MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Lee Evans Dunigan,
Appellant-Plaintiff,

v.

Wexford of Indiana, LLC,
Appellee-Defendant.

June 23, 2022

Court of Appeals Case No. 21A-CT-2379

Appeal from the Sullivan Circuit Court

The Honorable Robert E. Hunley, II, Judge

Trial Court Cause No. 77C01-2105-CT-247

Tavitas, Judge.

Case Summary

[1] Lee Dunigan, an inmate in the Indiana Department of Correction ("DOC"), filed two separate actions against Wexford of Indiana, LLC ("Wexford"). Wexford was formerly a contractor with the DOC and was tasked with providing medical services to inmates. Dunigan asserted an array of claims pertaining to Wexford's alleged failure to provide necessary medical services. The trial court dismissed the complaint that gave rise to this appeal, reasoning that a substantially similar action was already pending in a different county. We find that the trial court properly dismissed the complaint and, thus, affirm.

Issue

[2] Dunigan raises four issues, one of which we find dispositive: whether the trial court erred in dismissing Dunnigan's complaint under Trial Rule 12(B)(8).

Facts

[3] Dunigan, currently incarcerated in the DOC, filed a civil complaint against Wexford in the Madison Circuit Court ("Madison complaint") on December 9, 2020.[1] The Madison complaint contains six counts. Dunigan accused Wexford of: (1)[2] denying him medical treatment for Hepatitis A; (2) fraudulently using Dunnigan's consent for mental health treatment; (3) denying Dunigan treatment for Hepatitis C; (4) denying Dunigan treatment for "Gram Stain

[1] The complaint was amended on February 5, 2021.

[2] The claims are listed in the order in which they appear in the complaints.

polymorphonuclear leukocytes, rare epithelial cells, many Gram-positive cocci, and many Gram-negative bacilli," Appellee's App. Vol. II p. 42; (5) failing to provide dental treatment; and (6) fraudulently indicating in medical charts that Dunigan has narcissistic traits. Dunigan sought injunctive relief and money damages.

[4] On May 10, 2021, Dunigan filed a second complaint against Wexford, this time in the Sullivan Circuit Court ("Sullivan complaint"). The Sullivan complaint also contains six counts. Dunigan accused Wexford of: (1) failing to provide treatment for Hepatitis C; (2) denying treatment for positive cocci, negative bacilli, rare epithelial cells, and polymorphonuclear leukocytes; (3) failing to provide treatment for Hepatitis A; (4) failing to provide treatment for a bump on Dunigan's penis; (5) failing to provide necessary dental care; and (6) mentally abusing Dunigan by charting false information pertaining to Dunigan's mental health, including charting narcissistic traits.

[5] The primary difference between the complaints—despite the facial similarities of the claims—is that the Madison complaint purports to refer to events alleged to have occurred while Dunigan was incarcerated at the Pendleton Correctional facility, while the Sullivan complaint purports to refer to events alleged to have occurred after Dunigan was transferred to the Wabash Correctional Facility.

[6] On September 14, 2021, Wexford filed a motion to dismiss the Sullivan complaint pursuant to Indiana Trial Rule 12(B)(8). Wexford argued that the two complaints were substantially similar, and therefore, the later-filed

complaint should be dismissed. The trial court granted Wexford's motion on September 22, 2021. Dunigan filed a motion to reconsider, which the trial court denied on October 6, 2021. This appeal followed.

Analysis

I. Jurisdiction and Venue

[7] The trial court did not dismiss the complaint on jurisdictional grounds or because of issues of venue. Neither matter, therefore, is squarely before us on review.[3] Nevertheless, Dunigan presents arguments with respect to both, and we address those arguments here. The thrust of Dunigan's arguments appears to be that, as a matter of both jurisdiction and venue, Dunigan had no choice but to file the Sullivan complaint in the Sullivan Circuit Court. The implication is that the trial court's actual grounds for dismissal—the fact that the case was already pending in a different court—cannot legitimate the dismissal of the complaint on the entirely separate Rule 12(B)(8) grounds.

