

IN THE COURT OF APPEALS OF OHIO  
SIXTH APPELLATE DISTRICT  
LUCAS COUNTY

Joseph M. Walker

Court of Appeals No. L-17-1131

Appellant

Trial Court No. CI0201504809

v.

Metropolitan Environmental Services, Inc.

**DECISION AND JUDGMENT**

Appellee

Decided: February 9, 2018

\* \* \* \* \*

Joseph M. Walker, pro se.

Vincent S. Mezinko, for appellee.

\* \* \* \* \*

**JENSEN, J.**

{¶ 1} This is an accelerated appeal from a judgment of the Lucas County Court of Common Pleas which granted appellee's motion for judgment on the pleadings or, in the alternative, summary judgment. For the reasons set forth below, this court affirms the judgment of the trial court.

{¶ 2} On November 17, 2015, appellant filed a pro se “filing statement” against appellee. The trial court referred to appellant’s “filing statement” as “difficult to understand.” Ultimately, the trial court determined appellant sought “a declaration of criminal fraud as to certain insurance documents in order to compel criminal prosecution for the alleged fraud. The documents are alleged to have some relation to the adjudication of [appellant’s] Ohio workers’ compensation claim, and [appellant] claims mental anguish caused by the alleged fraud.” The trial court deciphered appellant’s causes of action as alleging insurance fraud, forgery and theft with respect to the insurance documents. Appellee generally denied the allegations. Following a period of discovery by the parties, appellee filed a motion for judgment on the pleadings or, in the alternative, summary judgment, which appellant opposed. On May 1, 2017, the trial court granted appellee’s motion. Appellant then filed this pro se appeal on May 30, 2017.

{¶ 3} We find appellant’s brief difficult to understand. We searched appellant’s brief, but we are not required to comb through it or the sources erroneously incorporated by reference for appealable errors. *Simon v. Mitchell*, 2017-Ohio-671, 85 N.E.3d 470, ¶ 11 (6th Dist.). Although appellant is pro se, he must still follow the same rules and procedures as attorneys. *HSBC Bank USA, N.A. v. Takats*, 6th Dist. Lucas No. L-14-1155, 2015-Ohio-3077, ¶ 9. Nevertheless, we may afford pro se appellant reasonable leeway in the construction of pleadings in the interests of justice. *Id.*

{¶ 4} The principles of reasonable leeway for appellant’s pro se brief do not extend to this court conjuring up questions never squarely asked or constructing

full-blown claims from convoluted reasoning. *Kenwood Gardens Ass’n., LLC v. Shorter*, 6th Dist. Lucas No. L-10-1315, 2011-Ohio-4135, ¶ 8. Nor does reasonable leeway extend to crafting well-articulated claims from poorly drafted arguments. *HSBC Bank United States NA v. Beins*, 6th Dist. Lucas No. L-13-1067, 2014-Ohio-56, ¶ 6. Ultimately, a pro se litigant may not be given any greater rights than a party represented by counsel and bears the consequences of any litigation mistakes. *Id.* at ¶ 7.

{¶ 5} Pursuant to App.R. 16(A)(3), appellant is required to state the assignments of error presented for review, with reference to the place in the record where each error is reflected. Pursuant to App.R. 16(D) and 6th Dist.Loc.App.R. 10(C), appellant is required to reference to the record to the volumes and page number of transcript. The record on appeal is limited to the original papers and exhibits filed in the trial court, the transcript of proceedings and certified copies of the docket and journal entries prepared by the trial court clerk. App.R. 9(A). We “may disregard an assignment of error presented for review if the party raising it fails to identify in the record the error on which the assignment of error is based or fails to argue the assignment separately in the brief, as required under App.R. 16(A).” App.R. 12(A)(2). Further briefing requirements are outlined in the local rules. 6th Dist.Loc.App.R. 10(F). Despite the significant deficiencies of appellant’s brief, we will address any reasonably discernible merits of his appeal. *State v. Rickard*, 6th Dist. Lucas No. L-16-1043, 2016-Ohio-4755, ¶ 3.

