MEMORANDUM DECISION

APPELLANT PRO SE

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IN THE
COURT OF APPEALS OF INDIANA

Warren Parks,
Appellant-Plaintiff,

v.

State of Indiana, et al.,
Appellees-Defendants.

February 1, 2022

Court of Appeals Case No. 21A-MI-1320

Appeal from the Putnam Superior Court

The Honorable Melinda Jackman-Hanlin, Magistrate

Trial Court Cause No. 67D01-2105-MI-201

Friedlander, Senior Judge.

[1] Warren Parks is a prisoner incarcerated at the Putnamville Correctional Facility. He appeals the dismissal of his complaint for declaratory judgment and damages. We affirm.

[2] On May 4, 2021, Parks filed a complaint against the warden of the Putnamville Facility, the head of the facility's internal affairs department, a Department of Correction staff attorney, and one of the facility's correctional officers alleging that he had been improperly removed from his job as a clerk in the facility's law library due to an illegal retaliation. Parks asserted he was "doing something [he] had a constitutional right to do." Appellees' App. Vol. 2, p. 8.

[3] The defendants filed a motion to screen Parks' complaint pursuant to Indiana Code section 34-58-1-2 (2004), the Frivolous Claim Law. This law was designed to screen and prevent abusive and prolific offender litigation in our state. *Smith v. Ind. Dep't of Corr.*, 883 N.E.2d 802 (Ind. 2008). After screening Parks' complaint, the court dismissed it with prejudice. Parks now appeals.

[4] At the outset, we note that Parks is proceeding pro se. Such litigants are held to the same standard as trained counsel, are required to follow procedural rules, and must accept the consequences when they fail to do so. *Lowrance v. State*, 64 N.E.3d 935 (Ind. Ct. App. 2016), *trans. denied* (2017). For instance, Appellate Rule 46 (A)(8)(a) requires the appellant to set forth his contentions on the issues supported by cogent reasoning. Accordingly, failure to present a cogent argument results in waiver of the issue on appeal. *Martin v. Brown*, 129 N.E.3d 283 (Ind. Ct. App. 2019).

[5] Here, Parks' brief contains a section entitled "Discussion" that is comprised of a string of case citations concerning governmental tort liability. *See* Appellant's Br. pp. 11-17. This section of his brief fails to comply with Rule 46 (A)(8)(a) in

that it completely lacks any contentions concerning how the trial court erred in this case as well as any cogent argument.

[6] Parks' brief also contains a section entitled "Argument." Although only slightly more comprehensible than the Discussion section, this section seems to convey Parks' dissatisfaction with the trial court's dismissal of his complaint as a result of the screening process. Supporting our assessment is his notice of appeal, which clearly indicates that he is appealing the court's order of June 17, 2021 (i.e., the order dismissing his complaint as a result of the screening process). Although his brief is convoluted, confusing, and falls decidedly short of the standard established in the appellate rules, we believe we are able to discern the overall nature of Parks' arguments and will proceed to address such.

[7] When reviewing the dismissal of an offender's claim pursuant to Section 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*. We look only to the well-pleaded facts in the complaint or petition to determine whether such document contains allegations concerning all of the material elements necessary to sustain a recovery under some viable legal theory. *Id.*

[8] Section 34-58-1-2, in relevant part, provides:

> (a) 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:
>
> (1) is frivolous;
>
> (2) is not a claim upon which relief may be granted; or

(3) seeks monetary relief from a defendant who is immune from liability for such relief.

(b) A claim is frivolous under subsection (a)(1) if the claim:

(1) is made primarily to harass a person; or

(2) lacks an arguable basis either in:

(A) law; or

(B) fact.

The order dismissing Parks' complaint simply states that "the claims contained in Plaintiff's complaint may not proceed." Appellees' App. Vol. 2, p. 2.

[9] At the outset, we briefly address two of Parks' allegations, as we understand them. First, he asserts that the motion to screen is not recorded in the case summary or that the record does not reflect its filing. *See* Appellant's Br. pp. 8, 5. This is simply not the case. The motion to screen was filed on June 16, 2021, as reflected in the CCS Parks provided in his appendix. *See* Appellant's App. Vol. 2, pp. 5-6. Second, Parks claims the screening statute creates a presumption, and "[t]he Dismissal is a complete disregard to the procedural process" because he was not given a chance to rebut the presumption. Appellant's Br. pp. 6, 8. Again, we must disagree. Section 34-58-1-2 neither creates nor contains a presumption. Furthermore, as he is obviously aware, offenders may avail themselves of the appellate process to seek review of the trial court's screening decision.