[8] We first note that Dunigan's arguments that the Madison Circuit Court lacks subject matter jurisdiction over the claims arising from the alleged occurrences at the Wabash Correctional Facility are unavailing. "'The question of subject matter jurisdiction entails a determination of whether a court has jurisdiction

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[3] Though it is true, of course, that issues of subject matter jurisdiction may be raised at any stage of a proceeding. *See, e.g., Parkview Hosp. Inc. v. Am. Fam. Ins. Co.*, 151 N.E.3d 1218, 1224-25 (Ind. Ct. App. 2020) ("'Subject matter jurisdiction cannot be waived or conferred by agreement and can be raised at any time.'") (quoting *In re Adoption of L.T.*, 9 N.E.3d 172, 175 (Ind. Ct. App. 2014))), *trans. denied*.

over the general class of actions to which a particular case belongs.'" *K.S. v. State*, 849 N.E.2d 538, 542 (Ind. 2006) (quoting *Troxel v. Troxel*, 737 N.E.2d 745, 749 (Ind. 2000)). It is a matter of no controversy that Indiana's circuit courts are courts of general jurisdiction. Ind. Code § 33-28-1-2; *see also* I.C. § 33-33-48-12 (specifically providing that the Madison Circuit Court is one of general jurisdiction). "An Indiana court obtains subject matter jurisdiction only through the Constitution or a statute." *Scheub v. Van Kalker Fam. Ltd. P'ship*, 991 N.E.2d 952, 957 (Ind. Ct. App. 2013). Because both the Madison and Sullivan Circuit Courts have "original and concurrent jurisdiction in all civil cases and in all criminal cases[,]" I.C. § 33-28-1-2(a)(1), those courts have subject matter jurisdiction to hear either the Madison or the Sullivan complaints. The fact that the occurrences alleged in the Sullivan complaint happened in Sullivan County cannot strip the Madison Circuit Court of its subject matter jurisdiction, and Dunigan points us to no persuasive authority to the contrary.

[9] With respect to venue, Dunigan argues that Indiana Trial Rule 75 establishes that Sullivan County is the preferred venue for his claims. This is incorrect. Dunigan argues that preferred venue lies in the county where either "one or more individual plaintiffs reside, the principal office of a governmental organization is located, or the office of a governmental organization to which the claim relates or out of which the claim arose is located, if one or more governmental organizations are included as defendants in the complaint[.]" T.R. 75(A)(5). This is true, but irrelevant, as none of the named defendants are

governmental organizations. Indiana Trial Rule 75(A)(4) states that preferred venue lies in "the county where . . . the principal office of a defendant organization is located . . . ." Here, Wexford's principal office is in Marion County, a fact of which Dunigan is aware.

[10] Moreover, it is not even clear what benefit Dunigan might secure if Sullivan County was a preferred venue. That fact would not alter the Rule 12(B)(8) analysis. It would not defeat a motion to dismiss. Wexford correctly points out that a contrary interpretation of the trial rules would render Trial Rule 12(B)(8) "meaningless and superfluous in any action where the original forum is a preferred venue." Appellee's Br. p. 18. We eschew such readings of the trial rules, preferring to interpret them so that they work together harmoniously. *See, e.g., Lutheran Health Network of Indiana, LLC v. Bauer,* 139 N.E.3d 269, 281 (Ind. Ct. App. 2019). The aim of the preferred venue rule is to locate forums in the counties where information is available, and witnesses can easily get to court. The aim of Trial Rule 12(B)(8) is to promote judicial efficiency and curtail duplicative litigation. *See, e.g., Kindred v. Indiana Dep't of Child Servs.*, 136 N.E.3d 284, 290 (Ind. Ct. App. 2019). If Dunigan were correct, and a preferred venue issue could defeat a motion to dismiss under Rule 12(B)(8) then the purpose of one rule would be frustrated by a faulty interpretation of the other.

II. Rule 12(B)(8)

[11] Dunigan argues that dismissal was improper under Indiana Trial Rule 12(B)(8), which provides that a motion to dismiss an action may be granted when "[t]he same action [is] pending in another state court of this state." "'Trial Rule

12(B)(8) implements the general principle that, when an action is pending in an Indiana court, other Indiana courts must defer to that court's authority over the case.'" *In re McQueary*, 125 N.E.3d 664, 675 (Ind. Ct. App. 2019) (quoting *Beatty v. Liberty Mut. Ins. Grp.*, 893 N.E.2d 1079, 1084 (Ind. Ct. App. 2008)). "This rule 'applies where the parties, subject matter, and remedies are precisely the same, and it also applies when they are only substantially the same.'" *Walker v. Herman & Kittle Props., Inc.,* 178 N.E.3d 1266, 1270 (Ind. Ct. App. 2021) (quoting *Beatty*, 893 N.E.2d at 1084), *trans. denied*. "Whether two actions are the same under the rule 'depends on whether the outcome of one action will affect the adjudication of the other.'" *Id*. (quoting *Kentner v. Ind. Pub. Emprs' Plan, Inc.*, 852 N.E.2d 565, 570 (Ind. Ct. App. 2006)). We apply a de novo standard of review to the question of whether a motion to dismiss under Trial Rule 12(B)(8) was properly granted. *See, e.g., id*.

