MEMORANDUM DECISION

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IN THE
COURT OF APPEALS OF INDIANA

Tracey Wheeler,
Appellant-Plaintiff,

v.

Branchville Correctional Facility Office, et al.,
Appellees-Defendants.

October 14, 2021

Court of Appeals Case No. 20A-MI-2425

Appeal from the Perry Circuit Court

The Honorable M. Lucy Goffinet, Judge

The Honorable Karen Werner, Magistrate

Trial Court Cause No.
62C01-2008-MI-319

Altice, Judge.

Case Summary

[1] Inmate Tracey Wheeler filed, pro se, a complaint for damages and injunctive relief against the Branchville Correctional Facility (Branchville) and eight Branchville employees, claiming that his Indiana statutory and constitutional rights were violated based on the facility's policy that provided prisoners with two free standard-sized envelopes per month but required that larger, document-sized envelopes be purchased at the facility's commissary. The defendants filed an Ind. Trial Rule 12(B)(6) motion to dismiss, which the trial court granted. Wheeler brings this pro se appeal from the trial court's dismissal of his complaint.

[2] We affirm.

Facts & Procedural History

[3] On December 18, 2019, Wheeler was transferred from one Indiana Department of Correction (DOC) facility to Branchville. On or about December 31, 2019,

Wheeler finished drafting a 42 U.S.C. § 1983 complaint, which was thirty to forty pages in length and challenged the conditions of his confinement at the former DOC facility, and he wanted to mail and file it in U.S. District Court. On that date, Wheeler asked the Branchville law library supervisor for an 8x11-inch envelope to use to mail the complaint. She told Wheeler that he would need to contact his counselor about that request. Wheeler spoke to his counselor, who advised that Branchville's policy was to provide two free 4x9-inch standard-sized envelopes per month and that the larger size that Wheeler desired would need to be purchased from the commissary. Wheeler was indigent and could not purchase it. Wheeler requested and received from his counselor a copy of the relevant policy, which according to Wheeler,[1] was "a Branchville interdepartmental memorandum" that stated that Branchville "will hand out two free [standard-size] envelopes at the beginning of each month [] but legal envelopes must be purchased off of commissary." *Appellant's Brief* at 7; *Appellee's Appendix* at 6.

[4] In the following weeks, Wheeler made various challenges to the denial of his request: He emailed informal complaints to both Branchville's Warden, Kathy Alvey, and the law library supervisor, who each advised him that he could purchase the envelope from the commissary or use the State-provided 4x9-inch size. On January 4, 2020, Wheeler submitted a remittance form to purchase an 8x11 envelope but the remittance was returned to him due to lack of funds in

[1] The policy is not included in the record before us.

his account. Wheeler filed a formal grievance, and he received a response from "S. Howerton," which indicated that the grievance was "approved" and that the process "needed to be reviewed to consider the purchase of envelopes for indigent inmates" [2] but did not provide Wheeler with an envelope. *Appellee's Appendix* at 10-11. Wheeler appealed that outcome to Alvey, who responded on February 6, 2020, that she concurred with Howerton's response. Wheeler then appealed to the "the Department Grievance Man[a]ger," Ike Randolph. *Id.* at 11. On February 11, Randolph responded and agreed with the prior decisions. In short, Wheeler never received a free 8x11 envelope and, according to Wheeler, this caused him to miss the statute of limitations for his § 1983 claim.

[5] On August 7, 2020, Wheeler filed a verified complaint in Perry Circuit Court, later amended on October 12, 2020, against Branchville, eight Branchville employees in their individual and official capacities, and the Branchville "[b]usiness office" (collectively, Branchville Defendants), claiming denial of adequate access to the courts. Wheeler alleged that he had "a State-created statutory right by the provisions of Ind. Code § 11-11-7-2 and protected by Indiana [C]onstitution Art 1 § 9 and Art 1 § 12" to judicial review of unconstitutional and unreasonable rules and policies. *Id*. at 7. He requested compensatory damages, punitive damages, and injunctive relief "to enjoin

[2] We do not have Howerton's written response in the record and, therefore, refer to Wheeler's description of what it said.

[Branchville] from its current policy regarding the disbursement of envelopes[.]" *Id*. at 13.

