

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

Teddy Glen Bostic, Sr.,	:	
Plaintiff-Appellant,	:	
v.	:	No. 14AP-635 (C.P.C. No. 13CV-12667)
Jeanette Arlene Davis,	:	(REGULAR CALENDAR)
Defendant-Appellee.	:	

D E C I S I O N

Rendered on May 21, 2015

Teddy Glen Bostic, Sr., pro se.

Solove and McCormick, Ronald L. Solove and Kerry L. McCormick, for appellee.

APPEAL from the Franklin County Court of Common Pleas

KLATT, J.

{¶ 1} Plaintiff-appellant, Teddy Glen Bostic, Sr., appeals a judgment of the Franklin County Court of Common Pleas that dismissed his action against defendant-appellee, Jeanette Arlene Davis. For the following reasons, we affirm that judgment.

{¶ 2} On November 20, 2013, Bostic filed a complaint against Davis, his ex-wife. The complaint alleged that Davis had "use[d] fraudulent actions, motives, and words to per[s]uade [Bostic] to marry [her], sign a Prenuptial Agreement two days before the wedding and to keep [her] legal name." (R. 3, at 2.) Additionally, the complaint alleged that Davis knowingly infected Bostic with herpes.

{¶ 3} In response to the complaint, Davis moved to dismiss for failure to state a claim upon which relief could be granted. Alternatively, Davis asked the court to strike

portions of the complaint and require Bostic to provide a more definite statement of his claims. Bostic filed a response to Davis' motion, but he failed to attach a certificate of service to his response.

{¶ 4} In a decision and entry dated January 15, 2014, the trial court granted Davis' motion in part and denied it in part. The trial court refused to dismiss the complaint, but it ordered Bostic to file a more definite statement, which excised the allegations that Davis objected to, by January 29, 2014. In ruling on the motion, the trial court refused to consider Bostic's response because it did not include a certificate of service.

{¶ 5} On February 3, 2014, Davis again moved to dismiss the complaint. Davis sought dismissal because Bostic had not filed a more definite statement as ordered by the court. Bostic responded with a motion to dismiss Davis' motion to dismiss. Pointing to his response to Davis' original motion to dismiss, Bostic claimed that he had provided a more definite statement.

{¶ 6} The trial court dismissed Bostic's complaint in a decision and entry dated March 13, 2014. The trial court found that Bostic had not complied with the January 15, 2014 order or the Ohio Rules of Civil Procedure, and that he had failed to state a claim for which the court could grant relief.

{¶ 7} Bostic now appeals the March 13, 2014 judgment, and he assigns the following errors:

1. THE COURT ERRED IN NOT CONSIDERING RESPONSE OF PLAINTIFF BECAUSE THERE WAS NOT A CERTIFICATE OF SERVICE INCLUDED ON PLAINTIFF'S "ANSWER" TO DEFENDANTS MOTIONS ON December 11 2013 FOR A MORE DEFINITE STATEMENT AND TO DISMISS THE COMPLAINT FOR FAILURE TO STATE A CLAIM UPON WHICH RELIEF MAY BE GRANTED. THE PLAINTIFF DID INCLUDE A CERTIFICATE OF SERVICE AND WHY THE COURT OR ATTORNEY SOLOVE DID NOT RECEIVE CERTIFICATE OF SERVICE PLAINTIFF DOES NOT KNOW. PLAINTIFF DOES KNOW THAT HE DID NOT RECEIVE SOME OF THE FILINGS FROM ATTORNEY SOLOVE OR DECISIONS OF THE COURT IN THE MAIL LIKE HE SHOULD HAVE.

2. THE COURT ERRED IN STATING THAT PLAINTIFF DID NOT STATE A CLAIM. PLAINTIFF MADE CLAIM VERY

CLEAR THAT DEFENDANT DID KNOW_LING GIVE PLAINTIFF THE HERPES VIRUS WHICH SHE CONTACTED FROM A COLUMBUS POLICE OFFICER AND DID CONSPIRE WITH THIS COLUMBUS POLICE OFFICER "FOR SPORT" TO CREATE ENOUGH EMOTIONAL TURMOIL AND MENTAL TURMOIL IN PLAINTIFF'S LIFE TO CAUSE PLAINTIFF TO COMMIT SUICIDE. IT WAS WITHOUT A DOUBT INFERRED INTENT TO DO EMOTIONAL AND MENTAL HARM TO PLAINTIFF AND ANY AVERAGE PERSON OF INTELLIGENCE WHO LOOKED AT THE FACTS AND EVIDENCE WOULD WITH THE ABILITY OF REASON WOULD CONCLUDE THAT IT WAS INDEED INFERRED INTENT TO DO HARM.

