

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Stephen A. Byrd,
Appellant-Plaintiff,

v.

Indiana Department of
Corrections and Frank Vanihel,
Appellee-Defendant

March 6, 2023

Court of Appeals Case No.
22A-SC-2537

Appeal from the Sullivan Superior
Court

The Honorable Hugh R. Hunt,
Judge

Trial Court Cause No.
77D01-2208-SC-162

Memorandum Decision by Judge Mathias
Judges May and Bradford concur.

Mathias, Judge.

- [1] Stephen A. Byrd appeals the trial court’s dismissal of his complaint against the Indiana Department of Correction (“the DOC”) and Frank Vanihel, the Warden of the Wabash Valley Correctional Facility. Byrd raises a single issue for our review, which we restate as whether the trial court erred when it dismissed his complaint. We affirm.

Facts and Procedural History

- [2] Byrd is an inmate at the Wabash Valley Correctional Facility. On October 5, 2021, officers at the facility, acting under the direction of Warden Vanihel, conducted a “shakedown” of the unit that included Byrd’s cell. Appellant’s App. Vol. 2, p. 47. The purpose of the shakedown was to locate and seize unauthorized property in the possession of inmates. During the course of the search of Byrd’s cell, officers seized, lost, damaged, or destroyed approximately \$500 worth of Byrd’s personal property. The officers also seized personal property from eleven other inmates in Byrd’s unit.
- [3] Byrd filed an offender grievance with the DOC seeking compensation for this personal property. DOC Policy Number 00-02-301(IV)(A) directs inmates with grievable issues to complete the offender grievance process described in that Policy. “Matters Appropriate to the Offender Grievance Process” include “[t]he manner in which staff members interpret and apply the policies, procedures, and/or rules of the Department or the facility,” including “[a]ctions of individual staff.” *Id.* at 91. However, “non-grievable issues” are identified in the Policy as including “[t]ort [c]laims seeking monetary compensation.” *Id.* at 92.

- [4] Byrd’s offender grievance alleged only that his personal property had been “seized [and] destroyed contrary to policy.” *Id.* at 15. As relief, he demanded financial compensation for the alleged damage to or destruction of his personal property. He included receipts for some of the personal property to justify his alleged damages. Byrd did not allege that any DOC employees had acted inappropriately. The DOC denied his request, stating, “if you feel that you are missing something[,] you may file a tort claim” *Id.* at 14 (capitalization removed).
- [5] Byrd then filed a complaint against the DOC and Warden Vanihel under the Indiana Tort Claims Act (“the ITCA”) for damages. In his complaint, he alleged, for the first time, that Warden Vanihel’s direction to have facility officers check for unauthorized items of personal property was targeted at inmates who had requested a specialized status of care known as protective custody. Byrd was one such inmate. *See id.* at 52-54. As relief, Byrd demanded to be compensated for his damaged or destroyed personal property.
- [6] The DOC and Warden Vanihel filed a motion to screen and dismiss Byrd’s complaint pursuant to [Indiana Code section 34-58-1-2\(a\) \(2021\)](#). In their motion, the DOC and Warden Vanihel argued that Byrd’s complaint should be dismissed both due to his failure to exhaust administrative remedies with the DOC and because the DOC and Warden Vanihel were immune from Byrd’s claims. The trial court agreed and dismissed Byrd’s complaint with prejudice. This appeal ensued.

Discussion and Decision

[7] Byrd appeals the dismissal of his complaint. As we have explained:

We review de novo a ruling on a motion to dismiss a civil complaint for failure to state a claim pursuant to [Indiana Trial Rule 12\(B\)\(6\)](#). *Putnam County Sheriff v. Price*, 954 N.E.2d 451, 453 (Ind. 2011). “Such a motion tests the legal sufficiency of a claim, not the facts supporting it.” *Caesars Riverboat Casino, LLC v. Kephart*, 934 N.E.2d 1120, 1122 (Ind. 2010). “That is to say, it tests whether the allegations in the complaint establish any set of circumstances under which a plaintiff would be entitled to relief.” *Price*, 954 N.E.2d at 453. In ruling on a [Rule 12\(B\)\(6\)](#) motion, courts are required to view the complaint in the light most favorable to the non-moving party and with every inference in its favor. *Id.*

Medley v. Lemmon, 994 N.E.2d 1177, 1182 (Ind. Ct. App. 2013), *trans. denied*.

