. 49D11-1310-PL-038001. *See* Appendix of Appellee, Volume 2 at 5. The class action suit claimed that the BMV had been overcharging Indiana residents for various fees, including vehicle registration. On September 18, 2015, the *Raab* trial court granted class certification under Indiana Trial Rule 23(A) & (B)(3) and later revised the class definition to include “[a]ll persons and entities that paid to the [BMV] one or more of the Overcharged Fees during the corresponding overcharge period” and provided that the “class period” was from January 1, 2002, through December 31, 2014. *Id.* at 9.
- [3] On April 7, 2016, class counsel submitted a report of the parties’ agreement concerning issuance of notices to the class and requests for exclusion by class members. *See id.* at 122. The *Raab* trial court approved the forms of notice and methods of issuing notice of certification to the class members, which was done in July 2016. *See id.* at 126-28. Notice to the class included:

- a. Establishing a website located at www.BMVOverchargeLitigation.com, to provide information and relevant documents related to the Settlement[;]
- b. Establishing a toll free telephone number, 1-855-730-8637, and an Interactive Voice Recording (“IVR”) system through which Class Members could call and listen to answers to Frequently Asked Questions or request a notice packet be mailed to them[;]
- c. Establishing a post office box, P.O. Box 43419, Providence, RI 02940-3419, to be used for receiving requests for exclusion and other communications, including questions and comments[;]
- d. Publishing notice in *Fort Wayne Journal Gazette/News Sentinel*, *Jeffersonville News & Tribune*, *Merrillville Post Tribune*, *Indianapolis Star*, *Bloomington Herald Times*, *South Bend Tribune*, *Evansville Courier Press*, and *Richmond Palladium-Item* on July 15, 2016[;]

* * *

- f. Issuing postcard notice, skip tracing for returned postcards and remailing postcards with updated addresses[;] and
- g. Issuing email notice and mailing postcard notice if an email was returned undeliverable and a mailing address was available[.]

Id. at 123-24.¹

¹ According to the report of class counsel following issuance of notice, as of September 9, 2016, 1,146 members of the class had requested exclusion. App. of Appellee, Vol. 2 at 124. Jent was not among them. *See id.* at 141-61.

[4] On November 18, 2016, the *Raab* trial court issued its findings of facts, conclusions of law and judgment on the complaint. The *Raab* trial court entered judgment in favor of the plaintiff class and ordered mediation between the parties to resolve the issue of total damages due to the class. *See id.* at 47-48. On May 1, 2017, the parties submitted a class action settlement agreement. The settlement agreement provided that class members could submit claims to the BMV website from July 1, 2017, through July 1, 2019. *Id.* at 70. The agreement further provided that class members released all claims, whether class or individual, against the BMV related to the collection of fees during the class period. *Id.* at 76. And the settlement agreement requested the *Raab* trial court approve the parties' notice of the settlement to the class members, which was to be posted in the following locations:

(1) on the notice website previously identified in the e-mail, postcard and publication notices issued to the Plaintiff Class; (2) via a link on the BMV's website home page (in a similar size and style format as the button for "Class Action Lawsuit Info" currently along the right side of the BMV home page); and (3) via a link on Class Counsel's website home page[.]

Id. at 75; *see also id.* at 91-103.

[5] On May 2, 2017, the *Raab* trial court granted the parties' joint motion for preliminary approval of a class action settlement agreement. *See id.* at 63-65. The *Raab* trial court then entered its order and final judgment approving the settlement wherein it concluded the notice provided for in the settlement agreement was reasonable and adequate. *Id.* at 117-20.

[6] On August 28, 2018, Jent filed a Notice of Tort Claim against the BMV. He alleged therein that on April 22, 2018, he learned from a relative about the class action suit for the first time. He further alleged that between 2002 and 2004, he had initiated five different transactions for title and registration change or renewal through the BMV making him a member of the class. However, Jent never filed a claim or opted out of the class action settlement.² The Office of the Indiana Attorney General denied Jent's tort claim. Appellant's Appendix, Volume 2 at 16. Subsequently, Jent filed a complaint against the BMV seeking compensatory and punitive damages.

[7] On October 5, 2020, the BMV filed a motion to dismiss asserting that Jent, as a member of the *Raab* class, had waived and released any claim against the BMV and that res judicata barred Jent's claim. *See id.* at 19. The trial court granted the BMV's motion and dismissed Jent's complaint with prejudice.³ Jent now appeals.

² Jent claimed that he was unable to file a settlement claim because he did not have computer access due to his incarceration. *See* Appellant's Brief at 9.

³ Jent subsequently filed a Motion for Leave to Amend Complaint and an Amended Complaint on November 5, 2020. *See* Appellant's App., Vol. 2 at 30-37. However, Jent had filed his notice of appeal on October 30, 2020, and the motion to amend was not considered by the trial court.

