

## 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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APPELLANT, PRO SE

John Jay Lacey  
Carlisle, Indiana

ATTORNEYS FOR APPELLEES  
KELLY INDA, KIM HOBSON,  
AND DR. SIMS

Kathryn Elias Cordell  
Jarod M. Zimmerman  
Katz Korin Cunningham, PC  
Indianapolis, Indiana.

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## IN THE COURT OF APPEALS OF INDIANA

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John Jay Lacey,  
*Appellant-Plaintiff,*

v.

State of Indiana, Kelly Inda,  
Kim Hobson, and Dr. Sims,  
*Appellees-Defendants.*

April 28, 2021

Court of Appeals Case No.  
20A-CT-1734

Appeal from the Sullivan Superior  
Court

The Honorable Hugh R. Hunt,  
Judge

Trial Court Cause No.  
77D01-1805-CT-226

**Pyle, Judge.**

## Statement of the Case

[1] John Jay Lacey (“Lacey”), pro se, appeals multiple orders entered by the trial court in this prisoner complaint proceeding in which the remaining defendants are medical providers at Wabash Valley Correctional Facility (“WVCF”).<sup>1</sup> Specifically, these medical providers include licensed mental health counselor, Kelly Inda (“Counselor Inda”); nurse and health services administrator, Kim Hobson (“Nurse Hobson”); and psychologist, Dr. Mary Ruth Sims (“Dr. Sims”) (collectively “the Medical Providers”). Lacey argues that the trial court erred by: (1) denying his motion for default judgment against the Medical Providers; (2) granting the Medical Providers’ summary judgment motion; and (3) denying his summary judgment motion.<sup>2</sup> Concluding that there was no error in the trial court’s rulings, we affirm the trial court’s judgment.

[2] We affirm.

## Issues

1. Whether the trial court erred by denying Lacey’s motion for default judgment.
2. Whether the trial court erred by granting the Medical Providers’ summary judgment motion.

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<sup>1</sup> The complaint had been previously dismissed against other defendants who are not participating in this appeal.

<sup>2</sup> We have consolidated and reordered Lacey’s arguments into these three general arguments.

3. Whether the trial court erred by denying Lacey's summary judgment motion.

## **Facts**

- [3] On May 10, 2018, Lacey filed a prisoner complaint under 42 U.S.C. § 1983 against the Indiana Department of Correction (“the DOC”), WVCF, and employees of WVCF (Richard Brown, Thomas Wellington, Kelly Sweazey) (collectively, “the State Defendants”); Wexford Health Services (“Wexford”); and the Medical Providers. In his complaint, Lacey generally alleged that these parties had violated his constitutional rights while he was incarcerated; however, he did not specify any constitutional provisions that had been violated. Lacey sought to obtain \$700,000.00 from these defendants. In relation to the Medical Providers, Lacey alleged that they had denied him access to psychiatric treatment from March 20, 2017 (the day he arrived at WVCF) to January 2, 2018. He also alleged that the prison dispensary had provided him with incorrect doses of prescribed medication and that Nurse Hobson should have ensured that the dispensary provided him with the appropriate dosage of medication.
- [4] Subsequently, in June 2018, the Medical Providers, along with Wexford, filed their answer and a motion to dismiss. The trial court did not rule on the motion to dismiss but ordered Lacey to file, within twenty days, an amended complaint to comply with the trial rules.
- [5] On July 20, 2018, Lacey filed a pro se amended complaint. In relevant part, Lacey alleged that the Medical Providers had violated his “eighth and

fourteenth amendment rights” by subjecting him to “cruel and unusual punishment” when they denied him access to psychiatric treatment from March 20, 2017 to January 2, 2018. (App. Vol. 2 at 29). Lacey alleged that the Medical Providers had been deliberately indifferent to his psychiatric needs. He also alleged that the Medical Providers had subjected him to “intentional mistreatment and negligence” because Nurse Hobson had not “ensured that the [prison] dispensary was providing accurate doses of medication and that adequate amounts of medication were on hand” at the prison dispensary. (App. Vol. 2 at 30, 31).