{¶ 6} We discern appellant sets forth one assignment of error stating the trial court erred in granting appellee’s motion for “not taking into consideration prudent prima facie

material facts” that appellant believes would have changed the trial court’s decision. However, he fails to clearly identify the alleged “prudent prima facie material facts.”

{¶ 7} In support of his assignment of error, appellant appears to argue the trial court “[m]isinterpreted the legal [s]tatutes stated” by relying on his own belief of what “operative facts” means. Other than referring to an attachment to his “filing statement” entitled, “Condition of the Four Documents Discrepancies,” which is itself difficult to understand, appellant fails to specifically identify the alleged misinterpretation that is the subject of this argument or to provide any legal basis that such misinterpretation constitutes trial court error.

{¶ 8} Appellant appears to further argue the trial court erred by citing to appellee’s evidence “that is not categorized, listed, enumerated under the Rules of Evidence.” However, appellant fails to specifically identify the evidence that is the subject of this argument or to provide any legal basis that such evidence constitutes trial court error.

{¶ 9} Appellant attaches an uncertified copy of the online docket of the trial court case as his statement of the case. Even assuming such information somehow is properly before this court pursuant to App.R. 9(A) and complies with App.R. 16(A)(5), appellant fails to identify what claim is supported by that information or to provide any legal basis that such information constitutes trial court error.

{¶ 10} Appellant appears to further argue he sufficiently pled his causes of action to withstand appellee’s motion as follows:

{¶ 11} 1. For the underlying cause of action, by stating in his “filing statement”: “Joseph M. Walker is filing this Claim of [Action] pursuant to, COURTS – COMMON PLEAS, the Ohio Revised Code Title [23], {2307.01}, {2301.11}, (D), (E)” [sic]. Appellant then fails to identify and support any specific legal basis to assert trial court error.

{¶ 12} 2. For insurance fraud, by stating in his “filing statement” at Count 2: “Plaintiff Charges that, the Four Documents are in Violation of, The State of Ohio Revised Code: Title [29], [Insurance Fraud], {2913.47}(1) (2) (4)” [sic]. He then appears to argue that since only two of the “four documents” are “Accord [sic] Documents” only two “legally fall under the industry Standards of Accord [sic] Documents.” However, appellant fails to identify and support any specific legal basis how the “Accord” status of any particular document constitutes trial court error.

{¶ 13} 3. For forgery, by stating in his “filing statement” at Count 3: “Plaintiff Charges that, the Four Documents are in Violation of, The State of Ohio Revised Code: Title [29], [Forgery], {2913.31}(1) (2) (3)” [sic]. Appellant then appears to argue in relation to the alleged forged insurance documents that the material fact precluding summary judgment in favor of appellee under Civ.R. 56 is a Michigan appeals court opinion saying he was not an Ohio injured worker. Yet appellee does not dispute this “material” fact. Even if we assume the Michigan appeals court decision is somehow properly in the record before us, appellant fails to identify and support any specific legal

basis to assert trial court error. We note the Michigan appeals court upheld a trial court's dismissal of appellant's claims.

{¶ 14} 4. For theft and fraud, by stating in his "filing statement" at Count 4: "Plaintiff Charges that, the Four Documents are in Violation of, The State of Ohio Revised Code: Title [29], [Theft and Fraud], {2913.01}(F) (G) (H)" [sic]. He then appears to reject he had any burden under Civ.R. 12(C) to allege in the complaint any element for fraud, namely that appellee acted to obtain some form of benefit. However, again, appellant fails to identify and support any specific legal basis to assert trial court error.

{¶ 15} In response appellee argues the trial court did not commit reversible error when it dismissed appellant's complaint. Appellee argues the trial court properly applied both the standards for a motion for judgment on the pleadings under Civ.R. 12(C) and for a motion for summary judgment under Civ.R. 56.

{¶ 16} Our review of a motion for judgment on the pleadings under Civ.R. 12(C) is the same as a motion to dismiss under Civ.R. 12(B)(6). *Clemens v. Katz*, 6th Dist. Lucas No. L-08-1274, 2009-Ohio-1461, ¶ 6. Our review is de novo. *Hoeflinger v. AM Mart, LLC*, 6th Dist. Lucas No. L-16-1124, 2017-Ohio-7530, ¶ 15.

