

STATE OF INDIANA

COUNTY OF
MADISONARIEL DALTON, and
BRICE SESLER, b/n/f
ARIEL DALTON,
Plaintiffs,IN THE MADISON CIRCUIT
COURT, DIV. 42024 TERM
CAUSE NO: 48C04-2211-CT-000168

v.

EDGEWOOD POLICE
DEPARTMENT, CITY OF
EDGEWOOD,
OFFICER SHANE BRIGGS, in
his individual capacity, and
OFFICER BRIAN PETTY, in his
individual capacity
Defendants**ORDER OF DISMISSAL FOR FAILURE TO PROSECUTE CLAIM**

Hearing held this date on Defendants' motion for dismissal for failure to prosecute the claims raised herein, pursuant to T.R. 41(E). Plaintiffs did not appear this date. Defendants appeared by counsel.

Due to Plaintiffs' failure to appear and show cause why this matter should not be dismissed, the Court now dismisses this cause in its entirety, with prejudice.

SO ORDERED THIS 10th DAY MAY, 2024.

/s/ David A. Happe, Judge
Madison Circuit Court 4

DISTRIBUTION:

RJO
Court File
Plaintiff
Defendants

STATE OF INDIANA

COUNTY OF
MADISON

)
)
)

IN THE MADISON CIRCUIT COURT,
DIV. 4

ARIEL DALTON, and
BRICE SESLER, b/n/f
ARIEL DALTON,

2024 TERM
CAUSE NO: 48C04-2211-CT-000168

Plaintiffs,

v.

EDGEWOOD POLICE
DEPARTMENT, CITY OF
EDGEWOOD,
OFFICER SHANE BRIGGS, in his
individual capacity, and
OFFICER BRIAN PETTY, in his
Individual capacity, Defendants.

**ORDER ON HEARING OF PLAINTIFF'S MOTION TO SET ASIDE
INVOLUNTARY DISMISSAL PURSUANT TO T.R. 41(E)**

Hearing was held this date on Plaintiffs' request to set aside the judgment of dismissal entered herein due to Plaintiffs' failure to prosecute their claims.

Plaintiff Ariel Dalton appeared in person this date, without counsel. Defendants appeared by counsel.

Ms. Dalton made her argument as to why the dismissal should be set aside and this matter reinstated. Defendants argued and objected that this Court has been divested of jurisdiction due to the initiation of an appeal by Plaintiffs.

Defendants are correct that in between Plaintiffs' motion to set aside being scheduled for hearing and today's hearing taking place, Plaintiffs initiated an appeal. Jurisdiction to act in this case now lies solely with the Indiana Court of Appeals, and this Court is unable to grant the relief requested.

In any event, had the Court been able to exercise jurisdiction, it would have denied the motion to set aside dismissal, as Plaintiffs failed to demonstrate grounds

justifying their non-

appearance at the 41(E) hearing. Plaintiffs likewise failed to show cause why the case should not be dismissed for Plaintiffs' failure to pursue their claims diligently.

SO ORDERED THIS 26th DAY JUNE, 2024.

/s/ David A. Happe, Judge
Madison Circuit Court 4

DISTRIBUTION:

RJO
Court File
Plaintiff
Defendants

MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.

I N T H E
Court of Appeals of Indiana

Ariel Dalton, et al.,
Appellants-Plaintiffs

v.

Edgewood Police Department, et al.,
Appellees-Defendants

November 26, 2024
Court of Appeals Case No.
24A-CT-1369
Appeal from the Madison Circuit
Court

The Honorable David A. Happe,
Judge

Trial Court Cause No.
48C04-2211-CT-168

**Memorandum Decision by Judge
Bradford Judges Bailey and Foley concur.**

Bradford, Judge.

