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IN THE
COURT OF APPEALS OF INDIANA

Terrence Brodnik,
Appellant-Plaintiff,

v.

Cottage Rents LLC,
Appellee-Defendant.

February 22, 2021

Court of Appeals Case No.
20A-SC-2036

Appeal from the Hendricks
Superior Court

The Honorable Tammy S. Somers,
Judge

Trial Court Cause No.
32D01-2008-SC-929

Weissmann, Judge.

- [1] When Cottage Rents LLC filed its motion to dismiss Terrence Brodnik’s notice of claim against it, Cottage Rents *said* the trial court lacked subject matter jurisdiction and that Brodnik failed to state a claim upon which relief could be granted. What Cottage Rents apparently *meant*, however, was that the court lacked personal jurisdiction over it. Despite this disparity, the trial court immediately signed Cottage Rents’s proposed order, dismissing Brodnik’s claim based on what Cottage Rents *said*. Brodnik then appealed based on what Cottage Rents *meant*.
- [2] As a result, the litigants’ briefs rely on law not mentioned in the trial court’s order. Using that order as our guide, we determine that dismissal was improper. We reverse and remand for further proceedings.

Facts

- [3] Terrence Brodnik canceled his Florida vacation due to the COVID-19 pandemic. He prepaid for lodging through Cottage Rents, a vacation rental company, and he wants a refund. Brodnik filed a notice of claim against Cottage Rents in small claims court on August 28, 2020. Cottage Rents moved to dismiss on October 5, 2020. The next day, the trial court dismissed the claim. Brodnik now appeals.

Discussion and Decision

[4] Brodnik’s appeal has many parts. He argues that:

- the trial court violated his due process rights under both the Indiana and United States constitutions when it ruled on Cottage Rents’s motion to dismiss without providing Brodnik an opportunity to be heard;
- the motion to dismiss was improper because it was based on arguments rather than evidence;
- a jurisdictional disposition is not made on the merits of a claim, and therefore, Brodnik’s claim cannot be dismissed with prejudice; and
- Cottage Rents waived its jurisdictional objection by seeking affirmative relief from the trial court.

[5] A key point of confusion in this case is the basis for dismissal. The trial court’s order specifies that the dismissal was for “lack of jurisdiction pursuant to [Indiana] Trial Rule[s of Procedure] 12(b)(1) and 12(b)(6).” Appellant’s App. Vol. II p. 4. Trial Rule 12(B)(1) is the vehicle for motions to dismiss for lack of subject matter jurisdiction, and Trial Rule 12(B)(6) is the vehicle for motions to dismiss for failure to state a claim upon which relief may be granted. Although Cottage Rents cited both rules in its motion to dismiss, the motion and subsequent briefing appear to have argued lack of personal jurisdiction, a basis for dismissal under a third rule: Trial Rule 12(B)(2).

[6] Brodnik appeals as though his claim were dismissed for lack of personal jurisdiction under Trial Rule 12(B)(2). However, we must navigate this appeal

through the channel created by the trial court’s judgment. We therefore analyze Brodnik’s claims within the context of a dismissal for lack of subject matter jurisdiction under Trial Rule 12(B)(1) and failure to state a claim under Trial Rule 12(B)(6).¹

I. Dismissal with Prejudice

[7] The parties agree that dismissing Brodnik’s claim with prejudice was improper, and they are correct. A dismissal with prejudice is a dismissal on the merits. *Hart v. Webster*, 894 N.E.2d 1032, 1037 (Ind. Ct. App. 2008) (citing *Mounts v. Evansville Redevelopment Comm.*, 831 N.E.2d 784, 791 (Ind. Ct. App. 2005)). The trial court dismissed this case for lack of jurisdiction, which is not an adjudication on the merits. Instead, it means the court lacks the power to reach the merits. *Perry v. Stitzer Buick GMC, Inc.*, 637 N.E.2d 1282, 1286 (Ind. 1994). Dismissal for lack of subject matter jurisdiction therefore cannot be “with prejudice.” *Hart*, 894 N.E.2d at 1037 (citing *Perry*, 637 N.E.2d at 1286; *Frederickson v. City of Lockport*, 384 F.3d 437, 438 (7th Cir. 2004)).

[8] Likewise, a dismissal for failure to state a claim under Trial Rule 12(B)(6) is not *res judicata*. *Thacker v. Bartlett*, 785 N.E.2d 621, 624 (Ind. Ct. App. 2003). When a complaint is dismissed pursuant to Rule 12(B)(6), “the pleading may be amended once as of right pursuant to Rule 15(A) within ten [10] days . . .” T.R.

¹ Because the trial court entered judgment solely under Trial Rules 12(B)(1) and 12(B)(6), we decline to address Brodnik’s claim that Cottage Rents waived the issue of personal jurisdiction under Trial Rule 12(B)(2). We also do not express any view on the merits of any argument related to Trial Rule 12(B)(2).

12(B)(6). Such a dismissal only becomes an adjudication on the merits after the complaining party appeals the order instead of filing an amended complaint.

