MEMORANDUM DECISION

APPELLANT PRO SE

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IN THE COURT OF APPEALS OF INDIANA

Robert Carl Johnson,
Appellant-Petitioner,

v.

Corrections Officer Schell and Corrections Officer Captain Blattner,[1]
Appellee-Respondent

July 20, 2022

Court of Appeals Case No. 21A-PL-2328

Appeal from the Madison Circuit Court

The Honorable Angela G. Warner Sims, Judge

Trial Court Cause No. 48C01-1507-PL-87

[1] Though Johnson lists only Corrections Officer Schell in his appeal, Officer Blattner, despite his death, is still a party before the trial court, and a party of record before the trial court is a party on appeal. *See* Indiana Appellate Rule 17(A) ("A party of record in the trial court . . . shall be a party on appeal.").

May, Judge.

[1] Robert Carl Johnson appeals the trial court's grant of summary judgment in favor of Corrections Officer Schell and Corrections Officer Captain Blattner (collectively, "Defendants"). He also appeals the trial court's decision to dismiss all claims against former defendant Captain Blattner following Captain Blattner's death. We affirm.

Facts and Procedural History

[1] Johnson is serving a forty-nine year and eleven-month sentence for robbery. This case has been pending for approximately seven years. In his first appeal, we set forth the foundational facts of his civil action:

> On July 28, 2015, Johnson filed a civil complaint asserting his Fourth Amendment rights under the United States Constitution were violated when he "was violated by the [Correctional Officers] as [he] was continually searched and/or ordered to be searched by them by being stripped out each and every time late at night while in [his] cell." He alleged specifically he "was told to bend over and open [his] anus cavity" and he had been "psychologically damaged because of the abuse by all officers." He also contended his Fourteenth Amendment rights under the United States Constitution were violated "based on the fact that other inmates were not subjected or treated in the same manner of abuse as [he] was."
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> On December 22, 2015, the Correctional Officers filed a motion to dismiss Johnson's complaint pursuant to Indiana Trial Rule 12(B)(6) "because prisoners do not have a right to privacy under the 4th Amendment of the United States Constitution and the

> Plaintiff fails to allege sufficient facts to state an equal protection claim under the 14th Amendment to the United States Constitution." On January 11, 2016, the trial court granted the Correction Officers' motion to dismiss.

Johnson v. Corrections Officer Captain Blattner, 48A02-1602-PL-285, *slip op*. at *1 (Ind. Ct. App. December 16, 2016) (citations to the record omitted). Johnson appealed the trial court's grant of the Defendants' motion to dismiss. *Id*. at *3. We affirmed as to the Fourth Amendment issue, but we reversed and remanded regarding the Fourteenth Amendment issue because "Johnson's allegations fit those of a 'class of one' equal protection claim in that he contends he was treated differently than other prisoners and provided details of that treatment. The dismissal of Johnson's equal protection claim under the Fourteenth Amendment was not appropriate." *Id*.

[2] As we explained when Johnson later appealed this matter a second time:

> On remand, on February 23, 2017, the State filed a motion for summary judgment on the grounds that Johnson failed to exhaust his administrative remedies before filing his complaint, in violation of the PLRA [Prison Litigation Reform Act]. On March 3, Johnson filed a motion for partial summary judgment, contending that he exhausted his administrative remedies to the extent allowed by the State. Both parties designated evidence in support of their motions and the trial court held a hearing on those motions on August 17, 2017.
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> On October 19, 2017, the trial court granted the State's motion for summary judgment.

Johnson v. Corrections Officer Captain Blattner, 48A05-1711-PL-2840, *slip op*. at *1, 3 (Ind. Ct. App. August 20, 2018). Johnson appealed the trial court's grant of summary judgment in favor of Defendants. *Id*. at *3. Our court reversed the trial court's grant of summary judgment in favor of the Defendants because "there is a genuine issue of material fact regarding whether or not Johnson completed the last step of the DOC grievance process by filing an appeal of the Offender Grievance Response issued by the State on January 12, 2015." *Id*.

