

MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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IN THE COURT OF APPEALS OF INDIANA

Warren Parks,
Appellant,

v.

Lisa Bloc & Brandon Pherson,
Appellees

March 29, 2022

Court of Appeals Case No.
21A-MI-1751

Appeal from the Putnam Circuit
Court

The Honorable Melinda Jackman-
Hanlin Magistrate

Trial Court Cause No.
67C01-2011-MI-000668

May, Judge.

- [1] Warren Parks appeals from the trial court's order granting summary judgment in favor of Lisa Bloc and Brandon Pherson in Parks' action for violation of his First Amendment right to religious freedom. Because Parks failed to present a

cogent argument explaining how the trial court erred when it granted summary judgment, we affirm.

Facts and Procedural History

[2] On November 5, 2020, Parks, an inmate at the Putnamville Correctional Facility (“PCF”), filed a complaint against Bloc and Pherson (collectively, “Defendants”), two employees of Aramark Correctional Services, LLC, an entity contracted to provide food services to the Indiana Department of Correction (“DOC”). Parks asserted, pursuant to 42 United States Code section 1983 and the First Amendment to the United States Constitution, that the Defendants violated his rights when they served him leavened bread during Passover in contravention of a tenant of his Hebrew Israelite faith. He alleged this action caused him to “violate the Torah and . . . to be cut off from [his] people.” (Appellee’s App. Vol. II at 4.) Parks also alleged the Defendants required him to walk to pick up his meal on the Sabbath, thus causing him to breach the tenant of his faith that he rest on the Sabbath.

[3] On July 12, 2021, the Defendants filed a motion for summary judgment. The Defendants argued they were entitled to summary judgment because Parks did not exhaust his administrative remedies as required by the Prison Litigation Reform Act¹ before initiating this civil rights suit and because his constitutional

¹ 42 U.S.C. § 1997e.

rights were not violated when he was accidentally served a leavened roll. In support of their motion, the Defendants submitted a declaration from Brandon Pherson, the Aramark Food Services Director at PCF. Pherson averred that when he reported to work on April 9, 2020, he learned certain inmates observing Passover had been given, at the time of the breakfast service, both their breakfast meal and a lunch sack with items that were not approved for Passover. Pherson determined this occurred because of a miscommunication between kitchen workers, and Aramark staff then prepared an appropriate Passover lunch and served it to the inmates observing Passover. The Defendants also submitted a declaration from Chris Williams, the grievance specialist at PCF, in support of their summary judgment motion. Williams attested Parks attempted to file a grievance in December 2019 regarding having to walk to the kitchen on the Sabbath to retrieve his meal, but Parks did not perform the necessary preliminary steps before filing a formal grievance. On July 26, 2021, Parks filed a response to the Defendants' motion for summary judgment. On July 27, 2021, the trial court granted the Defendants' motion for summary judgment.

Discussion and Decision

[4] Initially, we note Parks proceeds pro se. “It is well settled that pro se litigants are held to the same legal standards as licensed attorneys.” *Lowrance v. State*, 64 N.E.3d 935, 938 (Ind. Ct. App. 2016), *reh’g denied, trans. denied*. Consequently, “pro se litigants are bound to follow the established rules of procedure and must

be prepared to accept the consequences of their failure to do so.” *Id.* “While we prefer to decide issues on the merits, where the appellant’s noncompliance with appellate rules is so substantial as to impede our consideration of the issues, we may deem the alleged errors waived.” *Basic v. Amouri*, 58 N.E.3d 980, 984 (Ind. Ct. App. 2016). We will not become an advocate for one of the parties or address an argument that is too poorly developed or expressed for us to understand. *Id.* Consequently, a party may waive an issue on appeal by failing to present a cogent argument. *Martin v. Brown*, 129 N.E.3d 283, 285 (Ind. Ct. App. 2019) (“Failure to present a cogent argument results in waiver of the issue on appeal.”).

