MEMORANDUM DECISION

APPELLANT PRO SE

Miracle Hurston
Middletown, Ohio

ATTORNEYS FOR APPELLEE

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IN THE COURT OF APPEALS OF INDIANA

Miracle Hurston,
Appellant-Defendant,

v.

Indiana Gaming Company, LLC d/b/a Hollywood Casino Lawrenceburg,
Appellee-Plaintiff

October 18, 2023

Court of Appeals Case No. 23A-CT-800

Appeal from the Dearborn Superior Court

The Honorable Sally A. McLaughlin, Judge

Trial Court Cause No. 15D02-2206-CT-17

Memorandum Decision by Chief Judge Altice
Judges May and Foley concur.

Altice, Chief Judge.

Case Summary

[1] Indiana Gaming Company, LLC d/b/a Hollywood Casino Lawrenceburg (the Casino) filed a complaint for damages in Dearborn Superior Court against Miracle Hurston, alleging abuse of process and malicious prosecution. Hurston is an Ohio resident who frequented the Casino before being banned in June 2019 after an altercation with another guest. Over the next two years, Hurston filed two federal lawsuits in the Southern District of Indiana against the Casino. These federal lawsuits are the subjects of the Casino's complaint.

[2] Hurston, pro se, moved to dismiss the Casino's complaint for lack of personal jurisdiction and failure to state a claim. The trial court found that it had jurisdiction over Hurston but dismissed the complaint on the latter ground. The parties filed motions to correct error, and, after a hearing, the trial court granted the Casino's motion and reinstated the complaint.

[3] Hurston, still pro se, appeals from the grant of the Casino's motion to correct error. As an initial matter, we address whether Hurston's appeal is from a final judgment as defined by Ind. Appellate Rule 2(H). Concluding that it is, we then turn to Hurston's claims that (1) the trial court lacked personal jurisdiction over him and (2) the Casino's complaint failed to sufficiently state claims for abuse of process and malicious prosecution.

[4] We affirm.

Facts & Procedural History

[5] In 2018 and 2019, Hurston was a frequent guest of the Casino, which is in Lawrenceburg, Indiana. He was involved in multiple altercations with guests and staff at the Casino during that period. In June 2019, after a physical and verbal altercation with a guest on the premises of the Casino, Hurston and the other guest were formally banned from the Casino for one year.

[6] Thereafter, on December 11, 2019, Hurston filed a lawsuit against the Casino in the U.S. District Court for the Southern District of Indiana under Case Number 1:19-cv-04890-TWP-DLP (the First Federal Suit). This was based on alleged racial confrontations and incidents involving the Casino's employees and patrons. As amended multiple times, the First Federal Suit involved claims for race discrimination, intentional infliction of emotional distress, and breach of contract.

[7] On November 2, 2021, Hurston filed another federal lawsuit against the Casino in the Southern District of Indiana, this time under Case Number 1:21-cv-02768-TWP-DLP (the Second Federal Suit). This was filed after Hurston was permanently banned from the Casino by certified mail dated January 20, 2021, and was then allegedly physically removed from the Casino on February 12, 2021, while attempting to play blackjack. The Second Federal Suit presented claims of race discrimination, retaliation, and intentional infliction of emotional distress. The district court dismissed the Second Federal Suit on March 1, 2022, finding it duplicative of the First Federal Suit, and later denied Hurston's motion to reconsider the dismissal.

[8] On June 1, 2022, the Casino filed the instant case against Hurston for abuse of process (Count I) and malicious prosecution (Count II). In Count I of the complaint, the Casino alleged that Hurston's allegations in the First Federal Suit were "frivolous" and "made for the ulterior purpose and motive of extorting money from [the Casino] and gaining access to [the] Casino." *Appellee's Appendix* at 13. In Count II, the Casino alleged further that the Second Federal Suit was "frivolous" and filed by Hurston "with malicious intent" and with "no probable cause." *Id*. at 14. Additionally, the Casino alleged that the Second Federal Suit "was dismissed with prejudice in its entirety and final judgment was entered." *Id*. Under both counts, the Casino claimed to have sustained damages as a direct and proximate result of Hurston's alleged actions.