{¶ 17} A motion for judgment on the pleadings may be made "after the pleadings are closed but within such time as not to delay the trial." Civ.R. 12(C). Civ.R. 12(C) motions are specifically for resolving matters of law. *Hoeflinger* at ¶ 14. A motion for judgment on the pleadings will be granted where the material allegations in the

complaint, including all reasonable inferences therefrom, are construed in the plaintiff's favor, and it appears beyond doubt the plaintiff can prove no set of facts entitling the plaintiff to the relief sought. *Id.*

{¶ 18} Under Civ.R. 8(A)(1) appellant is required to plead sufficient operative facts to support the relief he seeks. *Clemens* at ¶ 7. Simply stating legal conclusions is insufficient. *Id.* Operative facts are those underlying facts that relate to and support, and tend to show the existence of merit for, appellant's claims against appellee. *Id.*; *Bader v. Ferri*, 3d Dist. Allen No. 1-13-01, 2013-Ohio-3074, ¶ 40.

{¶ 19} We reviewed the record de novo and found appellee's motion for judgment on the pleadings was filed in compliance with Civ.R. 12(C). In appellant's opposition to the motion, his insertion of the words "operative fact" in relation to his opinions and beliefs or in relation to broad reference to the documents attached to his "filing statement" did not compel us to determine they are sufficient operative facts to withstand appellee's motion for judgment on the pleadings.

{¶ 20} We were able to discern from appellant's civil "filing statement" the relief sought was criminal prosecution of appellee by "proper authorities":

Plaintiff Pleas to the Court to Find all of Plaintiff's [Charges] Valid, to enter a decision in Favor of Plaintiff, to put forth and [Order] all the Material Facts Presented (Evidence) to be Properly and formally presented to the Proper Authority, Authorities to, investigate all the elements involved

with the [Charges], so as to move forward with [Criminal Prosecution] that the State of Ohio Revised Code Penalties prescribe for the Crimes State.

[sic]

{¶ 21} Even construing appellant’s civil “filing statement” as attempting to meet the requirements under R.C. 2935.09 to seek a criminal prosecution against appellee, appellant obviously failed to do so, as he did not allege his compliance with the mandatory statutory procedures. Even if he had, R.C. 2935.09 does not mandate a clerk of court’s acceptance for filing the affidavit, nor the prosecution of the offenses stated in the affidavit, had he submitted one. *State ex rel. Rodriguez v. Hofner*, 6th Dist. Wood No. WD-11-041, 2011-Ohio-4142, ¶ 5; *Leavell v. Wilson*, 6th Dist. Erie No. E-17-012, 2017-Ohio-1275, ¶ 9.

{¶ 22} Appellant’s complaint did not support the relief he sought. We found no material factual issues existed and appellee was entitled to judgment as a matter of law under Civ.R. 12(C).

{¶ 23} Our review of trial court summary judgment determinations is de novo, employing the same Civ.R. 56 standard as trial courts. *Levy v. Huener*, 6th Dist. Lucas No. L-17-1081, 2018-Ohio-119, ¶ 11.

{¶ 24} Summary judgment may be granted only:

if the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence, and written stipulations of fact, if any, timely filed in the action, show that there is no genuine issue as to any



material fact and that the moving party is entitled to judgment as a matter of law \* \* \* [and] that reasonable minds can come to but one conclusion and that conclusion is adverse to the party against whom the motion for summary judgment is made, that party being entitled to have the evidence or stipulation construed most strongly in the party's favor.

Civ.R. 56(C); *Levy* at ¶ 11.

{¶ 25} When seeking summary judgment, a party must specifically delineate the basis upon which the motion is brought and identify those portions of the record that demonstrate the absence of a genuine issue of material fact. *Id.* at ¶ 12. When a properly supported motion for summary judgment is made, an adverse party may not rest on mere allegations or denials in the pleadings, but must respond with specific facts showing that there is a genuine issue of material fact for trial in accordance with Civ.R. 56(E). *Id.* A material fact is one which would affect the outcome of the suit under the applicable substantive law. *Id.* To determine if a genuine issues exists, we inquire whether the evidence in dispute is sufficient to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law. *Wall v. Firelands Radiology*, 106 Ohio App.3d 313, 322-323, 666 N.E.2d 235 (6th Dist.1995).