[10] Turning to the heart of Parks' appeal as we are able to perceive it, we review the well-pleaded facts in the complaint.[1] Parks' complaint states that he was assigned to work as a law library clerk at the correctional facility in August 2020 and that the defendants retaliated against him for exercising his First Amendment rights by removing him from "the clerk law library list"—which we gather means to remove him from his job as a law library clerk. Appellees' App. Vol. 2, pp. 6-8. Parks asserts that in February 2021 he filed a prisoner grievance regarding these facts and received a response dated April 1, 2021, stating his grievance had been denied. *See id.* at 7-8.

[11] An Offender Grievance Response Report was filed with the trial court at the same time as Parks' complaint in this matter. The report lists Warren Parks as the Offender and is dated April 1, 2021. It provides:

> I have reviewed your grievance concerns. Yes, I was aware of your sovereign citizen[2] views when you and I first talked and you were hired for a clerk position in the law library. However, I was not aware of how the Investigations and Intelligence Office classified the sovereign citizen. The Zero Tolerance policy here at ISF does not keep offenders from getting in programs only

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[1] We note here another instance in which Parks has failed to follow the procedural rules. Appellate Rule 50(A)(2)(f) requires appellants to provide in their appendix pleadings and other documents from the Clerk's Record that are necessary for resolution of the issues raised on appeal. Parks' complaint is one of these necessary pleadings, yet he failed to include it in his appendix as required. Our review is not impeded by Parks' neglect, however, because the Appellees filed an appendix and included Parks' complaint.

[2] The sovereign citizen movement is a set of "fringe political beliefs" held by some offenders and described as "using odd interpretations of both federal and state laws and constitutions to conclude that they do not apply to these citizens." *Hotep-El v. State*, 113 N.E.3d 795, 803 (Ind. Ct. App. 2018), *trans. denied* (2019). Followers of this movement typically serve as their own counsel and file unconventional motions in an attempt to frustrate the court proceedings. *Id.*

> certain job lines. The Investigations and Intelligence Office has set a standard that any offender with a confirmed STG[3] profile will only be allowed to work certain jobs. The law library clerk position is not one of them, therefore, the Investigations and Intelligence Office had you removed from the clerk's position. Grievance denied.

Id. at 10 (footnotes added).

[12] Thus, the issue for us to address is whether Parks' complaint alleging he has a First Amendment right to be a member of the sovereign citizens movement states a claim that has an arguable basis in law or upon which relief can be granted. On this topic, we find guidance from the federal courts.

[13] In *Suding v. Holcomb*, No. 3:18-CV-1044, 2019 WL 186498 (N.D. Ind. Jan. 11, 2019), the court considered prisoner Suding's complaint that alleged he was being denied admission into an apprentice program at Westville Correctional Facility because of a policy prohibiting participation in the program by members of STGs. Suding was classified as a member of an STG, and he argued that he had a First Amendment right to join such a group. The court recognized that STGs are prison gangs and that prison gangs are a manifest threat to prison order and discipline and are therefore incompatible with any penological system because they serve to undermine prison security. Accordingly, the court found it was not a violation of the First Amendment to

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[3] STG is an acronym for "Security Threat Group." *Reed v. White*, 103 N.E.3d 657 (Ind. Ct. App. 2018).

exclude Suding from the program because he is an STG member and dismissed his complaint for failure to state a claim. *Id.* (noting that gang member's claim of First Amendment right to belong to prison gang is too tenuous to state a claim).

[14] As an STG, the sovereign citizen movement is a prison gang, and, as such, it threatens the safety and stability within the prison. *See id.* Consequently, Parks' association with such movement is not protected activity under the First Amendment. Thus, whether denominated as frivolous due to its lack of arguable basis in law or as failing to state a claim upon which relief may be granted, Parks' complaint was properly dismissed as permitted by Section 34-58-1-2(a)(1) and (2).

[15] Judgment affirmed.

Crone, J., and Tavitas, J., concur.