[9] Hurston quickly moved to dismiss the Casino's complaint on two bases – lack of personal jurisdiction and failure to state a claim. The parties presented the trial court with written and oral arguments, and on October 13, 2022, the trial court issued its order on Hurston's motion to dismiss. The trial court determined that it had personal jurisdiction over Hurston because, by his own admission, he visited the Casino in Dearborn County on several occasions and the federal lawsuits filed by him arose from those incidents. The trial court, however, granted the motion to dismiss based on Ind. Trial Rule 12(B)(6), finding that the facts alleged in the complaint were incapable of supporting relief under any set of circumstances. At the conclusion of its order, the trial court expressly dismissed the Casino's complaint.

[10] On November 14, 2022, the Casino filed a motion to correct error and, in the alternative, asked for leave to amend its complaint. Hurston responded with his own motion to correct error, challenging the trial court's determination regarding the jurisdictional issue. After receiving written and oral arguments from the parties, the trial court issued an order on March 13, 2023, granting the Casino's motion to correct error. Specifically, the court reaffirmed its ruling regarding jurisdiction but reversed course on the T.R. 12(B)(6) issue and found that the complaint sufficiently stated claims of abuse of process and malicious prosecution. The court then set the matter for pre-trial conference.

[11] Hurston appeals the trial court's March 13, 2023 order. Additional information will be provided below as needed.

Discussion & Decision

1. Appellate Jurisdiction

[12] Before reaching the merits, we must determine whether this appeal is properly before us. *See Snyder v. Snyder*, 62 N.E.3d 455, 458 (Ind. Ct. App. 2016) ("[I]ssues concerning the finality of appealed judgments are jurisdictional in nature."). Hurston purports to invoke our jurisdiction by way of an appeal from a final judgment under App. R. 2(H)(4), which defines a final judgment to include "a ruling on either a mandatory or permissive Motion to Correct Error which was timely filed under Trial Rule 59." The Casino, however, argues that the motions, including its own, were improperly titled and were actually motions to reconsider an interlocutory order.

[13] It is well established that "motions to correct error are proper only after the entry of final judgment." *Snyder*, 62 N.E.3d at 458. Thus, regardless of the label attached by a party, "any such motion filed prior to the entry of final judgment must be viewed as a motion to reconsider." *Id*.; *see also Georgos v. Jackson*, 790 N.E.2d 448, 451 (Ind. 2003) ("Neither the parties nor the trial court can confer appellate jurisdiction over an order that is not appealable either as a final judgment or under Trial Rule 54(B)."). The distinction is important here because only rulings on a motion to correct error, as opposed to motions to reconsider, are considered final judgments pursuant to App. R. 2(H)(4). *See Severance v. Pleasant View Homeowners Ass'n, Inc.*, 94 N.E.3d 345, 349 n.4 (Ind. Ct. App. 2018) ("[B]ecause there was no final judgment, the HOA's self-styled motion was in fact a motion to reconsider and, contrary to the trial court's conclusion here, its subsequent ruling on that motion could not itself be considered a final judgment pursuant to Indiana Appellate Rule 2(H)(4)."), *trans. denied*. Thus, the determinative question here is whether the trial court's order of October 13, 2022, was a final judgment.

[14] A final judgment disposes of all issues in a case, leaving nothing for future determination.[1] *Georgos,* 790 N.E.2d at 451. The order must "end the case."

[1] A judgment as to fewer than all claims or parties, under certain circumstances, can be considered final, but none of those circumstances is applicable here. *See, e.g.*, App. R. 2(H)(2) (defining judgment as final where "the trial court in writing expressly determines … that there is no just reason for delay and in writing expressly directs the entry of judgment" under Ind. Trial Rule 54(B) or Ind. Trial Rule 56(C)).

Id. at 452. "A disposition of all claims requires more than the entry of a ruling on a motion without entry of judgment." *Id*.