[6] On October 30, 2020, Branchville Defendants filed a T.R. 12(B)(6) motion to dismiss for failure to state a claim upon which relief can be granted. Branchville Defendants asserted, among other things, that DOC facilities are not required to provide offenders with free envelopes of a certain size and that nothing in Wheeler's complaint showed that either I.C. § 11-11-7-2 or Art. 1, § 12 of the Indiana Constitution entitled him to relief.

[7] On December 1, 2020, the trial court summarily granted the motion, dismissing his complaint with prejudice. Wheeler, pro se, now appeals.[3]

Discussion & Decision

[8] Wheeler argues that the trial court erred when it dismissed his complaint. "We review de novo the trial court's grant or denial of a motion based on Indiana Trial Rule 12(B)(6)." *Kapoor v. Dybwad*, 49 N.E.3d 108, 119-20 (Ind. Ct. App. 2015), *trans. denied*.

> A motion to dismiss under Rule 12(B)(6) tests the legal sufficiency of a complaint: that is, whether the allegations in the complaint establish any set of circumstances under which a plaintiff would be entitled to relief. Thus, while we do not test the sufficiency of the facts alleged with regards to their adequacy

[3] It is well settled that a pro se litigant is held to the same legal standards as a licensed attorney. *Zavodnik v. Harper*, 17 N.E.3d 259, 266 (Ind. 2014). Neither the trial court nor this court owes Wheeler any inherent leniency simply by virtue of his being self-represented. *Id*.

> to provide recovery, we do test their sufficiency with regards to whether or not they have stated some factual scenario in which a legally actionable injury has occurred.

Id. (citations omitted).

[9] As a preliminary matter, we address Wheeler's claim that the trial court should not have granted Branchville Defendants' motion because the court had already declined to dismiss the complaint under Ind. Code § 34-58-1-2, which provides, in relevant part: "A court shall review a complaint or petition filed by an offender and shall determine if the claim may proceed. A claim may not proceed if the court determines that the claim . . . is not a claim upon which relief may be granted[.]" As we have explained, "The statute provides the same authority as T.R. 12(B)(6) in civil cases involving prisoners acting pro se, but without requiring a motion by the defendant to trigger the determination." *Medley v. Lemmon*, 994 N.E.2d 1177, 1183 (Ind. Ct. App. 2013), *trans. denied* (quotation omitted). In *Medley*, we rejected the same argument that Wheeler now makes and determined that "nothing prohibited the trial court [] from reconsidering its prior decision to allow [the offender's] lawsuit to proceed upon the presentation of a motion to dismiss and supporting argument by the Defendants." *Id*.

[10] Turning to the merits of his appeal, Wheeler challenges Branchville's policy of not providing free larger, 8x11-inch envelopes to indigent offenders that would allow them "to mail and file oversized legal documents with the court[s]." *Appellant's Brief* at 12. His position is that this "is an irrational procedure" and

"an unconstitutional policy" under state statutes and the Indiana Constitution.[4] *Id*. at 13. Specifically, he argues that Branchville's policy was "in direct violation" of I.C. § 11-11-7-2 and "denied [him] complete access to the court" contrary to Art. 1, § 12 of the Indiana Constitution. *Appellant's Brief* at 10. As explained below, neither of those provisions provides relief to Wheeler, and, accordingly, we find no error in the trial court's dismissal of his complaint.

[11] I.C. § 11-11-7-2 states that the DOC "shall provide an indigent confined person with free stationery, envelopes, postage, and notarial services for legal correspondence." As the Branchville Defendants correctly observe, however, our courts have found in similar contexts that statutes under Title 11 do not provide an offender with a private cause of action. *See Blanck v. Ind. Dep't of Corr.*, 829 N.E.2d 505, 509 (Ind. 2005) (finding that the legislature did not intend for the disciplinary statutes under Title 11 to provide offenders with a private cause of action); *see also Kimrey v. Donahue*, 861 N.E.2d 379, 382 (Ind. Ct. App. 2007) (finding that *Blanck* was not limited to only prison discipline matters and that DOC inmate did not have private right of action under I.C. § 11-11-3-6 stating that "a confined person may acquire and possess printed matter on any subject"), *trans. denied*; *Medley*, 994 N.E.2d at 1185 (no private right of action under I.C. § 11-11-3-9, concerning restrictions on visitation),

[4] Other than a few general assertions of federal constitutional violations, Wheeler does not make separate arguments regarding federal constitutional violations or provide cogent argument. *See Appellant's Brief* at 13, 14, 18 (stating generally that his First, Fifth, and Fourteenth Amendment rights were infringed upon) and *Reply Brief* at 5 (same). Thus, any federal constitutional claims are waived. *See* Ind. Appellate Rule 46(A)(8).

trans. denied. Thus, to the extent that Wheeler's complaint was based on an alleged violation of I.C. § 11-11-7-2, the trial court properly dismissed it because that statute did not provide him with a private cause of action against the Branchville Defendants.

