NO._____

IN THE

SUPREME COURT OF THE UNITED STATES

PASTOR MARIO L. SIMS,

Petitioner,

v

PETE BUTTIGIEG, MIKE SCHMUL, TIM CORBETT, ST. JOSEPH COUNTY, INDIANA by and through the ST. JOSEPH COUNTY BOARD OF COMMISSIONERS in their individual and official capacities, CITY OF SOUTH BEND INDIANA, STEPHANIE STEELE, as Corporation Counsel for the City of South Bend, TASHA REED OUTLAW, ANN-CAROL NASH, CRISTAL BRISCO, all named individuals are current or former South Bend City employees, and are sued in their official and individual capacities,

Respondents

On Petition for Writ of Certiorari to the

Indiana Supreme Court

PETITION FOR WRIT OF CERTIORARI

Appendixes A, B, and C

Pet. App A

The Indiana Court of Appeals "Opinion" of August 12, 2022, Cause Number 21A-CT-2309, affirmed the Trial Court's "Order" filed February 18, 2022, in Cause Number 71C01-2109-CT-342. The Order was affirmed 2/01/2023. And its Orders of December 10, 2021 and February 4, 2022 directed to the Trial Court

ATTORNEYS FOR APPELLANT

Johnny W. Ulmer
Ulmer Law Offices, Inc.
Bristol, Indiana

Richard E. Bryant
Law Office of Richard E. Bryant, P.C.
Goshen, Indiana

Thomas F. Godfrey
Michigan City, Indiana

ATTORNEY FOR APPELLEES

James F. Groves
Lee Groves & Zalas
South Bend, Indiana

IN THE
COURT OF APPEALS OF INDIANA

Mario Sims,
Appellant-Plaintiff,

v.

Pete Buttigieg; Mike Schmul; Tim Corbett; St. Joseph County, by the Board of Commissioners of St. Joseph County, Indiana; City of South Bend, Indiana; Stephanie Steele, as Corporation Counsel for the City of South Bend; Tasha Reed Outlaw; Ann-Carol Nash; and Cristal Brisco,
Appellees-Defendants.

August 12, 2022

Court of Appeals Case No.
21A-CT-2309

Appeal from the
St. Joseph Circuit Court

The Honorable
John E. Broden, Judge

Trial Court Case No.
71C01-2109-CT-342

Friedlander, Senior Judge.

[1] Mario Sims appeals the trial court's order dismissing with prejudice his complaint against Appellees. Concluding the trial court properly dismissed Sims' complaint, we affirm.

[2] This is yet another action in Sims' decades-long effort to show that his 1995 convictions for burglary, rape, and criminal deviate conduct are the result of a purported conspiracy against him within St. Joseph County. By October of 2003, Sims had been involved in at least forty-seven state court appeals, nearly all of which—civil and criminal—had been unsuccessful and were directly or indirectly related to his arrest, prosecution, conviction, or confinement for burglary, rape, and criminal deviate conduct. *Sims v. Scopelitis*, 797 N.E.2d 348, 349 n.2 (Ind. Ct. App. 2003), *trans. denied* (2004). Due to Sims' continued filing of meritless actions, in *Scopelitis* we imposed conditions upon future lawsuits he may initiate. Assuredly, in these intervening years, Sims has initiated several more appeals, including the present action.

[3] This time Sims claims the trial court improperly dismissed his complaint that alleges police misconduct in the form of planting evidence concerning his 1995 convictions and concealment of evidence of the misconduct by South Bend city officials. Sims filed his complaint and then moved for a default judgment. On October 15, the court issued an order dismissing the complaint with prejudice based on the doctrines of res judicata and collateral estoppel.

[4] Sims appealed that dismissal to this Court, and on December 10, we directed the trial court to issue an order clarifying whether Sims had complied with the conditions previously imposed on him in *Scopelitis*. After some delay, the trial court issued an order on February 18, 2022, stating that, while Sims had complied with the *Scopelitis* requirements, the court's review of his complaint revealed it was subject to dismissal with prejudice as his claims were barred by the doctrines of collateral estoppel and law of the case. The court explained:

> 4. In reviewing the Verified Complaint, the Court **FINDS** that the proposed Verified Complaint at Law is barred by the doctrines of collateral estoppel and law of the case. The basic gravamen of the Verified Complaint is the same – it sues a similar cast of individuals – then Mayor Buttigieg, his Chief of Staff Mike Schmul, Tim Corbett, St. Joseph County, the City of South Bend, and two former corporation counsel for the City of South Bend, Cristal C. Brisco and Stephanie Steele. The Verified Complaint goes on to allege a host of conspiracies across various levels of local government but all centered on the actions of Defendant Corbett and the alleged fraudulent concealment of evidence and retaliation against Plaintiff. In fact, the only real "new" element as set out in the proposed Verified Complaint is the conduit of these actions which is a local news anchor and a reported conversation that she allegedly had with Defendant Corbett.