Case Summary

- [1] In November of 2022, Rebecca Dalton and Brice Sesler, by next friend Dalton (collectively, “Dalton”), sued the Edgewood Police Department, the City of Edgewood, Edgewood Police Officer Shane Briggs, and Edgewood Police Officer Brian Petty (collectively, “Edgewood”) for damages. Over the next seventeen months, Dalton, with the exception of appearing at one pretrial hearing, did nothing to advance her claim. In April of 2024, Edgewood moved to dismiss Dalton’s claim for failure to prosecute, which motion the trial court granted. Dalton contends that the trial court abused its discretion in granting Edgewood’s motion to dismiss. We affirm.

Facts and Procedural History

- [2] On November 15, 2022, Dalton sued Edgewood for damages. On May 19, 2023, a hearing at which Dalton appeared with counsel, the trial court set a jury trial to begin on February 25, 2025. The same day, the trial court issued a pretrial order with discovery and pretrial-filing deadlines, among them a requirement that initial witness and exhibits lists be exchanged no later than ninety days from the date of the order. On November 10, 2023, Dalton’s counsel moved to withdraw, citing a communications breakdown.

- [3] On April 8, 2024, Edgewood moved to dismiss for failure to prosecute, in which motion it alleged that Dalton had not served discovery requests in the seventeen months since the suit had been filed; no motions, notices, or other items had been filed since the amended complaint had been filed on November 21, 2022; and Dalton had been inactive since a May 7, 2023, telephonic pretrial conference, at which Dalton's counsel had appeared. Edgewood further alleged that Dalton had failed to take any action in the four months since her attorney had withdrawn and had failed to update her address with the trial court or Edgewood's counsel.
- [4] On April 16, 2024, the trial court set a hearing on the motion to dismiss for May 10, 2024. Dalton did not appear at the hearing, and the trial court dismissed the case with prejudice. On June 10, 2024, Dalton filed a notice of appeal of the trial court's dismissal.¹

Discussion and Decision

- [5] Indiana Trial Rule 41(E) provides, in part, that
- when no action has been taken in a civil case for a period of sixty [60] days, the court, on motion of a party or on its own motion shall order a hearing for the purpose of dismissing such case. The court shall enter an order of dismissal at plaintiff's costs if the plaintiff shall not show sufficient cause at or before such hearing.

¹ On May 28, 2024, Dalton moved for an expedited hearing and a reopening of the case, which motion the trial court denied the next day. On June 6, 2024, Dalton requested a hearing on her motion to set aside the dismissal. On June 10, 2024, the trial court set a hearing on Dalton's filing, and Dalton filed her notice of appeal of the trial court's dismissal. On June 26, 2024, the trial court ruled that it did not have jurisdiction to rule on anything Dalton had filed after she had filed her notice of appeal.

The purpose of Rule 41(E) is “to ensure that plaintiffs will diligently pursue their claims. The rule provides an enforcement mechanism whereby a defendant, or the court, can force a recalcitrant plaintiff to push his case to resolution.” *Belcaster v. Miller*, 785 N.E.2d 1164, 1167 (Ind. Ct. App. 2003) (citation and quotation marks omitted), *trans. denied*. “The burden of moving the litigation is upon the plaintiff, not the court.” *Id.* (citation and quotation marks omitted). Trial courts cannot be expected to carry cases on their dockets indefinitely, nor should defendants have to have lawsuits hanging over their heads indefinitely. *Id.*

- [6] “We will reverse a Trial Rule 41(E) dismissal for failure to prosecute only in the event of a clear abuse of discretion, which occurs if the decision of the trial court is against the logic and effect of the facts and circumstances before it.” *Id.*(citation and quotation marks omitted). We will affirm the dismissal “if there is any evidence that supports the decision of the trial court.” *Id.* (citation and quotation marks omitted). We

generally balance several factors when determining whether a trial court abused its discretion in dismissing a case for failure to prosecute. These factors include: (1) the length of the delay; (2) the reason for the delay; (3) the degree of personal responsibility on the part of the plaintiff; (4) the degree to which the plaintiff will be charged for the acts of his attorney; (5) the amount of prejudice to the defendant caused by the delay; (6) the presence or absence of a lengthy history of having deliberately proceeded in a dilatory fashion; (7) the existence and effectiveness of sanctions less drastic than dismissal which fulfill the purposes of the rules and the desire to avoid court congestion; (8) the desirability of deciding the case on the merits; and (9) the extent to which the plaintiff has been

stirred into action by a threat of dismissal as opposed to diligence on the plaintiff's part.

