

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Richard Kelly,
Appellant-Plaintiff,

v.

Wexford of Indiana, LLC and
Robert Carter,
Appellees-Defendants.

January 31, 2022

Court of Appeals Case No.
21A-PL-1014

Appeal from the Marion Superior
Court

The Honorable James A. Joven,
Judge

Trial Court Cause No.
49D13-2006-PL-20529

Najam, Judge.

Statement of the Case

[1] Richard Kelly, *pro se*, appeals the trial court’s dismissal of his amended complaint against Wexford of Indiana, LLC (“Wexford”), and Robert Carter, in his capacity as the Commissioner of the Indiana Department of Correction, for failure to state a claim. Kelly raises three issues for our review. However, we are unable to discern Kelly’s arguments of trial court error. Kelly therefore has not demonstrated reversible error, and we affirm.

Facts and Procedural History

[2] Kelly is an inmate with the Department of Correction and suffers from numerous medical issues. Wexford has a contract with the Department of Correction to provide medical care to inmates and has been Kelly’s provider of medical care.

[3] In June 2020, Kelly filed his initial complaint against Wexford and alleged that Wexford had engaged in negligence and deceptive practices under the Indiana Deceptive Consumer Sales Act, Ind. Code §§ 24-5-0.5-0.1 to -12 (2021) (“the Act”). Wexford moved to dismiss the complaint for failure to state a claim upon which relief can be granted. The trial court granted Wexford’s motion but permitted Kelly to amend his complaint.

[4] In January 2021, Kelly filed his amended complaint and named Carter, Wexford, and several Wexford medical employees as defendants. Kelly again

alleged that Wexford, through its employees, had violated the Act, and he asserted that Wexford had entered into a “fraudulent contract” with the Department of Correction in that Wexford had “the intention of denying as much healthcare as possible” in its administration of healthcare services to inmates. Appellee Carter’s App. Vol. 2 at 17.

[5] Wexford again moved to dismiss the complaint for failure to state a claim upon which relief can be granted, and Carter separately also moved to dismiss the complaint. Wexford asserted numerous reasons in support of its motion, including that Kelly’s amended complaint did not allege facts that would support a claim under the Act and arguing that *res judicata* from federal court decisions against Kelly on similar claims applied to his state claims against the same Wexford employees. The trial court granted both Wexford’s motion and Carter’s motion to dismiss the amended complaint. This appeal ensued.

Discussion and Decision

[6] Kelly appeals the trial court’s dismissal of his amended complaint for failure to state a claim upon which relief can be granted. As our Supreme Court has explained:

Indiana Trial Rule 12(B)(6) allows a motion to dismiss based on failure to state a claim upon which relief can be granted. When ruling on such a motion, the court must “view the pleadings in the light most favorable to the nonmoving party, with every reasonable inference construed in the non-movant's favor.” *Thornton v. State*, 43 N.E.3d 585, 587 (Ind. 2015) (citation omitted). Because such a motion challenges only the legal sufficiency of the complaint, it presents a legal question that is

reviewed *de novo* on appeal. *Ward v. Carter*, 90 N.E.3d 660, 662 (Ind. 2018).

Further, “matters of statutory interpretation present pure questions of law; as such, these questions are reviewed *de novo*.” *Rodriguez v. State*, 129 N.E.3d 789, 793 (Ind. 2019).

Robertson v. State, 141 N.E.3d 1224, 1227 (Ind. 2020).

- [7] We initially note that Kelly proceeds *pro se*. It is well established that “an appellant who proceeds *pro se* is held to the same established rules of procedure that a trained legal counsel is bound to follow and, therefore, must be prepared to accept the consequences of his or her action.” *McCullough v. CitiMortgage, Inc.*, 70 N.E.3d 820, 825 (Ind. 2017) (quotation marks and alteration omitted).
- [8] On appeal, Kelly raises three apparent issues for our review. His first issue consists of a declaratory sentence that Wexford violated the Act, followed by a page of string citations. He then asserts that he suffers from numerous medical conditions that Wexford has intentionally refused to treat.
- [9] The operative language of the Act states that “[a] supplier may not commit an unfair, abusive, or deceptive act, omission, or practice in connection with a consumer transaction.” I.C. § 24-5-0.5-3(a). A “[s]upplier” is defined as “(A) [a] seller, lessor, assignor, or other person who regularly engages in or solicits consumer transactions, including soliciting a consumer transaction by using a telephone facsimile machine to transmit an unsolicited advertisement. The term

includes a manufacturer, wholesaler, or retailer, whether or not the person deals directly with the consumer”; and “(B) [a] debt collector.” I.C. § 24-5-0.5-2(a)(3).

[10] In its motion to dismiss, Wexford argued that it was not a supplier under the Act, and the trial court agreed. On appeal, Kelly presents no argument supported by cogent reasoning and citation to the record or authorities to demonstrate that the trial court’s decision on this question was erroneous. *See* Ind. Appellate Rule 46(A)(8)(a). Therefore, Kelly has not carried his burden of persuasion on this issue, and we cannot say the trial court erred when it dismissed Kelly’s amended complaint alleging a claim under the Act.

[11] Kelly’s second and third apparent issues on appeal are each one sentence followed by string citations and with no analysis of either the law or the alleged facts. *See* Appellant’s Br. at 11-12. These apparent issues are not arguments supported by cogent reasoning and citations to the record that would enable this Court to review the merits of his positions. *See* App. R. 46(A)(8)(a). We are therefore obliged to say that Kelly has failed to carry his burden of persuasion on these issues.

[12] Finally, we note that Kelly does not appeal the trial court’s dismissal of his complaint with respect to Carter. Thus, we affirm the trial court’s dismissal of Kelly’s complaint as to Carter.

[13] In sum, we affirm the trial court’s dismissal of Kelly’s amended complaint in all respects.

[14] Affirmed.

Vaidik, J., and Weissmann, J., concur.