Appellant's App. Vol. II, pp. 16-17. It is from this order that Sims now appeals.

[5] "There is no right to engage in abusive litigation." *Zavodnik v. Harper*, 17 N.E.3d 259, 264 (Ind. 2014). Moreover, "the state has a legitimate interest in the preservation of valuable judicial administrative resources," and "[e]very

resource that courts devote to an abusive litigant is a resource denied to other legitimate cases with good-faith litigants." *Id.* In the interest of preserving these resources and apart from statutes or rules of court, "courts have inherent authority to impose reasonable restrictions on any abusive litigant." *Id.* at 265 (quoting the *Scopelitis* requirements with approval).

[6] In *Scopelitis*, we exercised our inherent authority to restrict abusive litigants and determined:

> With respect to any future lawsuits that arise directly or indirectly from any alleged conspiracy by public officials related to Sims' arrest, prosecution, conviction or confinement for burglary, rape, and criminal deviate conduct, we impose the following conditions upon Sims: (1) Prior to filing any such lawsuit, Sims shall submit to the trial court a copy of the complaint he wishes to file; (2) Sims shall also file a copy of all of the relevant documents pertaining to the ultimate disposition of each and every previous case instituted by Sims against the same defendant or emanating, directly or indirectly, from any alleged conspiracy by public officials. This includes, but is not limited to, the complaint, any motions to dismiss or motions for summary judgment filed by the defendants in those actions, the trial court order announcing disposition of the case, and any opinions issued in the case by any appellate court; (3) Sims shall file a legal brief, complete with competent legal argument and citation to authority, explaining to the court why the new action is not subject to dismissal by application of the doctrines of res judicata, collateral estoppel, or law of the case. If, after reviewing these materials, the trial court determines that the proposed lawsuit is frivolous, malicious, fails to state a claim upon which relief may be granted, or is otherwise utterly without merit, the court shall dismiss with prejudice the proposed complaint; (4) Sims is required to verify his new complaint pursuant to Indiana Trial

> Rule 11(B); and (5) Sims is specifically instructed to attach to such complaint a separate copy of this final section of the instant opinion.

797 N.E.2d at 352. We noted that these conditions are necessary to deter Sims' abuse of the judicial system because "Sims seems to have a penchant for litigation, regardless of the merits of his claims or prior adjudications of competent courts." *Id.*

[7] The gist of Sims' contention on appeal is that the trial court incorrectly dismissed his complaint because he "complied with *Scopelitis* and the trial court was required to allow the case to proceed." Appellant's Br. p. 20. We infer from his statement that Sims believes as long as he submits to the trial court all the materials required by *Scopelitis*, his lawsuit will be allowed to proceed. This is undoubtedly not the case. As indicated by the words "prior to filing any such lawsuit," the *Scopelitis* conditions are pre-filing screening requirements that are to be satisfied in order to allow the court to review Sims' claims and bar them from going forward if they are duplicative of his sundry previous actions and thus without merit. Therefore, simply submitting the required *Scopelitis* materials does not make approval for filing automatic; if that were the case, the screening process would be pointless.

[8] Here, the action was filed before the trial court performed its *Scopelitis* review. Presumably aware of his filing restrictions that have been in place since 2003, Sims filed this action without a determination by the court that his suit could go forward and then moved to default the defendants when they did not file an

answer to his complaint. In the meantime, the court performed its review and determined that the lawsuit is barred by the doctrines of collateral estoppel and law of the case, and the suit was dismissed with prejudice. After Sims appealed that dismissal order, the trial court clarified the results of its *Scopelitis* review and again ordered Sims' action dismissed with prejudice.

[9] Pursuant to the screening procedure set out in *Scopelitis*, this lawsuit should never have been filed. Nevertheless, there is no procedural error in the trial court performing its mandated *Scopelitis* review after the premature filing of the complaint. Further, because the trial court determined that Sims' claims in the complaint cannot go forward, the Appellees were not in default for not filing an answer or other responsive pleading as claimed by Sims in his appellate brief.

