MEMORANDUM DECISION

APPELLANT PRO SE

Kevin Martin
Pendleton Correctional Facility
Pendleton, Indiana

ATTORNEYS FOR APPELLEE

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IN THE COURT OF APPEALS OF INDIANA

Kevin Martin,
Appellant-Plaintiff,

v.

Barbara Rosenberg and Indiana State Police,
Appellees-Defendants

September 27, 2023

Court of Appeals Case No. 23A-CT-355

Appeal from the LaPorte Superior Court

The Honorable Michael A. Fish, Special Judge

Trial Court Cause No. 46D02-2009-CT-1831

Memorandum Decision by Judge Crone
Judges Brown and Felix concur.

Crone, Judge.

Case Summary

[1] Kevin Martin appeals the trial court's dismissal of his complaint against the Indiana State Police (ISP) and its legal counsel, Barbara L. Rosenberg. Specifically, the trial court screened and dismissed Martin's complaint pursuant to Indiana's Screening Statute, Indiana Code Section 34-58-1-2. Concluding that Martin has waived his claims of error, we affirm.

Facts and Procedural History

[2] Martin is an inmate at the Pendleton Correctional Facility and a frequent trial level and appellate litigant. He is currently serving a lengthy sentence for multiple crimes with an earliest possible release date of July 20, 2046. In September 2020, Martin filed a complaint against the ISP and Rosenberg pursuant to 42 U.S.C. Section 1983 alleging numerous claims involving the ISP's and Rosenberg's denial of his request for copies of certain forensic evidence related to his 2007 murder conviction pursuant to the "investigatory record" exception to Indiana's Access to Public Records Act, Indiana Code Chapter 5-14-3. Appellant's App. Vol. 2 at 72. Martin sought compensatory and punitive damages for the alleged wrongful denial.[1]

[3] At least five trial judges recused themselves or declined to accept jurisdiction due to other legal actions filed by Martin and his accusations against those

[1] Due to the illegibility of his handwritten complaint, it is unclear whether Martin was seeking $500,000,000 or $500,000 in damages. Appellant's App. Vol. 2 at 33.

judicial officers alleging, among other things, racism, bias, unfairness, and collusion with the Attorney General's Office. On December 1, 2022, the current trial judge accepted jurisdiction and agreed to serve as special judge in this case.

[4] On January 25, 2023, the ISP and Rosenberg filed a motion for the trial court to screen the complaint pursuant to Indiana Code Section 34-58-1-2 and a motion to dismiss the complaint pursuant to Indiana Trial Rule 12(B)(6). On January 31, 2023, the trial court granted the motion to screen and dismissed the complaint in its entirety. This appeal ensued.

Discussion and Decision

[5] Martin appeals the trial court's dismissal of his complaint pursuant to Indiana's Screening Statute, Indiana Code Section 34-58-1-2, which provides that a trial court shall screen complaints filed by an offender to "determine if the claim may proceed." A claim may not proceed if the court determines that the claim is frivolous or if it is not a claim upon which relief may be granted. Ind. Code § 34-58-1-2(a). "We review *de novo* a trial court's dismissal of an offender's complaint under this statute." *Reed v. White*, 103 N.E.3d 657, 659 (Ind. Ct. App. 2018). "Like the trial court, we look only to the well-pleaded facts contained in the complaint." *Id*. "The statute is akin to a legislative interpretation of Indiana Trial Rule 12(B)(6), a rule which has given judges in civil cases the authority to consider a case in its early stages and, taking everything the plaintiff has alleged as true, determine whether it can proceed." *Id*. (citations, quotation marks, and footnote omitted). This statute is one avenue for trial courts to address abusive

and prolific offender litigation and relieve the "heavy burden that those suits have placed on our judicial system." *Smith v. Wal-Mart Stores E., LP*, 853 N.E.2d 478, 481 (Ind. Ct. App. 2006), *trans. denied*; *see Zavodnik v. Harper*, 17 N.E.3d 259, 264 (Ind. 2014) ("Every resource that courts devote to an abusive litigant is a resource denied to other legitimate cases with good-faith litigants.").

[6] As Martin has done in his countless other appeals filed with this Court, he has chosen to proceed pro se. We again remind him that a litigant who proceeds pro se is held to the same rules of procedure that trained counsel is bound to follow. *Smith v. Donahue*, 907 N.E.2d 553, 555 (Ind. Ct. App. 2009), *trans. denied*, *cert. dismissed*. Pro se litigants are afforded no inherent leniency simply by virtue of being self-represented. *Zavodnik*, 17 N.E.3d at 266. One risk a litigant takes when he proceeds pro se is that he will not know how to accomplish all the things an attorney would know how to accomplish. *Smith*, 907 N.E.2d at 555. When a party elects to represent himself, there is no reason for us to indulge any benevolent presumption on his behalf or to waive any rule for the orderly and proper conduct of the appeal. *Foley v. Mannor*, 844 N.E.2d 494, 496 n.1 (Ind. Ct. App. 2006).