[3] Upon remand to the trial court, the trial court entered an order on November 15, 2019, setting the deadline for completion of discovery for September 3, 2020. At some point after November 15, 2019, Johnson filed a motion to amend his complaint, which the trial court granted on April 16, 2020.[2] On April 20, 2020, the State filed a suggestion of death, indicating Captain Blattner had passed away and Johnson was required to name a replacement defendant pursuant to Indiana Code section 34-9-3-3(a). Johnson did not name a successor to Captain Blattner. Though it is unclear from the record, at some point thereafter in the proceedings, the trial court dismissed Johnson's claims against Captain Blattner because Johnson had not named a successor defendant for Captain Blattner.

[2] The record does not include a copy of Johnson's amended complaint.

[4] On July 19, 2021, Defendants[3] filed a motion for summary judgment.[4] On July 20, 2021, Johnson filed his motion for summary judgment.[5] Johnson responded to Defendants' motion for summary judgment on September 27, 2021. On October 4, 2021, the trial court granted Defendants' motion for summary judgment and dismissed the matter with prejudice.

Discussion and Decision

[5] As an initial matter, we note Johnson proceeds pro se. Litigants who elect to proceed pro se assume the risk they may not know how to accomplish all that a trained attorney may be able to accomplish. *Smith v. Donahue*, 907 N.E.2d 553, 555 (Ind. Ct. App. 2009), *trans. denied*, *cert. dismissed*, 558 U.S. 1074 (2009). Nonetheless, "[i]t is well settled that pro se litigants are held to the same legal standards as licensed attorneys." *Lowrance v. State*, 64 N.E.3d 935, 938 (Ind. Ct. App. 2016), *reh'g denied*, *trans. denied*. Consequently, "pro se litigants are bound to follow the established rules of procedure and must be prepared to accept the consequences of their failure to do so." *Id*. We will not become an advocate for one of the parties or address an argument too poorly developed or expressed for us to understand. *Basic v. Amouri*, 58 N.E.3d 980, 984 (Ind. Ct. App. 2016).

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[3] Despite the fact Captain Blattner was deceased and claims against him were dismissed, he remains a party of record.

[4] A copy of this motion for summary judgment and supporting exhibits are not in the record.

[5] A copy of this motion for summary judgment and supporting exhibits are not in the record.

[6] Fatal to Johnson's appeal are his multiple violations of the Indiana Rules of Appellate Procedure. His brief is almost incomprehensible and contains barely ascertainable argument. To the extent he makes an argument, he has failed to support that argument with relevant case law. These two deficiencies violate Indiana Appellate Rule 46(A)(8) which requires an appellant to present a cogent argument supported by relevant case law.

[7] Additionally, Johnson's appendix runs afoul of Indiana Appellate Rule 50(A)(2)(f), which requires the appellant's appendix in an appeal of a civil matter to contain "pleadings and other documents from the Clerk's Record in chronological order that are necessary for resolution of the issues raised on appeal[.]" Here, while Johnson provided a copy of the appealed order, he has not provided a copy of the Defendants' motion for summary judgment and supporting materials, his response to the motion, or his motion for summary judgment. Without these documents, it is impossible for us to determine whether the trial court erred in determining there were no genuine issues of material fact and Defendants were entitled to judgment as a matter of law.

[8] Failure to present a cogent argument results in waiver of the issue on appeal. *Hollowell v. State*, 707 N.E.2d 1014, 1025 (Ind. Ct. App. 1999). Additionally, "both our appellate rules as well as applicable case law clearly indicate that when appealing the grant or denial of a motion for summary judgment, the moving party must file with the appellate court those materials that were designated to the trial court for purposes of reviewing the motion for summary judgment." *Yoquelet v. Marshall Cnty.*, 811 N.E.2d 826, 829-30 (Ind. Ct. App.

2004). Failure to file these materials can result in dismissal of the appeal. *Hughes v. King*, 808 N.E.2d 146, 148 (Ind. Ct. App. 2004). We need not determine whether dismissal is warranted here, as we instead hold Johnson has waived all arguments from our consideration because of his failures to comply with the Indiana Rules of Appellate Procedure.

Conclusion

[9] Because Johnson waived all his arguments due to his failure to provide cogent argument or all documents required to review his alleged issue on appeal, we affirm.

[10] Affirmed.

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