[10] To quell any further confusion regarding the *Scopelitis* procedure, we provide this clarification. With respect to any future lawsuits that arise directly or indirectly from any alleged conspiracy by public officials related to Sims' arrest, prosecution, conviction or confinement for burglary, rape, and criminal deviate conduct, Sims must first, prior to filing any such lawsuit, submit (i.e., not file) to the trial court his verified proposed complaint as required by *Scopelitis* conditions (1) and (4). With the proposed complaint, Sims must also submit to the trial court all the materials required by *Scopelitis* conditions (2), (3), and (5). The trial court will then review the complaint and accompanying materials and make a determination either that the lawsuit may be filed and go forward, or that the lawsuit is frivolous, malicious, fails to state a claim upon which relief may be granted, or is otherwise without merit and thus may not go forward. As

clearly specified in *Scopelitis*, this screening is intended to be a pre-filing procedure. If, however, a lawsuit is inadvertently filed prior to the screening by the trial court, the review outlined in *Scopelitis* and clarified here should take place as soon as practicable after filing. In such circumstances, if the trial court determines, upon completing its review, that the lawsuit is frivolous, malicious, fails to state a claim upon which relief may be granted, or is otherwise without merit, the court shall dismiss the complaint with prejudice.

[11] Finally, Sims alleges an improper basis for the trial court's October 15, 2021 dismissal order. He also claims the trial court improperly became an advocate for the defendants by moving for a dismissal on their behalf because the court's CCS entry for the October 15, 2021 dismissal order incorrectly states: "Order Granting Motion to Dismiss." Appellant's App. Vol. II, p. 6. Sims has previously appealed the October 2021 dismissal order to this Court. The order at issue in the current appeal is the trial court's February 18, 2022 dismissal order. Moreover, the inaccuracy in the trial court's CCS is simply a clerical error, and there is no indication otherwise.

[12] Based on the foregoing, we conclude the trial court properly dismissed Sims' complaint with prejudice.

[13] Judgment affirmed.

May, J., and Altice, J., concur.

IN THE

COURT OF APPEALS OF INDIANA

Mario Sims,

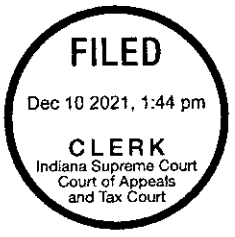
Appellant,

v.

Pete Buttigieg, et al.,

Appellees.

Court of Appeals Cause No.
21A-CT-2309



Order

[1] Appellant, by counsel, has filed a Motion to Strike Untimely Appearance. Appellees, by counsel, have filed a Response to Motion to Strike. The response seeks dismissal of this appeal. Appellant then filed a Motion for Leave to File Reply to Response to Motion to Strike Untimely Appearance.

[2] Having reviewed the matter, the Court finds and orders as follows:

1. Appellant's Motion for Leave to File Reply to Response to Motion to Strike Untimely Appearance is granted. The Clerk of this Court is directed to file Appellant's Reply to Response to Motion to Strike Untimely Appearance that was tendered on November 27, 2021 as of the date of this order.
2. Appellant's Motion to Strike Untimely Appearance is denied.
3. Appellees' request to dismiss this appeal in the Response to Motion to Strike is held in abeyance pending further order of this Court.
4. Pursuant to Appellate Rule 37, this appeal is temporarily stayed and remanded to the trial court, with this Court retaining jurisdiction.
5. Within twenty (20) days of the date of this order, the trial court is directed to issue an order clarifying whether Appellant has satisfied the requirements of *Sims v. Scopelitis*, 797 N.E.2d 348, 352 (Ind. Ct. App. 2003), *trans. denied.*
6. Within twenty-five (25) days of the date of this order, the St. Joseph Circuit and Superior Courts Clerk is directed to file with the Clerk of this

Court an Amended Notice of Completion of Clerk's Record with a copy of the trial court's clarification order.

7. The Clerk of this Court is directed to send this order to the parties, Judge John Broden of the St. Joseph Circuit Court, and the St. Joseph Circuit and Superior Courts Clerk.
8. The St. Joseph Circuit and Superior Courts Clerk is directed to file a copy of this order under Cause Number 71C01-2109-CT-342, and, pursuant to Indiana Trial Rule 77(D), the Clerk shall place the contents of this order in the Record of Judgments and Orders.

Ordered: 12/10/2021

Bailey, J., Friedlander, Baker, Sr.JJ., concur.

For the Court,

Chief Judge

IN THE

COURT OF APPEALS OF INDIANA

Mario Sims,

Appellant,

v.

Pete Buttigieg, et al.,

Appellees.