[15] The Casino directs us to *Constantine v. City-Cnty. Council of Marion Cnty.*, 369 N.E.2d 636 (Ind. 1977), for the proposition that an order granting a motion to dismiss under T.R. 12(B)(6) is not a final judgment given the right to replead. But this is not precisely the holding in *Constantine*, and the facts of that case are distinguishable.

[16] *Constantine* addressed the finality of a ruling by the trial court that provided: "Defendant's motion to dismiss granted." *Id*. at 637. The Supreme Court held that "an order merely sustaining a motion to dismiss, without any judgment thereon, is not an appealable matter." *Id*. It reasoned that following a dismissal for failure to state a claim, a plaintiff has ten days, as a matter of right, to plead over. *Id*. Although the plaintiff did not amend its complaint within ten days, the trial court had never made an entry dismissing the case. Because "no judgment ha[d] been entered," the appeal was dismissed for lack of jurisdiction. *Id*. at 638.

[17] T.R. 12(B) provides in relevant part:

> When a motion to dismiss is sustained for failure to state a claim under subdivision (B)(6) of this rule the pleading may be amended once as of right pursuant to Rule 15(A) within ten [10] days after service of notice of the court's order sustaining the motion and thereafter with permission of the court pursuant to such rule.

This language does not contemplate the immediate entry of judgment upon the sustaining of a motion to dismiss for failure to state a claim. *Parrett v. Lebamoff*, 383 N.E.2d 1107, 1109 (Ind. Ct. App. 1979). Rather, when granting such a motion:

> The court should … await the expiration of the ten day period and then adjudge the dismissal for the failure of the party to plead over. In the alternative the party against whom the motion is granted may advise the court of his election to not plead over and thus authorize entry of judgment.

Id.; *see also Thacker v. Bartlett*, 785 N.E.2d 621, 624 (Ind. Ct. App. 2003) ("Therefore, a Trial Rule 12(B)(6) dismissal is without prejudice, since the complaining party remains able to file an amended complaint within the parameters of the rule.").

[18] However, where a trial court goes further and affirmatively dismisses the action in its ruling on the 12(B)(6) motion, such constitutes a final judgment. *See Thacker*, 785 N.E.2d at 624 ("A trial court's entry sustaining a motion to dismiss that goes on to adjudge the case dismissed constitutes a final judgment."); *Parrett*, 383 N.E.2d at 1109 (observing that "the only party harmed by the entry of judgment immediately upon the sustaining of a TR 12(B)(6) motion is the party against whom the motion was directed" and distinguishing *Constantine* while holding that the ruling adjudicating dismissal of the cause and taxing costs constituted a final judgment).

[19] Unlike in *Constantine*, here, the trial court did not merely sustain Hurston's motion to dismiss; it dismissed the complaint. This was a final judgment from which the Casino appropriately filed a motion to correct error. Thus, pursuant to App. R. 2(H)(4), Hurston's appeal of the trial court's ruling on the motion to correct error is a final appealable judgment.

2. Personal Jurisdiction

[20] Having determined that we have jurisdiction to hear this appeal, we turn to Hurston's claim that the trial court lacked personal jurisdiction over him. He does not dispute that he traveled to Indiana to patronize the Casino or that his federal lawsuits were based on some of those visits. Rather, Hurston's sole argument is that he came to the Casino only because it "continually invited [him] to be a guest of the[] establishment, categorizing [him] as a VIP guest." *Appellant's Brief* at 7.

[21] The Due Process Clause of the Fourteenth Amendment of the U.S. Constitution requires that before a state may exercise jurisdiction over a defendant, the defendant have "certain minimum contacts" with the state "such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" *LinkAmerica Corp. v. Cox*, 857 N.E.2d 961, 967 (Ind. 2006) (quoting *Int'l Shoe Co. v. Wash.*, 326 U.S. 310, 316 (1945)).