[6] Thereafter, in August 2018, the State Defendants filed a motion to dismiss. The trial court granted the motion, thereby dismissing the State Defendants from this proceeding. The Medical Providers and Wexford then filed a request for a hearing to address their previously filed motion to dismiss. The trial court set a status hearing for October 31.

[7] On September 14, 2018, Lacey filed a pro se motion for summary judgment against the Medical Providers and Wexford. Lacey generally argued that he was entitled to summary judgment because “there [wa]s a genuine issue of material fact” and he was “entitled to judgment as a matter of law.” (App. Vol. 2 at 38). Lacey filed an affidavit in support of his summary judgment motion, in which he repeated the allegations contained in his amended complaint. His designated evidence included grievance documents and health care request forms he had filed with the DOC, correspondence with the DOC and Wexford, and medical records from 2006 to 2008.

[8] Shortly thereafter, the trial court rescheduled the October 31 hearing to October 24 and noted that the hearing would be a status hearing and a hearing on Lacey's summary judgment motion. During the October 24, 2018 hearing, the Medical Providers informed the trial court that they had been waiting for a ruling on their prior motion to dismiss and for a ruling on whether Lacey had been granted leave to file his amended complaint so that they could determine how to proceed. The trial court explained that it had not ruled on the Medical Providers' motion to dismiss because it had ordered Lacey to file an amended complaint. The trial court further stated that it was at "fault" for the Medical Providers' misunderstanding. (Tr. Vol. 2 at 5). The Medical Providers then asked the trial court for thirty days to respond to the amended complaint. The trial court asked Lacey if he had "any objection to that" request, and Lacey replied, "No sir." (Tr. Vol. 2 at 7). The trial court then gave the Medical Providers until November 24 to file their answer. The trial court then asked the parties if there were "[a]ny other things" that needed to be addressed. (Tr. Vol. 2 at 8). The Medical Providers responded that they "d[id]n't believe so[,] and Lacey made no mention of his summary judgment motion. (Tr. Vol. 2 at 8).

[9] On November 21, 2018, the Medical Providers, along with Wexford, filed an answer to Lacey's amended complaint. That same day, they also filed a motion to dismiss the complaint against Wexford. Thereafter, the trial court granted the motion to dismiss Wexford.

[10] On December 6, 2018, Lacey filed a "Motion for Default of Summary Judgment" ("default judgment motion"). (App. Vol. 2 at 108). He argued that

the trial court should grant default judgment against the Medical Providers because they had failed to respond to his amended complaint within thirty days of the date that it had been filed. The trial court denied Lacey's default judgment motion.

[11] Lacey then filed a notice of appeal with our Court to appeal the trial court's denial of his default judgment motion. Our Court dismissed Lacey's appeal without prejudice because the trial court's order was neither a final judgment nor a certified interlocutory order. *See* Appellate Cause No. 18A-CT-3080.

[12] On January 17, 2019, Lacey filed a motion for a hearing. In his motion, Lacey stated that the trial court had not ruled on his September 2018 summary judgment motion during the October 2018 status hearing, and he requested the trial court to set a hearing and rule on his summary judgment motion. On January 22, the trial court issued an order denying Lacey's request for a hearing and denying his summary judgment motion "[t]o the extent that it ha[d] not been denied by previous order[.]" (App. Vol. 2 at 119).

[13] More than one year later, on June 26, 2020, the Medical Providers filed a motion for summary judgment. They argued that they were entitled to summary judgment on Lacey's claims of denial of psychiatric care and negligence because their designated evidence showed that the Medical Providers had not acted negligently or with deliberate indifference. The Medical Providers also argued that summary judgment was proper on Lacey's attempt to hold Nurse Hobson vicariously liable for the availability of

medication doses at the prison pharmacy because she did not have authority over the pharmacy, making Lacey's claim of respondeat superior improper in the § 1983 lawsuit. The Medical Providers included the following designated evidence: (1) affidavits from the three Medical Providers and from a prison psychiatrist; (2) copies of all clinical notes, dating from March 2017 (when Lacey was first incarcerated) to May 2018; (3) copies of Lacey's healthcare request forms and grievance forms; and (4) a deposition of Lacey from February 2020.