[12] There is no doubt that both the Madison complaint and the Sullivan complaint feature identical parties and identical sought remedies. The question, then, turns on whether the claims in each action are "substantially similar," which in turn depends on whether the resolution of the matters in the Madison complaint would affect the adjudication of the Sullivan complaint. We find that it would. In so finding, we rely on the doctrine of issue preclusion.

> Issue preclusion bars the subsequent litigation of a fact or issue that was necessarily adjudicated in a former lawsuit if the same fact or issue is presented in the subsequent lawsuit. If issue preclusion applies, the former adjudication is conclusive in the subsequent action, even if the actions are based on different claims. The former adjudication is conclusive only as to those

> issues that were actually litigated and determined therein. Thus, issue preclusion does not extend to matters that were not expressly adjudicated and can be inferred only by argument.
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> In determining whether issue preclusion is applicable, a court must engage in a two-part analysis: (1) whether the party in the prior action had a full and fair opportunity to litigate the issue, and (2) whether it is otherwise unfair to apply issue preclusion given the facts of the particular case. The non-exhaustive factors to be considered by the trial court in deciding whether to apply issue preclusion include: (1) privity, (2) the defendant's incentive to litigate the prior action, and (3) the ability of the plaintiff to have joined the prior action.

Freels v. Koches, 94 N.E.3d 339, 342 (Ind. Ct. App. 2018) (quoting *Angelopoulos v. Angelopoulos*, 2 N.E.3d 688, 696 (Ind. Ct. App. 2013), *trans. denied*.).

[13] In both complaints, Dunigan puts at issue the existence of various medical problems. In order for a trier of fact to resolve the Madison complaint, it would necessarily have to decide whether Dunigan suffers from those medical problems. This is precisely the kind of danger that Trial Rule 12(B)(8) anticipates and guards against. One trial court might conclude that Dunigan does indeed suffer from, for example, Hepatitis C. The other trial court might reach the opposite conclusion. A system of justice that permits such inconsistent results would not be tenable. It is primarily for this reason that the doctrine of issue preclusion exists.

[14] Similarly, there are legal questions inherent in—and shared by—both complaints. In order to establish medical malpractice, for example, Dunigan

must prove the existence of a duty of care. The existence or non-existence of such a duty does not depend on the correctional facility in which Dunigan happened to be incarcerated. Thus, a trial court's conclusion about whether Wexford owed Dunigan a duty of care would preclude a later trial court from consideration of that issue. In this way, it is clear that resolution of the Madison complaint would necessarily affect the adjudication of the Sullivan complaint.

[15] Finally, we note that of particular importance here is "the ability of the plaintiff to have joined the prior action." *Freels*, 94 N.E.3d at 342 (quoting *Angelopoulos,* 2 N.E.3d at 696. Trial Rule 18[4] governs permissive joinder and paints with a broad brush. It also provides Dunigan with the proper channel through which to litigate the claims raised in the Sullivan complaint. Rather than initiating a new lawsuit, Dunigan could (and should) have amended the Madison complaint to include claims stemming from the alleged occurrences at the Wabash Correctional Facility. One of the key principles upon which our trial

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[4] The rule provides that "A party asserting a claim for relief as an original claim, counterclaim, cross-claim, or third-party claim, may join, either as independent or as alternate claims, as many claims, whether legal, equitable, or statutory as he has against an opposing party." We further note that Trial Rule 21(B) provides that:

> The court shall have venue and authority over all persons or claims required to be joined or permissively joined, impleaded or included by intervention, interpleader, counterclaim or cross-claim if it has venue or is authorized to determine any claim asserted between any of the parties thereto, notwithstanding any requirement of venue or of jurisdiction over the subject-matter applicable to other claims or other parties. The court may transfer the proceedings to the proper court if it determines that venue or authority of the court is dependent upon a claim, or a claim by or against a particular party which appears from the pleadings, or proves to be a sham or made in bad faith; and if another action is pending in this state by or against a person upon the same claim at the time he becomes a party, the court may dismiss the action as to him, or in its sound discretion, it may order all or part of the proceedings to be consolidated with the first pending action.

rules are built is that of efficiency, and piecemeal litigation does not further that aim. Accordingly, the trial court did not err in dismissing the Sullivan complaint on the basis of Trial Rule 12(B)(8).

Conclusion

[16] The trial court did not err in dismissing the Sullivan complaint. We affirm.

[17] Affirmed.

Riley, J., and May, J., concur.