[7] Although the failure to comply with the appellate rules does not necessarily result in waiver of the issues presented, it is appropriate where, as here, such noncompliance impedes our review. *In re Moder*, 27 N.E.3d 1089, 1097 n.4 (Ind. Ct. App. 2015), *trans. denied*. As we have acknowledged before, several of Martin's previous appeals have been dismissed for failure to comply with the Appellate Rules. *See Martin v. Hunt*, 130 N.E.3d 135, 137 (Ind. Ct. App. 2019)

(collecting cases). Once again, we conclude that the deficiencies in Martin's lengthy handwritten brief are sufficiently egregious that he has waived his claims and relieves us of the burden of engaging in a de novo review of the trial court's dismissal of his complaint.

[8] Significantly, Indiana Appellate Rule 46(A)(8)(a) requires the contentions in an appellant's brief to be supported by cogent reasoning and appropriate citations to the record and legal authorities. Here, it is extremely difficult for us, as it evidently was for the trial court, to discern the nature of and legal basis underlying Martin's claims and why the claims should be allowed to proceed. His brief consists of grammatically incorrect and incomplete or run-on sentences, several of which are posed as rhetorical questions to this Court regarding whether we agree with his rambling and often nonsensical statements. Rather than providing us with cogent reasoning as to why his complaint was not subject to mandatory dismissal pursuant to the Screening Statute, Martin's brief is packed with bald assertions, immaterial facts, legal terms used out of context, and citations to irrelevant legal authorities. "It is not sufficient for the argument section that an appellant simply recites facts and makes conclusory statements without analysis or authoritative support." *Kishpaugh v. Odegard*, 17 N.E.3d 363, 373 n.3 (Ind. Ct. App. 2014). To the extent that he does indeed cite to relevant statutes and potentially applicable caselaw, he fails to cogently explain how these authorities do or should apply to his claims. *See Burnell v. State*, 110 N.E.3d 1167, 1171 (Ind. Ct. App. 2018) (noting that presentation of

appellant's contentions must contain "a clear showing of how the issues and contentions relate to particular facts of the case under review").

[9] Although this Court has long stated its preference to decide cases on their merits, when possible, "[w]e will not become an 'advocate for a party, or address arguments that are inappropriate or too poorly developed or expressed to be understood.'" *Basic v. Amouri*, 58 N.E.3d 980, 984 (Ind. Ct. App. 2016) (citation omitted); *see Lane Alan Schrader Tr. v. Gilbert*, 974 N.E.2d 516, 521 (Ind. Ct. App. 2012) (emphasizing that cogency rule "prevents the court from becoming an advocate when it is forced to search the entire record for evidence in support of [a party's] broad statements."). Martin's arguments in his appellant's brief are too poorly expressed to be understood. Accordingly, he has waived his claims, and the trial court's dismissal of his complaint is affirmed.[2]

[2] We commend the State for attempting to thoroughly address Martin's dismissed claims on the merits despite the lack of cogency provided in his appellant's brief. We agree, waiver notwithstanding, with the State's assessment that Martin failed to state a valid Section 1983 claim against the ISP. *See Melton v. Ind. Athletic Trainers Bd.*, 156 N.E.3d 633, 649 (Ind. Ct. App. 2020) ("The United States Supreme Court has held that for Section 1983 purposes, the term 'person' does not include a state or its administrative agencies."). Similarly, Martin failed to state a valid Section 1983 claim against Rosenberg in her official capacity, as he requests money damages, as opposed to injunctive relief, and the allegations in his complaint revolve around her purported violation of state law, Indiana's Access to Public Records Act, Indiana Code Chapter 5-14-3, as opposed to any alleged ongoing constitutional violation. *See id.* at 651 ("Because official capacity suits generally state a claim against the entity of which the officer is an agent, state officials sued in their official capacities, like states and state entities, are not generally 'persons' subject to suit for damages under Section 1983. An exception to this general rule exists if the state official is sued in his or her official capacity for prospective relief such as an injunction based on an alleged ongoing constitutional violation.") (citations omitted).

[10] Affirmed.

Brown, J., and Felix, J., concur.