[12] Next, we address Wheeler's claim for relief under Art. 1, § 12, known as the Open Courts Clause. It provides that "[a]ll courts shall be open; and every person, for injury done to him in his person, property, or reputation, shall have remedy by due course of law. Justice shall be administered freely, and without purchase; completely, and without denial; speedily, and without delay." Branchville Defendants urge that "[W]heeler waived any claim under the Indiana Constitution by failing to present cogent argument." *Appellee's Brief* at 10. We agree. Waiver notwithstanding, we reject Wheeler's constitutional claim.

[13] We have held that "there is no express or implied right of action for monetary damages under the Indiana Constitution[.]" *Smith v. Ind. Dep't of Correction*, 871 N.E.2d 975, 986 (Ind. Ct. App. 2007) (rejecting prisoner's claims for compensatory and punitive damages under Art. 1, §§ 11, 15, 15, 23, and 31 of the Indiana Constitution), *trans. denied, cert. denied*; *see also McIntire v. Franklin Twp. Cmty. Sch. Corp.*, 15 N.E.3d 131, 137 (Ind. Ct. App. 2014) (rejecting claim for monetary damages for alleged violation of Art. 8, § 1 of the Indiana Constitution, Indiana's Education Clause, "because there can be no claim for monetary damages arising out of the Indiana Constitution"), *trans. denied*.

[14] Furthermore, with regard to Wheeler's request for prospective injunctive relief prohibiting Branchville from enforcing its policy of providing for free only envelopes of standard size, that claim is moot because Wheeler has been transferred to another facility, and, thus, the trial court could not grant prospective injunctive relief to Wheeler against the Branchville Defendants. *See Medley*, 994 N.E.2d at 1183 ("Generally, an issue is deemed to be moot when the case is no longer live and the parties lack a cognizable interest in the outcome . . . or where no effective relief can be rendered to the parties[.]"); *Ortiz v. Downey*, 561 F.3d 664, 668 (7th Cir. 2009) (a claim for prospective injunctive relief against a policy of a prison facility is mooted when the offender is transferred from the facility).

[15] Lastly, Wheeler asserts the alternative argument that, even if he failed to state an actionable claim in his complaint, the T.R. 12(B)(6) dismissal should not have been with prejudice. He is correct that, when a motion to dismiss is made and granted for failure to state a claim under T.R. 12(B)(6), the dismissal is to be without prejudice because the plaintiff is entitled to amend his complaint once as of right. T.R. 12(B); *see Platt v. State*, 664 N.E.2d 357, 361 (Ind. Ct. App. 1996), *trans. denied, cert. denied*. On appeal of a dismissal with prejudice, an appellant is required to show how he would have amended his complaint to avoid dismissal. *Saylor v. Reid*, 132 N.E.3d 470, 474 (Ind. Ct. App. 2019), *trans. denied*. Otherwise, this court will find that any error is harmless. *Id*. We have explained that we need "specific information as to how [the appellant] would have amended his complaint" so that we can make a rational assessment of

whether he was prejudiced by the trial court's erroneous ruling. *Baker v. Town of Middlebury*, 753 N.E.2d 67, 74 (Ind. Ct. App. 2001), *trans. denied*. Here, Wheeler states that, if allowed, he would have amended his complaint to add the DOC and the State as defendants. Because Branchville – a DOC facility – was already a named defendant, we find that any error in the dismissal of his complaint with prejudice harmless.

[16] For all the foregoing reasons, the trial court did not err when it granted Branchville Defendants' T.R. 12(B)(6) motion and dismissed Wheeler's complaint.

[17] Judgment affirmed.

Bradford, C.J. and Robb, J., concur.