[22] Relevant here, specific jurisdiction "may be asserted if the controversy is related to or arises out of the defendant's contacts with the forum state." *Id.* "Specific jurisdiction requires that the defendant purposefully availed [himself] of the

privilege of conducting activities within the forum state so that the defendant reasonably anticipates being haled into court there." *Id*. A single contact may be sufficient, "[b]ut a defendant cannot be haled into a jurisdiction 'solely as a result of random, fortuitous, or attenuated contacts or of the unilateral activity of another party or a third person.'" *Id*. (quoting *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475 (1985)).

[23] Here, Hurston had many contacts with Indiana, and these contacts were the basis of his federal lawsuits, which he filed in Indiana, and which underlie the instant controversy. It matters not that Hurston's frequent visits were at the Casino's invitation. Hurston chose to travel to Indiana and to repeatedly patronize the Casino. There was nothing random, fortuitous, or attenuated about the contacts, and Hurston could reasonably anticipate being haled into court in Indiana for matters related to these contacts.[2] The trial court properly exercised jurisdiction over Hurston.

3. T.R. 12(B)(6) Failure to State a Claim

[24] Finally, we address Hurston's claim that the Casino's complaint failed to sufficiently state a cause of action for abuse of process or malicious prosecution. Hurston presents a brief and undeveloped argument in this regard and relies exclusively on facts outside of those alleged in the complaint. This is improper,

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[2] Hurston's reliance on *Walden v. Fiore*, 571 U.S. 277 (2014) is entirely misplaced, as that was a case in which the defendant never set foot in the forum state and his alleged tortious conduct took place in a different state. *See id*. at 291 ("Petitioner's relevant conduct occurred entirely in Georgia, and the mere fact that his conduct affected plaintiffs with connections to the forum State does not suffice to authorize jurisdiction.").

as a motion to dismiss under T.R. 12(B)(6) tests the legal sufficiency of the complaint – "whether the allegations in the complaint establish any set of circumstances under which a plaintiff would be entitled to relief" – and we must accept as true the factual allegations in the complaint. *Trail v. Boys & Girls Clubs of Nw. Ind.*, 845 N.E.2d 130, 134 (Ind. 2006). "A motion to dismiss for failure to state a claim tests the legal sufficiency of the claim, not the facts supporting it." *Charter One Mortg. Corp. v. Condra*, 865 N.E.2d 602, 604 (Ind. 2007).

[25] Indiana Trial Rule 8(A), our notice pleading provision, requires only "a short and plain statement of the claim showing that the pleader is entitled to relief." "Although the plaintiff need not set out in precise detail the facts upon which the claim is based, [he] must still plead the operative facts necessary to set forth an actionable claim." *Trail*, 845 N.E.2d at 135. Dismissal for failure to state a claim is appropriate "only when it is 'apparent that the facts alleged in the challenged pleading are incapable of supporting relief under any set of circumstances.'" *Id*. (quoting *McQueen v. Fayette County Sch. Corp.*, 711 N.E.2d 62, 65 (Ind. Ct. App. 1999), *trans. denied*).

[26] In addition to not discussing the facts alleged in the complaint, Hurston did not even provide us with an appendix. *See* Ind. Appellate Rule 50(A) ("The purpose of an Appendix in civil appeals … is to present the Court with copies of only those parts of the Record on Appeal that are necessary for the Court to decide the issues presented."). Nor does Hurston's brief contain a statement of facts section, as required by Ind. Appellate Rule 46(A)(6), or any citations to the record. Finally, although he properly sets out the elements for the claims of

abuse of process and malicious prosecution, he does not present cogent argument as to whether the *facts alleged in the complaint* were legally sufficient to set forth actionable claims.

[27] Hurston has wholly failed to establish on appeal that it is clear on the face of the complaint that the Casino is not entitled to relief. *See City of New Haven v. Reichhart*, 748 N.E.2d 374, 377 (Ind. 2001) ("It is well settled that a complaint may not be dismissed for failure to state a claim upon which relief can be granted unless it is clear on the face of the complaint that the complaining party is not entitled to relief.").

[28] Judgment affirmed.

May, J. and Foley, J., concur.