[5] A party has a duty to comply with the Indiana Rules of Appellate Procedure, which govern the organization and content of briefs. *See Thacker v. Wentzel*, 797 N.E.2d 342, 345 (Ind. Ct. App. 2003) (“The purpose of our appellate rules, especially Indiana Appellate Rule 46, is to aid and expedite review and to relieve the appellate court of the burden of searching the record and briefing the case.”). Parks’ statement of the issue—“Due process is this still known as the integrity of the Court?” (Appellant’s Br. at 4) (errors in original)—does not “concisely and particularly describe” the issue presented for review as required by Indiana Appellate Rule 46(A)(4). Likewise, Parks’ statement of the facts is not presented in narrative form as required by Appellate Rule 46(A)(6). However, Parks’ most egregious violation of our Appellate Rules is the argument section of his brief. Appellate Rule 46(A)(8)(a)-(b), states:

(8) Argument. This section shall contain the appellant's contentions why the trial court or Administrative Agency committed reversible error.

(a) The argument must contain the contentions of the appellant on the issues presented, supported by cogent reasoning. Each contention must be supported by citations to the authorities, statutes, and the Appendix or parts of the Record on Appeal relied on, in accordance with Rule 22.

(b) The argument must include for each issue a concise statement of the applicable standard of review; this statement may appear in the discussion of each issue or under a separate heading placed before the discussion of the issues. In addition, the argument must include a brief statement of the procedural and substantive facts necessary for consideration of the issues presented on appeal, including a statement of how the issues relevant to the appeal were raised and resolved by any Administrative Agency or trial court.

[6] Large portions of Parks' brief under the section labeled "Argument" are unintelligible. For instance, Parks states:

I the living breathing man fell into a trap, in which the Defendant change the record, from {Warren Parks} the Claimant at Law, to (WARREN PARKS) making the straw man an asset belonging to the national government' this was created for purpose of raising a secret revenue from the living breathing man [Warren Parks] The Straw-man (WARREN PARKS) is a 14th amendment citizen resident of the US under article 14 and amendment.

(Appellant’s Br. at 5) (errors in original). While Parks’ brief contains copious citations to federal case law interpreting the Federal Rules of Civil Procedure, such authority is inapposite here because proceedings in Indiana state courts are governed by the Indiana Trial Rules. *See* Ind. T.R. 1 (“Except as otherwise provided, these rules govern the procedure and practice in all courts of the state of Indiana in all suits of a civil nature whether cognizable as cases at law, in equity, or of statutory origin.”). On appeal, Parks does not present a clear, cognizable argument as to why the trial court’s decision granting the defendants’ motion was erroneous. Therefore, we hold Parks has waived the issue on appeal and we affirm the trial court’s order granting the Defendants’ motion for summary judgment.² *See Martin*, 129 N.E.3d at 286 (holding appellant waived issue on appeal for failure to present a cogent argument and affirming the trial court).

Conclusion

² We nonetheless note that, while the impetus of Parks’ complaint is that he was accidentally served leavened bread during Passover, a single instance of an offender being negligently served an incorrect religious meal fails to state a claim for a religious violation. *See Johnson-Bey v. Ind. Dep’t of Corr.*, 668 F. Supp. 2d 1122, 1128-29 (N.D. Ind. 2009) (holding Muslim prisoner failed to state a claim for a civil rights violation after being negligently served pork on one occasion). Similarly, the Prison Litigation Reform Act bars suit by a prisoner over prison conditions pursuant to 42 U. S. C. § 1983 if the offender does not first exhaust his administrative remedies. *See Higgason v. Stogsdill*, 818 N.E.2d 486, 489 (Ind. Ct. App. 2004) (holding prisoner was required to exhaust administrative remedies before filing suit under § 1983), *trans. denied*.

[7] Parks has failed to advance a cogent argument as to why the trial court's order granting summary judgment in favor of Lisa Bloc and Brandon Pherson was erroneous. Thus, we affirm the trial court.

[8] Affirmed.

Brown, J., and Pyle, J., concur.