Court of Appeals Case No. 21A-CT-2309

Order

[1] On December 10, 2021, this Court issued an order that, among other things, temporarily stayed the instant appeal and remanded the matter to the trial court for the limited purpose of issuing an order, within twenty days, clarifying whether Appellant has satisfied the requirements of *Sims v. Scopelitis*, 797 N.E.2d 348, 352 (Ind. Ct. App. 2003), *trans. denied*. It appears from the trial court's Chronological Case Summary that, to date, no order has been issued by the trial court in response to this Court's December 10th order.

[2] Appellant, by counsel, now has filed an Appellant's Verified Motion to Remand in which Appellant seeks an order from this Court directing the trial court to: (1) vacate its October 15, 2021 order; (2) grant the Appellant's motion for default; and (3) set a hearing for damages.

[3] Having reviewed the matter, the Court finds and orders as follows:

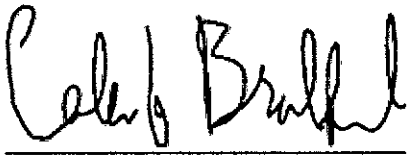
1. Appellant's Verified Motion to Remand is denied.
2. No later than fifteen (15) days from the date of this order, Judge John Broden of the St. Joseph Circuit Court is directed to issue an order as to whether Appellant has satisfied the requirements of *Sims v. Scopelitis*, 797 N.E.2d 348, 352 (Ind. Ct. App. 2003), *trans. denied*, as described in this Court's December 10, 2021 order.
3. Within five (5) days of the date the trial court has issued its clarification order, the St. Joseph Circuit and Superior Courts Clerk shall file with the Clerk of this Court an Amended Notice of Completion of Clerk's Record and attach a copy of the trial court's clarification order thereto.

4. The Clerk of this Court is directed to send this order to the parties, Judge John Broden of the St. Joseph Circuit Court, and the St. Joseph Circuit and Superior Courts Clerk.
5. The St. Joseph Circuit and Superior Courts Clerk is directed to file a copy of this order under Cause Number 71C01-2109-CT-342, and, pursuant to Indiana Trial Rule 77(D), the Clerk shall place the contents of this order in the Record of Judgments and Orders.

[4] Ordered: 2/4/2022

Bailey, J., Friedlander, Baker, Sr. JJ., concur.

For the Court,



Chief Judge

STATE OF INDIANA
COURT OF APPEALS

MARIO SIMS Appellant(s), v. PETE BUTTIGIEG MIKE SCHMUL TIM CORBETT ST. JOSEPH COUNTY BOARD OF COMMISSONER CITY OF SOUTH BEND, INDIANA STEPHANIE STEELE TASHA REED OUTLAW ANN-CAROL NASH CRISTAL BRISCO Appellee(s).	Cause No. 21A-CT-02309

2023 FEB -1 P 2:21
ST. JOSEPH COUNTY
CLERK
CIRCUIT COURT

CERTIFICATION

STATE OF INDIANA)
) SS:
Court of Appeals)

I, Gregory R. Pachmayr, Clerk of the Supreme Court, Court of Appeals and Tax Court of the State of Indiana, certify the above and foregoing to be a true and complete copy of the Opinion of said Court in the above entitled case.

IN WITNESS WHEREOF, I hereto set my hand and affix the seal of THE CLERK of said Court, at the City of Indianapolis, this on this the 1st day of February, 2023.

Gregory R. Pachmayr,
Clerk of the Supreme Court

Pet. App. B.

The Trial Court Order
filed February 18, 2022, in Cause Number 71C01-2109-CT-342

Petitioner's Verified Motion for Entry of Default

Verified Complaint at Law filed September 6, 2021

Brief Directed Solely to the Court in Support of His Verified

Complaint at Law (pursuant to the Court of Appeals Memorandum

Decision 20A-CT-2390 of April 14, 2021

STATE OF INDIANA)
) SS
ST. JOSEPH COUNTY)

IN THE ST. JOSEPH CIRCUIT COURT

CAUSE NO. 71C01-2109-CT-000342

PASTOR MARIO SIMS,
Plaintiff,

v.

PETE BUTTIGIEG,
MIKE SCHMUL,
TIM CORBETT,
ST. JOSEPH COUNTY, BY THE BOARD OF COMMISSIONERS OF ST. JOSEPH COUNTY, INDIANA,
CITY OF SOUTH BEND, INDIANA,
STEPHANIE STEELE, as Corporation Counsel for the City of South Bend,
TASHA REED OUTLAW,
ANN-CAROL NASH,
CRISTAL BRISCO.
Defendants.