Id. The weight assigned to any of those factors depends on the facts of the case. *See id.* “However, a lengthy period of inactivity may be enough to justify dismissal under the circumstances of a particular case, especially if the plaintiff has no excuse for the delay.” *Id.*

[7] Under the circumstances of this case, we have little hesitation in concluding that no abuse of discretion has occurred. It is undisputed that Dalton took no action to advance her case for more than seventeen months, or more than eight times the minimum amount of time that must pass before a party may move to dismiss pursuant to Rule 41(E). As for whether Dalton has any excuse for her inaction, on appeal Dalton points only to the fact that she was not served with Edgewood's motion to dismiss. Edgewood's motion to dismiss, however, was filed in April of 2024, *after* Dalton's seventeen-month period of inactivity, and so cannot excuse any of the inactivity, even if the service was ineffective. Moreover, at least four months of delay are attributable solely to Dalton, who not only failed to take any action after the withdrawal of her counsel, but also failed to provide the trial court or Edgewood with a current address. As for Dalton's diligence, she acted only when she learned of Edgewood's motion to dismiss her claim. Given the lengthy delay, lack of an excuse for any part of it, and other circumstances, we conclude that Dalton has failed to establish an abuse of discretion.

[8] In her reply brief, Dalton cites to our decision in *Benton v. Moore*, 622 N.E.2d 1002 (Ind. Ct. App. 1993), for the proposition that it is not within a trial court's discretion to grant a motion to dismiss for failure to prosecute once a trial date has been set. *Id.* at 1006. *Benton*, however, does not help Dalton. *Benton* was premised on the idea that, once the trial date had been set, the plaintiffs could not have been punished with dismissal for failing to take action because there was none to take. *Id.* While that may have been true in *Benton*, it was not true here. At the very least, Dalton was subject to a court order to provide initial witness and exhibit lists within ninety days of the order setting the trial date, which she did not do, a failure for which she does not offer an excuse.

[9] We affirm the judgment of the trial court.

Bailey, J., and Foley, J., concur.

APPELLANT *PRO SE*, FOR ALL APPELLANTS

Ariel Dalton

Brooksville, Florida

ATTORNEY FOR APPELLEES

Liberty L. Roberts

Church Church Hittle & Antrim

Noblesville, Indiana

IN THE
COURT OF APPEALS OF INDIANA

Ariel Dalton, et al.,

Appellants,

v.

Court of Appeals Cause No.
24A-CT-1369

Edgewood Police Department, et
al.,

Appellees.

Order

- [1] Appellants, pro se, have tendered a Petition for Rehearing.
- [2] Having reviewed the matter, the Court finds and orders as follows:
 - 1. The Clerk of the Court is directed to file Appellants' Petition for Rehearing as of the date of this order.
 - 2. Appellants' Petition for Rehearing is denied.

Ordered: 1/15/2025

Bailey, Bradford, Foley, JJ., concur.

For the Court,

/s/ Robert R. Altice, Jr.
Chief Judge

In the
Indiana Supreme Court

Ariel Dalton; Brice Sessler b/n/f
Ariel Dalton,
Appellant(s),

v.

Edgewood Police Department;
Shane Briggs; Brian Petty; City
Of Edgewood,

Appellee(s).

Court of Appeals Case
No. 24A-CT-01369

Trial Court Case No.
48C04-2211-CT-168

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. Done at Indianapolis, Indiana, on 4/24/2025

All Justices concur.

/s/ Loretta H. Rush
Chief Justice of
Indiana