3. THE COURT ERRED IN ITS TREATMENT OF THE PLAINTIFF APPELLANT WHICH VERY APPARENT WHEN ONE READS THE FILINGS (WHICH ARE NOT MANY) AND THE COURT DECISIONS ON THE PLAINTIFF'S MOTIONS.

4. THE COURT ERRED IN THE DISMISSAL OF THIS CASE BECAUSE IF IT HAD BEEN ALLOWED TO PROGRESS TO TRIAL THE PLAINTIFF WOULD HAVE PROVED THAT ALL OF HIS ACCUSATIONS WERE INDEED THE TRUTH.¹

{¶ 8} By Bostic's first assignment of error, he argues that the trial court erred by not considering his response to Davis' first motion to dismiss. We disagree.

{¶ 9} "Every pleading, motion, brief, memorandum, or argument in writing filed with the Court or a judge shall be served upon all opposing counsel and upon all parties not represented by counsel." Loc.R. 19 of the Court of Common Pleas of Franklin County, General Division. Each served document must "be accompanied by a completed proof of service which shall state the date and manner of service, specifically identify the division of Civ.R. 5(B)(2) by which the service was made, and be signed in accordance with Civ.R. 11." Civ.R. 5(B)(3); *accord* Loc.R. 19 ("Proof of service in writing shall be shown on or attached to the pleading, motion, brief, memorandum, or argument in writing.").

¹ We quote Bostic's assignments of error verbatim, without correcting spelling, punctuation, or grammatical errors.

"Documents filed with the court shall not be considered until proof of service is endorsed thereon or separately filed." Civ.R. 5(B)(3); *accord* Loc.R. 19 (with one inapplicable exception, "[n]o paper delivered to the Court or a judge without a certificate of service shall be considered by any judge of this Court"). Thus, in the absence of a certificate of service, a trial court simply may not consider a filing. *Purcell v. Estes*, 10th Dist. No. 13AP-606, 2014-Ohio-1027, ¶ 8.

{¶ 10} Here, Bostic claims that he included a certificate of service with his response to Davis' first motion to dismiss. The record, however, does not contain any certificate of service for that document. Consequently, the trial court did not err in refusing to consider Bostic's response, and we overrule Bostic's first assignment of error.

{¶ 11} By Bostic's second assignment of error, he argues that the trial court erred in finding that he did not state a claim for the tortious infliction of the herpes virus. The trial court stated two bases for dismissing Bostic's complaint: (1) failure to state a claim upon which relief can be granted, which justifies dismissal pursuant to Civ.R. 12(B)(6), and (2) failure to comply with an order of the court and the Ohio Rules of Civil Procedure, which justifies dismissal pursuant to Civ.R. 41(B)(1). Bostic has not challenged the second basis for dismissal. Thus, even if the trial court erred in dismissing Bostic's complaint for failure to state a claim, we could not reverse the trial court's judgment as it remains supported by the second basis for dismissal. Accordingly, we overrule Bostic's second assignment of error.

{¶ 12} By Bostic's third assignment of error, he argues that the trial court erred by being "unfriendly" to him because he proceeded pro se. Our review of the trial court's decisions shows that the trial court treated Bostic as it would a litigant represented by counsel. The trial court expected Bostic to understand the Ohio Rules of Civil Procedure,

and, thus, it did not provide the explanation of the rules that Bostic, as a non-lawyer, apparently needed. Bostic, however, cannot expect special treatment due to his pro se status. *Herlihy Moving and Storage, Inc. v. Nickison*, 10th Dist. No. 09AP-831, 2010-Ohio-6525, ¶ 18. If a court treats a pro se litigant differently, it risks violating its duty to impartially handle cases. *Id.* As the trial court would not explain procedural rules to a lawyer, it did not err by failing to explain the rules to Bostic. Accordingly, we overrule Bostic's third assignment of error.

{¶ 13} By Bostic's fourth assignment of error, he asserts that he could prove his case if allowed to present it at trial. True or not, that assertion is irrelevant in determining whether the trial court erred in dismissing Bostic's complaint. Accordingly, we overrule Bostic's fourth assignment of error.

{¶ 14} For the foregoing reasons, we overrule Bostic's four assignments of error, and we affirm the judgment of the Franklin County Court of Common Pleas.

Judgment affirmed.

BROWN, P.J., and BRUNNER, J., concur.