Thacker, 785 N.E.2d at 624. Dismissal with prejudice was therefore improper.

II. Due Process

[9] Brodnik argues, and Cottage Rents concedes, that Brodnik received deficient process when the trial court immediately ruled on Cottage Rents’s motion to dismiss without permitting Brodnik an opportunity to respond. Brodnik challenges the dismissal under both the Due Process Clause of the Fourteenth Amendment of the United States Constitution and Article I § 12 of the Indiana Constitution.

[10] If the basis of dismissal were lack of personal jurisdiction under Trial Rule 12(B)(2), the trial court’s failure to allow Brodnik an opportunity to respond may have been a due process violation. But the trial court specifically dismissed Brodnik’s claim for lack of subject matter jurisdiction under Rule 12(B)(1) and for failure to state a claim under Rule 12(B)(6). The lack of subject matter jurisdiction can be raised at any time, including by the court’s own motion. *Stewart v. McCray*, 135 N.E.3d 1012, 1025 (Ind. Ct. App. 2019). Additionally, motions for failure to state a claim are based on the complaint itself and do not require that plaintiffs have an opportunity to respond before dismissal. *Niksich v. Cotton*, 810 N.E.2d 1003, 1005-6 (Ind. 2004). Dismissal on these grounds therefore did not compromise Brodnik’s right to due process.

III. Dismissal

[11] Dismissal was not constitutionally defective, but it was nevertheless in error. Indiana’s small claims courts are governed primarily by the [Indiana Small Claims Rules](#). *Niksich*, 810 N.E.2d at 1005. [The Indiana Rules of Trial Procedure](#) also apply where the two sets of rules do not conflict. *Id.* Though the Small Claims Rules include only one avenue for dismissal—Small Claims Rule 10—Trial Rule 12(B) motions can be appropriate in small claims actions. *Id.* at 1005-6. “Lack of personal or subject matter jurisdiction, insufficient process, and a host of other dispositive issues are properly asserted by motion.” *Id.* We find dismissal of Brodnik’s claim was inappropriate under both Trial Rules 12(B)(1) and 12(B)(6), which we address separately.

A. Trial Rule 12(B)(1)

[12] To reiterate, a Trial Rule 12(B)(1) motion asserts lack of subject matter jurisdiction. Where disputed facts underlie such a motion and the trial court ruled on a paper record without conducting an evidentiary hearing, we review the facts and the law *de novo*. *GKN Co. v. Magness*, 744 N.E.2d 397, 401 (Ind. 2001). Applying this standard, we find that the trial court’s dismissal for lack of subject matter jurisdiction under Rule 12(B)(1) was in error.

[13] Small claims courts have jurisdiction over “civil actions in which the amount sought or value of property sought to be recovered is not more than eight thousand dollars (\$8,000).” Ind. Code § 33-29-2-4(b)(1). Brodnik’s claim arises in contract and is for \$6,000 plus interest. As the small claims court very clearly

has subject matter jurisdiction over Brodnik’s claim, it erroneously dismissed his claim under Trial Rule 12(B)(1).

B. Trial Rule 12(B)(6)

- [14] A motion under Trial Rule 12(B)(6) asserts a failure to state a claim for which relief can be granted. Because small claims courts are intended to be used by non-lawyers, notices of claims—the equivalent of complaints in other trial courts—are held to a more lenient standard than other civil complaints. *Niksich*, 810 N.E.2d at 1005-6. Unlike the traditional pleading standard, small claims plaintiffs need only set forth “a brief statement of the claim.” *Id.* (quoting S.C.R. 1(B)(4)). “This more relaxed standard may be met by setting forth facts sufficient to identify the dispute, even if facts essential to recovery are not alleged.” *Id.* at 1006. Despite this “more relaxed standard,” a small claims case may be dismissed when “it is apparent from the complaint that the pleader is not entitled to relief.” *Id.* (citing *Bedree v. DeGroot*, 799 N.E.2d 1167 (Ind. Ct. App. 2003) (holding that small claims plaintiff was not entitled to relief because defendant, a judge sued in that capacity, had judicial immunity)).
- [15] Cottage Rents has not shown that Brodnik’s notice of claim failed to meet this more lenient standard. In his notice of claim, Brodnik alleged facts sufficient to identify the dispute. Appellant’s App. Vol. II p. 5. Additionally, it is not apparent on the face of Brodnik’s notice of claim that he should be denied relief. *Id.*

[16] Because dismissal under both Trial Rules 12(B)(1) and 12(B)(6) was improper, we reverse and remand for further proceedings. We also remind the trial court that, if it is to consider a motion to dismiss for lack of personal jurisdiction under Trial Rule 12(B)(2), it would be wise to accept evidence from both sides, as “matters of jurisdiction are often not apparent on the face of the complaint.” *Suyemasa v. Myers*, 420 N.E.2d 1334, 1340 (Ind. Ct. App. 1981).

Mathias, J., and Altice, J., concur.