

STATE OF INDIANA ) IN THE HENDRICKS SUPERIOR COURT  
 ) SS: CIVIL DIVISION  
COUNTY OF HENDRICKS ) CAUSE NUMBER 32D01-0911-MI-25

JOHN R. FARMER,  
  
(Plaintiff),  
v.

STATE OF INDIANA, EX REL. INDIANA  
DEPARTMENT OF CORRECTION

And  
DAVE GALLOWAY, in his capacity as  
HENDRICKS COUNTY SHERIFF,

(Defendant).

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Dorothy [unclear]

**MEMORANDUM IN SUPPORT OF MOTION TO DISMISS**

Plaintiff John R. Farmer was found guilty of two counts of aggravated sexual assault and one count of aggravated rape from incidents in Tennessee in 1983 and 1984. He has filed this action against the Indiana Department of Correction, pursuant to the Uniform Declaratory Judgment Act, seeking a declaration of his obligations pursuant to the Indiana Sex Offender Registration Act. An action pursuant to the Uniform Declaratory Judgment Act is inappropriate here because the Sex Offender Registration Act provides him with a full and adequate remedy.

**I. STATEMENT OF MATERIAL FACTS NOT IN DISPUTE**

1. Plaintiff John R. Farmer was alleged to have committed various sexually related crimes including aggravated sexual battery and aggravated rape between 1981 and 1984 in Davidson County Tennessee (Plaintiff's Ex. 1).

2. Farmer was convicted of two counts of aggravated sexual battery occurring in 1983 and 1984 and one count of aggravated rape occurring in 1984 (Plaintiff's Ex. 2). The date of judgment of conviction for all three offenses occurred on April 15, 1988 (Plaintiff's Ex. 2).
3. Plaintiff admits that he has registered as a sex offender annually with the Hendrick's County Sheriff (Plaintiff's Complaint p. 4).

## **II. STANDARD OF REVIEW**

The standard of review for a Trial Rule 12(B)(1) motion to dismiss is *de novo* if the facts before the trial court are not in dispute and the only question presented is one of law. *See GKN Co. v. Magness*, 744 N.E.2d 397, 401 (Ind. 2001). When a trial court addresses a motion to dismiss granted pursuant to Indiana Trial Rule 12(B)(6), the trial court looks to and tests the legal sufficiency of the claim, not the facts supporting it. *See Borgman v. Aikens*, 681 N.E.2d 213, 216 (Ind. Ct. App. 1997). Thus, a trial court's ruling on a motion to dismiss on that ground and its application of law is also reviewed *de novo*. *See id.* at 216-17.

The denial of a motion for declaratory judgment is reviewed for an abuse of discretion. *Community Hospitals of Indiana, Inc. v. Estate of North*, 661 N.E.2d 1235, 1241 (Ind. Ct. App. 1996). An abuse of discretion occurs when a trial court's judgment is against the logic and effect of the facts and circumstances of the case. *See Morton-Finney v. Gilbert*, 646 N.E.2d 1387, 1388 (Ind. Ct. App. 1995).

### III. ANALYSIS

**Declaratory judgment is inappropriate because the plaintiff has a full and adequate remedy provided by another cause of action.**

The plaintiff has brought this action for declaratory relief pursuant to the Uniform Declaratory Judgment Act (“UDJA”), Indiana Code chapter 34-14-1. However, because there is a separate statutory mechanism that would fully and adequately address the plaintiff’s claims, the UDJA is an inappropriate legal mechanism for the remedy he seeks.

The UDJA provides that a person whose rights, status, or other legal relations are affected by a statute may “obtain a declaration of his rights, status, or other legal relations thereunder.” Ind. Code § 34-14-1-2. However, “the court may refuse to render or enter a declaratory judgment or decree where the judgment or decree, if rendered or entered, would not terminate the uncertainty or controversy giving rise to the proceeding.” Ind. Code § 34-14-1-6. The UDJA was not intended to and does not eliminate other causes of action, “particularly where the issues are ripe for litigation through the normal processes.” *KLLM, Inc. v. Legg*, 826 N.E.2d 136, 145 (Ind. Ct. App. 2005) (citing *Volkswagenwerk, A.G. v. Watson*, 390 N.E.2d 1082, 1085 (Ind. 1979)). A declaratory judgment should not be resorted to and is unnecessary where a full and adequate remedy is already provided by another cause of action. *Id.*

