

## 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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### APPELLANT PRO SE

Tracey Wheeler  
Greencastle, IN

### ATTORNEYS FOR APPELLEE

Theodore E. Rokita  
Attorney General of Indiana

David A. Arthur  
Indianapolis, Indiana

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## IN THE COURT OF APPEALS OF INDIANA

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Tracey Wheeler,  
*Appellant-Plaintiff,*

v.

Indiana Department of  
Correction, et al.,  
*Appellees-Defendants,*

February 10, 2022

Court of Appeals Case No.  
21A-MI-1206

Appeal from the Perry Circuit  
Court

The Honorable Karen Werner,  
Magistrate

Trial Court Cause No.  
62C01-2105-MI-193

**Robb, Judge.**

## Case Summary and Issue

- [1] Tracey Wheeler, an inmate at the Indiana Department of Correction (“DOC”), filed two identical lawsuits against the State of Indiana and the DOC (collectively, “State”) in Perry Circuit Court. The trial court dismissed both complaints with prejudice. Wheeler appeals the trial court’s dismissal of his later-filed complaint and raises a single issue for our review that we restate as whether the trial court properly dismissed his complaint with prejudice. Concluding the appropriate disposition of the second, duplicative lawsuit is to dismiss it without prejudice or to consolidate it with the first, we reverse and remand.

## Facts and Procedural History

- [2] On March 11, 2021, Wheeler filed a verified complaint against the State in Perry Circuit Court, which was docketed as cause number 62C01-2103-MI-94 (“Cause 94”). Wheeler sought monetary damages, alleging a DOC employee had wrongfully confiscated certain items from his cell. On May 28, the State filed a motion asking the trial court to screen Wheeler’s complaint pursuant to Indiana Code chapter 34-58-1 (the “Screening Statute”) and dismiss any claims that were frivolous, failed to state a claim, or sought relief from a defendant

who is immune.<sup>1</sup> On June 2, the trial court issued an order dismissing Wheeler’s complaint with prejudice in its entirety, finding without elaboration that the claims may not proceed pursuant to the Screening Statute. Wheeler appealed, and this court affirmed in part and reversed in part the trial court’s dismissal, holding that Wheeler could proceed on his negligence claim. *Wheeler v. State*, 21A-MI-1175 (Ind. Ct. App. Nov. 17, 2021). Cause 94 is currently pending in the trial court on remand.<sup>2</sup>

[3] Meanwhile, on May 11, Wheeler filed a verified complaint against the State in Perry Circuit Court, cause number 62C01-2105-MI-193 (“Current Cause”), alleging the same facts and seeking the same relief as his complaint in Cause 94.<sup>3</sup> On June 8, the State filed a motion for the trial court to screen Wheeler’s complaint pursuant to the Screening Statute, noting that the Current Cause is “a photocopy of the complaint filed by [Wheeler] in [Cause 94], with only [Wheeler’s] current location edited to reflect his transfer . . . to Putnamville Correctional Facility.” Appellant’s Appendix, Volume 2 at 35-36. On June 9, the trial court issued an order dismissing the Current Cause with prejudice,

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<sup>1</sup> The Screening Statute acts to prevent abusive civil litigation by criminal offenders by authorizing a court “to review an offender’s claim and bar it from going forward if it is frivolous (that is, made primarily to harass or lacking an arguable basis in law or fact), is not a claim on which relief may be granted, or seeks monetary damages from a defendant who is immune from such relief.” *Zavodnik v. Harper*, 17 N.E.3d 259, 264 (Ind. 2014).

<sup>2</sup> The appellate opinion in Cause 94 was certified on January 18, 2022.

<sup>3</sup> Wheeler claims he was told by the Perry County Clerk approximately one month after Cause 94 was docketed that it never received that complaint, and he filed the Current Cause as a result of that erroneous information. No evidence was presented to the trial court as to this claim, but Wheeler’s reason for filing a second, identical complaint is irrelevant.

finding the complaint “fails to state a claim upon which relief could be granted, and . . . is frivolous as this Court has already adjudicated the claims contained therein” in Cause 94. *Id.* at 5.

- [4] Wheeler has now appealed the dismissal of the Current Cause. He asks that we “reverse the trial court’s decision dismissing [his] complaint with prejudice and dismiss the action without prejudice and strike the [Current Cause] from the record.” Brief of Appellant at 15.

## Discussion and Decision

- [5] Wheeler acknowledges that his complaints in Cause 94 and the Current Cause are the same. In his Notice of Appeal, he suggested this appeal was unnecessary and a “quick remedy” would be to strike the Current Cause as duplicative. Notice of Appeal at 3. The appropriate resolution would have been for Wheeler to voluntarily dismiss the Current Case without prejudice in the trial court upon learning that Cause 94 had in fact been docketed or to ask that the two cases be consolidated rather than wasting judicial time and resources seeing a duplicate case through to judgment and then appealing that judgment. Even accounting for prison mail being slow to reach inmates, several motions and orders were filed in Cause 94 in the time between when the Current Cause was filed and when the trial court dismissed it. Consequently, Wheeler should have realized Cause 94 was docketed and that he had filed a duplicate complaint in the Current Cause.

[6] When Wheeler failed to take action to remedy his mistake, the trial court should have consolidated the actions pursuant to Trial Rule 42(A). That rule allows a trial court to consolidate actions pending in the same court when they involve a common question of law or fact. *Bodem v. Bancroft*, 825 N.E.2d 380, 382 (Ind. Ct. App. 2005). Consolidation under Trial Rule 42(A) requires common questions of law and fact that are determinative, *id.*, and this requirement is more than met here – not only are the determinative questions of law and fact in these two causes in common, they are identical. However, by the time the State filed its motion to screen Wheeler’s complaint in the Current Cause and pointed out the duplicate actions, the trial court had already dismissed Cause 94.<sup>4</sup> Thus, the trial court in turn dismissed the Current Cause with prejudice.

[7] Again, Wheeler does not disagree that the Current Cause is duplicative of Cause 94. He even suggests that it should be dismissed, albeit without prejudice. *See* Br. of Appellant at 15. The appeal in Cause 94 determined the complaint in that cause was improperly dismissed in its entirety and the case was remanded to the trial court for further proceedings on the negligence claim. *See Wheeler*, 21A-MI-1175 at \*8. Wheeler is correct that the same complaint

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<sup>4</sup> We remind the trial court that Indiana Code section 34-58-1-1 provides that “[u]pon receipt of a complaint or petition filed by an offender, the court shall docket the case and take no further action until the court has conducted the review required” by the Screening Statute. Thus, the trial court was required to screen Wheeler’s complaint immediately upon receipt and no motion to do so should have been necessary. *Benson v. News-Sentinel*, 106 N.E.3d 544, 545 (Ind. Ct. App. 2018). Although the onus of “fixing” the problem created here lies with Wheeler, had the trial court screened Wheeler’s complaint in the Current Cause when it was filed, the unnecessary duplication likely could have been discovered and remedied immediately.

cannot also be dismissed with prejudice. Instead, we remand to the trial court with instructions to either dismiss this case without prejudice or consolidate it with Cause 94 pursuant to Trial Rule 42(A).

## Conclusion

[8] The judgment of the trial court dismissing the Current Cause with prejudice is reversed and this case is remanded to the trial court for further proceedings consistent with this opinion.

[9] Reversed and remanded.

Riley, J., and Molter, J., concur.