[14] During an August 26, 2020 final pretrial hearing, the trial court asked Lacey if he was planning to file a response to the Medical Providers' summary judgment motion. Lacey told the trial court that he was waiting for a transcript of the October 24, 2018 status hearing before he filed his response and that he was planning to challenge the trial court's ruling on his prior default judgment motion. The trial court explained to Lacey that a challenge to the prior default judgment ruling would not be a proper summary judgment response. Lacey then told the trial court that he was "refusing to file a response." (Tr. Vol. 2 at 12). Lacey stated that he "want[ed] this case to be over" and "want[ed] a final judgment" so that he could appeal the trial court's default judgment ruling. (Tr. Vol. 2 at 11).

[15] Nevertheless, Lacey thereafter filed a response to the Medical Providers' summary judgment motion. In that response, he argued the trial court should have granted his default judgment motion and that the Medical Providers' default precluded their summary judgment motion. On September 1, 2020, the

trial court granted the Medical Providers' summary judgment motion. Lacey now appeals.

## Decision

[16] At the outset, we note that Lacey has chosen to proceed pro se. It is well settled that pro se litigants are held to the same legal standards as licensed attorneys. *Evans v. State*, 809 N.E.2d 338, 344 (Ind. Ct. App. 2004), *trans. denied*. Thus, 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 a party’s advocate, nor will we address arguments that are inappropriate, improperly expressed, or too poorly developed to be understood.” *Barrett v. State*, 837 N.E.2d 1022, 1030 (Ind. Ct. App. 2005), *trans. denied*.

[17] Lacey argues that the trial court erred by: (1) denying his default judgment motion; (2) granting the Medical Providers' summary judgment motion; and (3) denying his summary judgment motion. We will address these arguments in turn.

### 1. Default Judgment

[18] Lacey argues that the trial court erred by denying his motion for default judgment against the Medical Providers.



[19] Indiana Trial Rule 55 provides that a party “may be defaulted” if the party has “failed to plead or otherwise comply with the[] [trial] rules[.]” Ind. Trial Rule 55(A).

The grant or denial of a default judgment lies within the sound discretion of the trial court. On appeal, we will reverse only if the trial court’s decision is clearly against the logic and effect of the facts and circumstances before it. However, Indiana courts do not generally favor default judgments. Thus, any doubt as to the propriety of a default judgment is to be resolved in favor of the nonmoving party.

*Jackson v. City of Jeffersonville*, 771 N.E.2d 703, 705 (Ind. Ct. App. 2002) (cleaned up), *trans denied*.

[20] Lacey contends that the trial court should have granted his motion for default judgment because the Medical Providers failed, under Trial Rule 6, to file a timely answer to his amended complaint. We disagree.

[21] Here, after Lacey filed his initial pro se complaint, the Medical Providers filed both an answer and a motion to dismiss in June 2018. The trial court did not rule on the motion to dismiss but ordered Lacey to file an amended complaint to comply with the trial rules. Lacey then filed a pro se amended complaint on July 20, 2018. Following the trial court’s grant of the State Defendants’ motion to dismiss in August 2018, the Medical Providers filed a request for a hearing to address their previously-filed motion to dismiss. During an October 2018 hearing, the Medical Providers informed the trial court that they had been waiting for a ruling on their prior motion to dismiss and for a ruling on whether

Lacey had been granted leave to file his amended complaint so that they could determine how to proceed. The trial court explained that it had not ruled on the Medical Providers' motion to dismiss because it had ordered Lacey to file an amended complaint, and the trial court stated that it was at "fault" for the Medical Providers' misunderstanding. (Tr. Vol. 2 at 5). The Medical Providers then asked the trial court for thirty days to respond to the amended complaint. The trial court asked Lacey if he had "any objection to that" request, and Lacey replied, "No sir." (Tr. Vol. 2 at 7). The trial court then gave the Medical Providers until November 24 to file their answer. Thereafter, the Medical Providers filed an answer to Lacey's amended complaint on November 21, 2018. On December 6, 2018, Lacey filed his default judgment motion, which the trial court denied.

