

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

Kim L. Anderson,	:	
Plaintiff-Appellant,	:	No. 12AP-108
v.	:	(C.P.C. No. 11CV-4468)
Scott A. Smith et al.,	:	(REGULAR CALENDAR)
Defendants-Appellees.	:	

D E C I S I O N

Rendered on December 27, 2012

Kim L. Anderson, pro se.

Ron O'Brien, Prosecuting Attorney, and Mary Jane Martin,
for appellees.

APPEAL from the Franklin County Court of Common Pleas

BRYANT, J.

{¶ 1} Plaintiff-appellant, Kim L. Anderson, appeals from a judgment of the Franklin County Court of Common Pleas granting the motion of defendant-appellee, Scott A. Smith, a prosecutor in the Franklin County Prosecutor's Office, for judgment on the pleadings. Because the common pleas court properly determined defendant is entitled to absolute immunity on plaintiff's claims, we affirm.

I. Facts and Procedural History

{¶ 2} On April 7, 2011, plaintiff filed a complaint in the Franklin County Court of Common Pleas for what he termed a "professional tort," alleging defendant violated ethical and professional codes of conduct along with several state and federal

constitutional provisions. Through his complaint, plaintiff sought injunctive, punitive, and declaratory relief.

{¶ 3} The material allegations of plaintiff's complaint assert that defendant, as a representative of the Franklin County Prosecutor's Office, acted outside the scope of his duties when he knowingly and intentionally failed to follow the law, engaged in acts of "intentional malice, trickery, falsification, and deceit, with a total disregard for the integrity of justice," suppressed material evidence, failed to produce exculpatory evidence, conspired with his witness to mislead the fact finder regarding plaintiff's guilt, elicited false and perjured testimony that violated plaintiff's right to a fair trial, and "stepped outside of reasonable professional judgment, to control the outcome of the Plaintiff's Criminal Trial," resulting in "abuse of authority; official misconduct; negligence; conspiracy; and obstruction of justice." (Complaint, at 2.) Plaintiff alleged defendant's actions "satisfy the requirements for exemption from immunity for liability" due to the "malicious, intentional, willful, outrageous, reckless and/or flagrant nature of the misconduct." (Complaint, at 2-3.)

{¶ 4} In addition to alleging various statutory and ethical violations, plaintiff asserted that defendant's actions constituted "Contempt of Court, both Civil and Criminal." (Complaint, at 6.) Plaintiff accordingly sought contempt sanctions to punish defendant for impeding the judicial process.

{¶ 5} After filing an answer that denied the material allegations of plaintiff's complaint, defendant filed a motion for judgment on the pleadings on December 7, 2011, contending plaintiff could prove no set of facts permitting recovery. Noting plaintiff's allegations involve prosecutorial functions, defendant asserted he is entitled under R.C. 2744.03(A)(7) to the absolute prosecutorial immunity afforded prosecuting attorneys in conducting their duties. Plaintiff responded on December 14, 2011 with a "civil complaint willful and professional negligence-tort amended complaint." With it, he filed a motion for leave of court to amend his complaint. Plaintiff also filed a memorandum opposing defendant's motion for judgment on the pleadings.

{¶ 6} The common pleas court, on January 5, 2012, denied plaintiff's motion for leave to file an amended complaint, noting "plaintiff does not state in his motion the purpose for an amendment nor does [he] demonstrate good cause to why the motion

should be granted." (R. 28-29 Entry.) On the same day, the court granted defendant's motion for judgment on the pleadings and dismissed plaintiff's complaint, concluding defendant is entitled to absolute immunity.

II. Assignments of Error

{¶ 7} Plaintiff appeals, assigning two errors:

ASSIGNMENT OF ERROR NO. ONE

APPELLANT CONTENDS THAT THE TRIAL COURT DENIED HIM DUE PROCESS AND EQUAL PROTECTION OF THE LAW UNDER BOTH THE OHIO AND FEDERAL CONSTITUTION, 14TH AMENDMENT WHEN, (1) THE TRIAL COURT FAILED TO CONDUCT A FORMAL HEARING, AS REQUIRED UNDER STATUTORY LAW BEFORE DECIDED [sic] THE CLAIMS.

ASSIGNMENT OF ERROR NO. TWO

APPELLANT CONTENDS THAT THE TRIAL COURT ABUSED IT'S [sic] DISCRETION WHEN IT GRANTED SUMMARY JUDGMENT TO THE OPPOSING PARTY ON THE GROUNDS OF ABSOLUTE IMMUNITY, AND FAILURE TO STATE A CLAIM, THUS VIOLATING APPELLANT'S 1ST AND 14TH AMENDMENT RIGHTS UNDER THE U.S. CONSTITUTIONS.

Because the two assignments of error appear to be interrelated, we address them jointly.

A. Judgment on the Pleadings

{¶ 8} Plaintiff's two assignments of error contend the common pleas court erred in granting defendant judgment on the pleadings and dismissing plaintiff's complaint. He appears to raise two central issues: (1) whether the court properly dismissed his contempt allegations without conducting a hearing, and (2) whether defendant is entitled to absolute immunity concerning the conduct alleged in plaintiff's complaint.

{¶ 9} A Civ.R. 12(C) motion for judgment on the pleadings is specifically for resolving questions of law. *State ex rel. Montgomery v. Purchase Plus Buyer's Group, Inc.*, 10th Dist. No. 01AP-1073 (Apr. 25, 2002), citing *State ex rel. Midwest Pride IV, Inc. v. Pontious*, 75 Ohio St.3d 565, 570 (1996). In ruling on the motion, the common pleas court is permitted to consider both the complaint and answer, but must construe as true

all the material allegations of the complaint, drawing all reasonable inferences in favor of the non-moving party. *Montgomery; Whaley v. Franklin Cty. Bd. of Commrs.*, 92 Ohio St.3d 574, 581 (2001). In order to grant the motion, the court must find beyond doubt that the non-moving party can prove no set of facts that would entitle him or her to relief. *McClelland v. First Energy*, 9th Dist. No. 22582, 2005-Ohio-4940, ¶ 6. We review de novo the appropriateness of a decision granting judgment on the pleadings. *Fontbank, Inc. v. CompuServe, Inc.*, 138 Ohio App.3d 801, 807 (10th Dist.2000).