FILED
February 18, 2022
ST. JOSEPH CIRCUIT & SUPERIOR COURT
CT

ORDER

The Court having reviewed the case of *Sims v. Scopelitis,* 797 N.E.2d 348, 352 (Ind. Ct. App. 2003) as well as Plaintiff's Verified Complaint at Law and attached Exhibits and Memorandum of Law now **FINDS** as follows:

1. Plaintiff's Verified Complaint at pages 26 and 27, titled "Plaintiff's Verification of Compliance with the Court of Appeals Memorandum Decision 20A-CT-2390 of April 14, 2021, Pursuant to Indiana Rule 11B" includes the relevant text from the *Scopelitis* ruling that this Court must consider in determining whether Plaintiff's lawsuit may be filed and proceed.
2. The Court **FINDS** that Plaintiff has complied with (1) in that Plaintiff has provided this Court with a copy of the Complaint that he wishes to file. Plaintiff has also

complied with (2) in that this Court sees attached a list of 22 matters that appear to constitute a copy of all the relevant documents pertaining to the ultimate disposition of each and every previous suit initiated by Plaintiff Sims from the same Defendant or emanating, directly or indirectly, from any alleged conspiracy by public officials. Plaintiff's counsel have also submitted a legal brief aimed at addressing why this new proposed cause of action should not be (3) subject to dismissal under the doctrines of res judicata, collateral estoppel, or law of the case. Further, Plaintiff Sims has complied with both (4) and (5) of *Scopelitis* in that the proposed Complaint is Verified and, as previously stated, the final section of the opinion is included.

3. It thus falls to this Court to review Plaintiff's Verified Complaint at Law consisting of Eight Counts and 105 rhetorical paragraphs and determine whether the proposed Complaint is not subject to dismissal under the doctrines of res judicata, collateral estoppel, or law of the case.

4. In reviewing the Verified Complaint, the Court **FINDS** that the proposed Verified Complaint at Law is barred by the doctrines of collateral estoppel and law of the case. The basic gravamen of the Verified Complaint is the same- it sues a similar cast of individuals- then Mayor Buttigieg, his Chief of Staff Mike Schmul, Tim Corbett, St. Joseph County, the City of South Bend, and two former corporation counsel for the City of South Bend, Cristal C. Brisco and Stephanie Steele. The Verified Complaint goes on to allege a host of conspiracies across various levels of local government but all centered on the actions of Defendant Corbett and the alleged fraudulent concealment of evidence and retaliation against Plaintiff. In fact, the only real "new" element as set out in the proposed Verified Complaint is the conduit of these actions

which is a local news anchor and a reported conversation that she allegedly had with Defendant Corbett.

5. Thus, while Plaintiff's Verified Complaint at Law and supporting documents complies with multiple prongs of *Scopelitis*, ultimately Plaintiff's Verified Complaint is subject to **Dismissal With Prejudice** under the doctrines of collateral estoppel and law of the case. Thus, Plaintiff's Verified Complaint at Law is **DISMISSED** with prejudice.

Dated: 2/18/2022

SO ORDERED.

Hon. John E. Broden
Judge, St. Joseph Circuit Court

ST. JOSEPH COUNTY SEAL INDIANA CT

CT

Pet. App. C.

The Indiana Supreme Court "Order" in 71C01-2109-CT-342, denying Petitioner's "Petition to Transfer" was issued on 1/26/2023

In the
Indiana Supreme Court

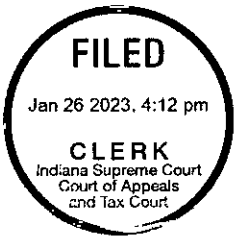
Mario Sims,
Appellant(s),

v.

Pete Buttigieg; Mike Schmul; Tim Corbett; St. Joseph County Board Of Commissoners; City Of South Bend, Indiana; Stephanie Steele; Tasha Reed Outlaw; Ann-Carol Nash; Cristal Brisco,
Appellee(s).

Court of Appeals Case No.
21A-CT-02309

Trial Court Case No.
71C01-2109-CT-342



Order

This matter has come before the Indiana Supreme Court on a petition to transfer jurisdiction, filed pursuant to Indiana Appellate Rules 56(B) and 57, following the issuance of a decision by the Court of Appeals. The Court has reviewed the decision of the Court of Appeals, and the submitted record on appeal, all briefs filed in the Court of Appeals, and all materials filed in connection with the request to transfer jurisdiction have been made available to the Court for review. Each participating member has had the opportunity to voice that Justice's views on the case in conference with the other Justices, and each participating member of the Court has voted on the petition.

Being duly advised, the Court DENIES the petition to transfer. All other pending motions are denied as moot.

Done at Indianapolis, Indiana, on 1/26/2023.

Loretta H. Rush
Chief Justice of Indiana

All Justices concur.