[22] Based on the record before us, we conclude that the trial court did not abuse its discretion by denying Lacey's default judgment motion. Lacey filed his motion for default judgment after the Medical Providers had already filed an answer to his amended complaint. We have explained that "[i]f an answer is filed before the motion for default, it is virtually impossible for the moving party to establish that the other party 'has failed to plead.'" *Sportsman's Paradise, Inc. v. Sports Ctr., Inc.*, 424 N.E.2d 1073, 1075 (Ind. Ct. App. 1981). "The crucial time for determining whether a party has in fact failed to plead is at the time the motion for default is filed." *Id.* Furthermore, "any answer filed before the motion for default is sufficient to avoid default . . . even though the answer is untimely filed pursuant to [Trial Rule] 6." Because the Medical Providers filed their answer

before Lacey filed his default judgment motion, the trial court did not abuse its discretion by denying Lacey's motion.<sup>3</sup>

## 2. The Medical Providers' Summary Judgment Motion

[23] Next, we address Lacey's argument that the trial court erred by granting the Medical Providers' summary judgment motion.

[24] Our standard of review for summary judgment cases is well-settled. When we review a trial court's grant of a motion for summary judgment, our standard of review is the same as it is for the trial court. *Knigheten v. E. Chi. Hous. Auth.*, 45 N.E.3d 788, 791 (Ind. 2015). Summary judgment is appropriate only where the moving party has shown that there is no genuine issue of material fact and it is entitled to judgment as a matter of law. *Hughley v. State*, 15 N.E.3d 1000, 1003 (Ind. 2014).

[25] Lacey does not challenge the substance of the Medical Providers' summary judgment motion or argue that they had failed to show that they were entitled to summary judgment as a matter of law. Instead, Lacey's argument regarding

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<sup>3</sup> As part of Lacey's argument regarding his default judgment motion, he also asserts that the trial court erred by granting the Medical Providers' request for additional time to file their answer to Lacey's amended complaint. However, Lacey, who told the trial court that he had no objection to the grant of additional time for the Medical Providers to file their response, has waived appellate review of such argument. *See Halliburton v. State*, 1 N.E.3d 670, 679 (Ind. 2013) (explaining that an appellant cannot state at trial that he has no objection to the admission of evidence and then argue on appeal that such admission is erroneous); *Staggs v. Buxbaum*, 60 N.E.3d 238, 248-49 (Ind. Ct. App. 2016) ("A party may not take advantage of an error that he commits, invites, or which is the natural consequence of his own neglect or misconduct."), *trans. denied*. Additionally, we reject Lacey's assertion that the trial court erred because it failed to follow an administrative statute relating to when an administrative law judge may serve written notice of a proposed default.

the Medical Providers' summary judgment motion is based entirely on the trial court's ruling on his default judgment motion. Specifically, he contends that if the trial court's ruling that denied his default judgment motion was erroneous and he was entitled to default judgment against the Medical Providers, then the Medical Providers would have been precluded from the entry of summary judgment in their favor. We, however, have already held that the trial court did not abuse its discretion by denying Lacey's motion for default judgment and that Lacey was not entitled to default judgment against the Medical Providers. Because Lacey has not otherwise argued or shown that the entry of summary judgment in favor of the Medical Providers was erroneous, we conclude that the trial court did not err by granting the Medical Providers' summary judgment motion.

### **3. Lacey's Summary Judgment Motion**

[26] Lastly, we turn to Lacey's argument that the trial court erred by denying his motion for summary judgment. Lacey does not argue the merits of his summary judgment motion or contend that he was entitled to summary judgment as a matter of law. Instead, he questions the "procedural" manner in which the trial court handled his summary judgment motion. (Lacey's Br. 25). Specifically, he contends that the trial court disregarded the summary judgment procedural rules by failing to order the Medical Providers to respond to his summary judgment motion and by failing to schedule a hearing when he requested it in September 2018 and January 2019.