{¶ 10} Plaintiff's complaint arises out of his own conviction, pursuant to a jury trial, on charges of engaging in a pattern of corrupt activity, theft, forgery, money laundering, and identity fraud as a result of his participation in a mortgage fraud scheme. His conviction was affirmed on appeal in *State v. Anderson*, 10th Dist. No. 08AP-1071, 2009-Ohio-6566 ("*Anderson I*"). Since his conviction, plaintiff has filed numerous actions in the common pleas court and in this court.

{¶ 11} Among them, plaintiff filed with the Franklin County Court of Common Pleas on August 12, 2010, an "application to show cause for civil contempt of court order." *Anderson v. Smith*, Franklin C.P. No. 10CV-11925 (Jan. 20, 2011). In it, he named defendant as the respondent, asserting defendant perpetrated a fraud on the court by suborning perjured testimony from a witness during plaintiff's criminal trial. Defendant filed a motion to strike the application under Civ.R. 12(F), the common pleas court found the application did not qualify as a complaint, and the court granted the motion to strike. In resolving plaintiff's appeal from the trial court decision, this court noted "it is clear that R.C. 2705.01 and 2705.02 do not create a private right of action" in favor of appellant. *Anderson v. Smith*, 196 Ohio App.3d 540, 2011-Ohio-5619, ¶ 11 (10th Dist.) ("*Anderson II*"). As this court explained: "[T]hese statutes do not create the power to punish contempt, which is inherent in the judiciary. The statutes simply regulate the exercise of this power." *Id.* Because "R.C. 2705.01 and 2705.02 do not create a private right of action for an independent contempt claim based on the type of misconduct appellant alleges in this case," "there is no basis for appellant's claim for relief." *Id.* at ¶ 12.

{¶ 12} To the extent plaintiff contends the common pleas court erred in granting defendant's motion for judgment on the pleadings on his request for contempt relief, this

court answered that issue in *Anderson II*. Accordingly, plaintiff's argument on appeal is unpersuasive respecting his contempt allegations.

B. Prosecutorial Immunity

{¶ 13} Plaintiff next suggests he was denied constitutional rights, including due process of law, because the common pleas court failed to hold a hearing on his complaint before granting defendant's motion for judgment on the pleadings and dismissing plaintiff's complaint. A hearing generally is designed to present to the court conflicting issues of fact so the court may resolve the factual dispute before applying the applicable law. Here, the common pleas court assumed all of plaintiff's factual allegations were true and then determined whether, if the allegations were true, plaintiff presented any basis for recovery against defendant. The trial court was not required to conduct a hearing before deciding defendant's motion.

{¶ 14} Nor did the trial court err in concluding defendant is entitled to absolute immunity. As the common pleas court pointed out, R.C. 2744.03(A)(7) provides that "[t]he political subdivision, and an employee who is a county prosecuting attorney * * * is entitled to any defense or immunity available at common law or established by the Revised Code." Under the common law, prosecuting attorneys are entitled to absolute immunity "in initiating a prosecution and in presenting the State's case." *Imbler v. Pachtman*, 424 U.S. 409, 431 (1976). "Absolute prosecutorial immunity will likewise attach to administrative or investigative acts necessary for a prosecutor to initiate or maintain the criminal prosecution." (Footnote deleted.) *Ireland v. Tunis*, 113 F.3d 1435, 1447 (6th Cir.1997); *Buckley v. Fitzsimmons*, 509 U.S. 259, 273 (1993). The immunity so provided extends even to false statements a prosecutor makes. *Adams v. Hanson*, 656 F.3d 397, 405 (6th Cir.2011), quoting *Pittman v. Cuyahoga Cty. Dept. of Children & Family Servs.*, 640 F.3d 716, 725 (6th Cir.2011) (stating " 'prosecutors do not forfeit their absolute immunity when they knowingly make false statements while advocating before the court' "); *Schrob v. Catterson*, 948 F.2d 1402, 1417 (3d Cir.1991), citing *Imbler* at 424-27, and *Brawer v. Horowitz*, 535 F.2d 830 (3d Cir.1976) (noting immunity extends to making false or defamatory statements in judicial proceedings and applies to a prosecutor's knowing use of perjured testimony in a judicial proceeding).

{¶ 15} In granting defendant's motion, the common pleas court observed that the ruling " 'leave[s] the genuinely wronged defendant without civil redress against a prosecutor whose malicious or dishonest action deprives him of liberty.' " Decision and Entry, at 3, quoting *Adams* at 401-02, quoting *Imbler* at 427. Nonetheless, the court observed, " 'the broader public interest would be disserved if defendants could retaliate against prosecutors who were doing their duties.' " Decision and Entry, at 3, quoting *Adams* at 402, quoting *Imbler* at 427. In the end, even if plaintiff's allegations were true, his complaint presents no basis for recovery against defendant. The common pleas court properly granted defendant's motion for judgment on the pleadings.

{¶ 16} Accordingly, plaintiff's two assignments of error are overruled.

III. Disposition

{¶ 17} Having overruled plaintiff's two assignments of error, we affirm the judgment of the Franklin County Court of Common Pleas.

Judgment affirmed.

TYACK and CONNOR, JJ., concur.