{¶ 26} We reviewed the record de novo and found appellee's motion for summary judgment complied with Civ.R. 56. Appellee pointed to the record containing appellant's pleadings and attachments and appellant's deposition testimony to discern appellant's claims and relief sought. They revolved around the "four documents" appellant believed

were fraudulent and worthy of criminal prosecution in Ohio for two reasons: lacking “Accord” approval and lacking workers’ compensation coverage in Michigan. The “factual” bases to support these claims were appellant’s own beliefs, opinions and legal conclusions. Appellee then pointed to the evidence in the record of the insurance documentation of valid Michigan workers’ compensation coverage. Appellee demonstrated that when all the evidence was construed in appellant’s favor, there were no genuine issues of material fact and appellee was entitled to judgment as a matter of law.

{¶ 27} Appellant then had the burden to respond with specificity showing where in the record there was a genuine issue of material fact requiring a trial. Civ.R. 56(E). Appellant “may not rest on mere allegations or denials in the pleadings.” *Id.* In appellant’s opposition to the motion, he failed to meet that burden because he simply referred to his “filing statement” and its attachments and merely added additional random commentary. Moreover, we found appellant’s insertion of the words “material fact” in relation to his opinions and beliefs or in relation to broad reference to the documents attached to his “filing statement” were unpersuasive. We determine those “facts” were insufficiently material and genuine to withstand appellee’s motion for summary judgment.

{¶ 28} For a number of reasons we did not find appellant demonstrated any genuine issues of material fact necessitating submission of the dispute to a jury. Appellant’s reference in his “filing statement” to R.C. 2307.01 simply did not by itself

constitute a genuine material fact of a cause of action that necessitated a trial. Nor did appellant's reference to R.C. 2301.11.

{¶ 29} Further, appellant's specific references in his "filing statement" to R.C. 2913.47(A)(1), (2), and (4), the definition section of the insurance fraud statute, also did not constitute a genuine material fact of a cause of action that necessitated a trial. Even if we found appellant's "filing statement" somehow complied with R.C. 2935.09 and construed that appellant properly claimed appellee violated any remaining portion of R.C. 2913.47, we find he did not allege to be the "insurer," an undisputed material fact necessary for any such alleged statutory violation. R.C. 2913.47(B).

{¶ 30} Similarly we found appellant's specific references in his "filing statement" to R.C. 2913.31(A)(1), (2), and (3), the fraud by forgery statute, and to R.C. 2913.01(F), (G), and (H), containing some of the definitions under the theft and fraud statute, did not constitute genuine material facts in dispute that necessitate a trial. Random references to, and comments about, the various documents in, and outside of, the record did not arise to the level of evidence to comply with appellant's burden under Civ.R. 56. The mere fact of appellant's litigation against appellee seeking criminal prosecution relief did not necessarily make summary judgment inappropriate because he did not dispute facts that are both genuine and material as to affect the outcome of the litigation under governing law. *Wall*, 106 Ohio App.3d at 322, 666 N.E.2d 235. "Irrelevant and unnecessary factual disputes will not preclude summary judgment." *Id.* We determined from the materials

authorized by Civ.R. 56(C) that appellant failed to meet his burden to overcome appellee's motion for summary judgment.

{¶ 31} Appellant's sole assignment of error is not well-taken.

{¶ 32} On consideration whereof, the judgment of the Lucas County Court of Common Pleas is affirmed. Appellant is ordered to pay the costs of this appeal pursuant to App.R. 24.

Judgment affirmed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27.  
*See also* 6th Dist.Loc.App.R. 4.

Mark L. Pietrykowski, J.

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JUDGE

Arlene Singer, J.

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JUDGE

James D. Jensen, J.  
CONCUR.

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JUDGE