[27] First, we reject Lacey’s argument that the trial court disregarded the summary judgment procedural rules by failing to order the Medical Providers to respond to his summary judgment motion. Indiana Trial Rule 56 provides that a party has thirty days to respond to a moving party’s summary judgment motion, but the rule does not require the trial court to order the party to file a response. *See* T.R. 56(C).

[28] Additionally, Trial Rule 56(C) was amended, effective January 1, 2006, to eliminate the mandatory nature of a summary judgment hearing. *See ABN AMRO Mortgage Grp., Inc. v. Am. Residential Servs., LLC*, 845 N.E.2d 209, 214 n.2 (Ind. Ct. App. 2006). Indiana Trial Rule 56 provides, in relevant part, as follows:

The court *may* conduct a hearing on the [summary judgment] motion. However, upon motion of any party made no later than ten (10) days after the response was filed or was due, the court *shall* conduct a hearing on the motion which shall be held not less than ten (10) days after the time for filing the response.

T.R. 56(C) (emphases added). Thus, Trial Rule 56(C) requires the trial court to hold a hearing only when a party makes a timely request.

[29] Here, Lacey filed a motion for summary judgment on September 14, 2018. Pursuant to Trial Rule 56(C), the trial court was not automatically required to hold a hearing on Lacey’s summary judgment motion. However, simultaneous with his September 2018 summary judgment motion, Lacey requested the trial court to hold a hearing on his summary judgment motion during an already-

scheduled October 2018 status hearing. Thus, Lacey's hearing request was timely as it was filed not later than ten days after any response was due. *See* T.R. 56(C). Upon Lacey's timely request for a hearing, the trial court complied with Trial Rule 56(C) and set Lacey's motion to be part of the October 2018 status hearing. During that hearing, the trial court first addressed other pending motions, including the Medical Providers' motion to dismiss and request for additional time to respond to Lacey's amended complaint, and then asked if the parties if they had any other motions to be addressed. Lacey, however, made no mention of his summary judgment motion. After Lacey unsuccessfully pursued a default judgment motion, he filed a motion for a summary judgment hearing in January 2019. At that time, more than ten days had passed since the October 2018 due date of a summary judgment response. Therefore, under Trial Rule 56(C), the trial court was not required to hold a summary judgment hearing. *See* T.R. 56(C).<sup>4</sup>

[30] Again, Lacey does not challenge the merits or the content of his summary judgment motion. Lacey does not contend that he, as movant in his summary judgment motion, met his burden of showing that all the elements of his claims against the Medical Providers had been proven as a matter of law. Accordingly, we conclude that the trial court did not err by denying Lacey's motion for summary judgment. *See Hughley*, 15 N.E.3d at 1003 (explaining that

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<sup>4</sup> Additionally, we reject Lacey's contention that the trial court erred because it failed to follow an administrative statute relating to how an administrative law judge is to handle a summary judgment motion in an administrative proceeding.

summary judgment is appropriate only where the moving party has shown that there is no genuine issue of material fact and it is entitled to judgment as a matter of law).<sup>5</sup>

[31] Affirmed.

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

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<sup>5</sup> Lastly, we reject Lacey’s assertion that the trial court judge engaged in “discriminatory” treatment, showed “vindictiveness[,]” “bias[,]” and “a marked lack of impartiality” toward him, or violated various canons of the Indiana Judicial Code of Conduct because the trial judge denied his default judgment motion, denied his summary judgment motion, and granted the Medical Providers’ summary judgment motion. (Lacey’s Br. 33, 34, 36). “Adverse rulings are not sufficient to show bias or prejudice on the part of the judge.” *Tharpe v. State*, 955 N.E.2d 836, 839 (Ind. Ct. App. 2011), *trans. denied*. We warn Lacey that “we do not look favorably upon disparaging and disrespectful language in briefs with regard to this Court or the trial courts of this state.” *Small v. Centocor, Inc.*, 731 N.E.2d 22, 31 (Ind. Ct. App. 2000), *reh’g denied, trans. denied*.