Discussion and Decision

I. Standard of Review

- [8] We begin by acknowledging that Jent proceeds pro se. It is well established that “a pro se litigant is held to the same standards as a trained attorney and is afforded no inherent leniency simply by virtue of being self-represented.” *Zavodnik v. Harper*, 17 N.E.3d 259, 266 (Ind. 2014).
- [9] A motion to dismiss for failure to state a claim tests the legal sufficiency of the claim, not the facts supporting it. *First Am. Title Ins. Co. v. Robertson*, 65 N.E.3d 1045, 1049 (Ind. Ct. App. 2016), *trans. denied*. This court reviews a trial court’s ruling on a motion to dismiss de novo. *Freels v. Koches*, 94 N.E.3d 339, 342 (Ind. Ct. App. 2018). When reviewing a motion to dismiss, “we view the pleadings in the light most favorable to the nonmoving party, with every reasonable inference construed in the non-movant’s favor.” *Kitchell v. Franklin*, 997 N.E.2d 1020, 1025 (Ind. 2013) (citation omitted). If a complaint sets forth facts that, even if true, would not support the requested relief, we will affirm. *Freels*, 94 N.E.3d at 342. And we may affirm the grant of a motion to dismiss if it is sustainable on any legal theory. *Id.*

II. Motion to Dismiss

[10] Jent argues that the trial court erred in granting the BMV's motion to dismiss with prejudice and precluding him from amending his complaint.⁴ *See* Appellant's Brief at 4. Generally, when a motion to dismiss is sustained for failure to state a claim under Indiana Trial Rule 12(B)(6), dismissal is without prejudice because the complaint may be amended once as of right. Ind. Trial Rule 12(B); *Platt v. State*, 664 N.E.2d 357, 361 (Ind. Ct. App. 1996), *trans. denied, cert. denied*, 520 U.S. 1187 (1997). However, we have held that on appeal of a dismissal with prejudice, an appellant is required to show how he would have amended his complaint to avoid dismissal. *See Saylor v. Reid*, 132 N.E.3d 470, 474 (Ind. Ct. App. 2019), *trans. denied*. Otherwise, any error is harmless. *Id.*

[11] Here, the trial court determined that Jent was a member of the *Raab* class and therefore barred by the doctrine of res judicata from making a claim. Appellant's App., Vol. 2 at 7. The doctrine of res judicata prevents the repetitious litigation of disputes that are essentially the same. *Indianapolis Downs, LLC v. Herr*, 834 N.E.2d 699, 703 (Ind. Ct. App. 2005), *trans. denied*. We have previously held that "a judgment in a class action has a res judicata effect on absent class members." *Wal-Mart Stores, Inc. v. Bailey*, 808 N.E.2d 1198, 1201 (Ind. Ct. App. 2004), *trans. denied*.

⁴ Jent asserts in his Statement of Issues and Statement of the Case that the trial court erred by considering "matters outside the pleadings[.]" Appellant's Br. at 4-5. However, he fails to cite relevant legal authority or make a cogent argument. Therefore, we conclude the issue is waived. *See* Ind. Appellate Rule 46(A)(8)(a).

[12] In his original complaint, Jent stated that he filed a notice of tort claim and then a civil complaint against the BMV because he “was unable to gain access to the website to file his claim” under the *Raab* class action settlement. Appellant’s App., Vol. 2 at 9.⁵ Jent claims to have been unable to make a settlement claim due to his incarceration. However, we are unconvinced given that he filed his notice of tort claim August 28, 2018, which was prior to the July 1, 2019, deadline to submit a settlement claim.

[13] After the trial court granted the BMV’s motion to dismiss, Jent tried to file an amended complaint asserting that the BMV failed “to give adequate notice to [him] in order for him to be excluded from the class action[.]” *Id.* at 37. Indiana Trial Rule 23(C)(2) provides that:

the court shall direct to the members of the class the *best notice practicable under the circumstances*, including individual notice to all members who can be identified through reasonable effort.

(Emphasis added.) The BMV mailed notice postcards to 2,438,443 addresses, e-mailed notice to 2,979,018 e-mail addresses, and published notice of the class certification in eight Indiana based newspapers. *See* App. of Appellee, Vol. 2 at 123, 127-28. Jent also acknowledges that he received notice of the settlement via a relative. We conclude that BMV’s notice was “the best notice practicable

⁵ We note that the class action settlement provides that any refund not claimed by a class member in the form of a refund check or applied to a BMV transaction as a credit would be transferred to the Indiana Unclaimed Property Fund under the class member’s name. *See* Appellee’s App., Vol. 2 at 70.

under the circumstances,” T.R. 23(C)(2), and thus Jent’s amended complaint would also have been barred by re judicata, *Bailey*, 808 N.E.2d at 1201.

Therefore, any error committed by the trial court in dismissing Jent’s original complaint with prejudice is harmless. *See Saylor*, 132 N.E.3d at 474.

Conclusion

[14] We conclude that any error committed by the trial court in granting the BMV’s motion to dismiss Jent’s complaint with prejudice was harmless. Accordingly, we affirm.

[15] Affirmed.

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