[8] Further, [Indiana Code section 34-58-1-2\(a\)](#) provides:

“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” We have noted that this statute “is akin to a legislative interpretation of [Indiana Trial Rule 12\(B\)\(6\)](#), a rule which has given judges in civil cases the authority ‘to consider a case in its early stages and, taking everything the plaintiff has alleged as true, determine whether it can proceed.’” *Guillen v. R.D.C. Mail Clerk*, 922 N.E.2d 121, 122-23 (Ind. Ct. App. 2010) (quoting *Peterson v. Lambert*, 885 N.E.2d 719, 720 (Ind. Ct. App. 2008)). The statute provides the same authority as [Trial Rule 12\(B\)\(6\)](#) in civil cases involving prisoners acting pro se, but “without requiring a motion by the defendant to trigger the determination.” *Id.* at 123.

Id. at 1182-83.

[9] Byrd’s complaint appears to be a tort claim for damages against the DOC and Warden Vanihel under the ITCA. With respect to Byrd’s claim against the DOC, however, there is no serious question that the DOC is immune from Byrd’s claim for damages. Under the ITCA, “[a] governmental entity . . . is not liable if a loss results” from the “enforcement of . . . a law (including rules and regulations)” [I.C. § 34-13-3-3\(a\)\(8\)\(A\)](#). But that is the gravamen of Byrd’s claim against the DOC. He alleges a loss resulting from Warden Vanihel’s enforcement of DOC and facility regulations regarding inmate personal property. As a matter of law, the DOC is not liable for any such loss, and the trial court properly dismissed Byrd’s claim as to the DOC.

[10] We thus turn to Byrd’s claim against Warden Vanihel. In particular, Byrd’s complaint alleges that Warden Vanihel is personally liable to Byrd because Warden Vanihel acted maliciously or willfully and wantonly when he directed facility officers to target inmates who were in protective custody. In order to bring a suit against an employee personally under the ITCA, the plaintiff must “allege that an act or omission of the employee that causes a loss is (1) criminal; (2) clearly outside the scope of the employee’s employment; (3) malicious; (4) willful and wanton; or (5) calculated to benefit the employee personally.” [I.C. § 34-13-3-5\(c\)](#). Further, the complaint “must contain a reasonable factual basis supporting the allegation.” *Id.*

[11] However, our case law is clear that a claimant “who has an available administrative remedy must pursue that remedy before being allowed access to the courts.” *Higgason v. Lemmon*, 818 N.E.2d 500, 503 (Ind. Ct. App. 2004), *trans. denied*. A party’s failure to exhaust administrative remedies deprives the trial court of subject matter jurisdiction. *Id.* This policy avoids premature litigation, permits the compilation of an adequate record for judicial review, and affords agencies the opportunity and autonomy to correct their own errors. *Id.*

[12] With respect to his allegation against Warden Vanihel personally, Byrd’s claims were raised for the first time in his complaint. That is, he did not file an offender grievance with the DOC based on “[t]he manner in which staff members,” namely, Warden Vanihel, “interpret[ed] and appl[ied] the policies, procedures, and/or rules of the Department or the facility,” which claims include “[a]ctions of individual staff.” Appellant’s App. Vol. 2, p. 91. DOC policy expressly identifies such claims as “Matters Appropriate to the Offender Grievance Process.” *Id.* Byrd’s only offender grievance simply sought remittance of damaged or destroyed personal property; he did not allege that Warden Vanihel misinterpreted or misapplied DOC or facility policies or otherwise acted inappropriately.

[13] Accordingly, Byrd did not seek or exhaust his administrative remedies as to his ITCA claim against Warden Vanihel. The trial court therefore properly dismissed Byrd’s complaint as to Warden Vanihel as well as to the DOC, and we affirm the trial court’s judgment.

[14] Affirmed.

May, J., and Bradford, J., concur.