The plaintiff seeks a declaration of his status under the Indiana Sex and Violent Offender Act (“the Act”), Indiana Code chapter 11-8-8. Specifically, the plaintiff seeks to have a declaration regarding his responsibility to register as a sex offender and be included on the sex offender registry after the Indiana Supreme Court’s decision in *Wallace v. State*, 905 N.E.2d 371 (Ind. 2009), *reh’g denied*. However, the Act already

provides a remedy to achieve this. Indiana Code section 11-8-8-22 states that a person who is required to register under the Act may petition a court to remove his status as a sex offender if due to a change in federal or state law after June 30, 2007, an individual who engaged in the same conduct as the offender would not be required to register under the Act. This is precisely the relief the plaintiff seeks.

The plaintiff by his own admission is a sex offender and was at one time legally obligated to register as a sex offender. Prior to *Wallace*, all sex offenders, regardless of the date of the commission or conviction, were required to register pursuant to the Act. However, the *Wallace* Court held that the Act violated *ex post facto* prohibitions as applied to a sex offender who committed his crime prior to the Act's 1994 enactment. *Wallace*, 905 N.E.2d at 373. Thus, Indiana law changed with that decision in 2009.

The plaintiff is seeking for this Court to declare that he is not subject to any provisions of the Act. This is the exact remedy already available to him through section 22 of the Act. This makes a declaratory judgment action inappropriate. Indiana law is clear that a declaratory judgment action should not be resorted to if an adequate remedy is already provided by another cause of action. Section 22 of the Act provides a mechanism for the remedy the plaintiff seeks, and it is through this mechanism, not through a declaratory judgment, the plaintiff should seek relief. Indeed, this was the route that provided the successful means for the petitioner in *Wallace's* companion case, *Jensen v. State*, 905 N.E.2d 384 (Ind. 2009).

The difference of filing pursuant to the UDJA or the Act is not a mere nominal matter of mistitling a pleading or citing to the wrong statute. The Act gives specific procedural instructions. After receiving a petition, a court can either dismiss it

summarily or give notice to the prosecuting attorney and set the matter for a hearing. I.C. § 11-8-8-22(d). Therefore, the county prosecutor is a mandatory party to any action determining a sex offender's requirement to register under section 22. This makes obvious sense as the prosecutor has the sole authority to decide whether or not to prosecute a sex offender for failing to register. *See Lamotte v. State*, 495 N.E.2d 729, 733 (Ind. 1986). Additionally, the prosecutor would be in a better position to determine the date of the crime, the background facts (e.g., was there force used or not, which is sometimes determinative, and what are the ages of the victims and offender at the time of the crime), and whether registration is part of a plea agreement or condition of probation. This information is relevant in the determination of whether someone is required to register.

The Act provides the plaintiff with a mechanism to receive his requested relief other than a declaratory judgment action. And it is through the Act that the plaintiff must seek that remedy. Proceeding in that way will fully address his grievance with the mandatory parties present. As such, this Court should deny declaratory relief. *See KKLM, Inc.*, 826 N.E.2d at 145; *Ferrell v. Dunescape Beach Club condo. Phase I, Inc.*, 751 N.E.2d 702, 707-08 (Ind. Ct. App. 2001); *Boone v. Hiler*, 463 N.E.2d 539, 542 (Ind. Ct. App. 1984); *Hinkle v. Howard*, 225 Ind. 176, 179, 73 N.E.2d 674, 675 (1947). Therefore, the plaintiff's action here should be dismissed.

Wherefore, the defendant respectfully requests that the Court grant defendant's motion to dismiss the compliant.

Respectfully submitted,

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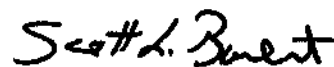
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## CERTIFICATE OF SERVICE

I do hereby certify that a copy of the forgoing document has been duly served upon the person(s) listed below by United States mail, first-class postage prepaid, on this the 7th day of January, 2010.

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