

[Cite as *Scaccia v. Lemmie*, 2007-Ohio-1055.]

**IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
MONTGOMERY COUNTY**

JOHN J. SCACCIA, et al.	:	
	:	
<i>Plaintiff-Appellants</i>	:	Appellate Case No. 21506
	:	
v.	:	Trial Court Case No. 05-CV-02313
	:	
VALERIE LEMMIE, et al.	:	(Civil Appeal from
	:	Common Pleas Court)
<i>Defendant-Appellees</i>	:	

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OPINION

Rendered on the 9th day of March, 2007.

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FAIN, J.

{¶ 1} Plaintiff-appellant John Scaccia filed a seventy-page complaint against the City of Dayton and other individuals. The defendants-appellees filed a motion to strike the

complaint, which was granted. Thereafter, Scaccia filed a fifty-page amended complaint. The City again sought to strike the complaint, and also to dismiss the action. The trial court granted the motion to dismiss.

{¶ 2} Scaccia contends that the trial court abused its discretion by denying his request for an extension of time to respond to the first motion to strike. He further claims that the trial court abused its discretion by striking his original complaint and requiring him to file an amended complaint. Finally, Scaccia contends that the trial court abused its discretion by dismissing his action.

{¶ 3} We conclude that the trial court did not abuse its discretion in this matter. Consequently, the judgment of the trial court is Affirmed.

I

{¶ 4} John Scaccia served as a prosecutor for the City of Dayton during the 1990's. At some point in 1998, he sought appointment as the City Law Director. However, the position was filled by another candidate and Scaccia was allegedly re-assigned to another division of the City's legal department. His employment with the City was terminated in 2001.

{¶ 5} On March 21, 2005, John Scaccia filed a complaint against the City of Dayton and six City employees (hereinafter "the City"). The 70-page complaint contained 548 paragraphs and stated nineteen separate causes of action, including claims for discrimination, wrongful discharge, theft, conversion of property, fraud, retaliation, defamation, tortious interference, intentional infliction of emotional distress, civil conspiracy, failure to

properly supervise, breach of contract, estoppel and bad faith.¹

{¶ 6} The City filed a motion to strike portions of the complaint on that basis that it violated Civ.R. 8(A) and 12(F). The motion noted that the complaint made reference to a domestic violence incident involving one of the defendants that had no bearing on the subject suit. The motion also noted that the complaint made allegations regarding individuals not involved in the lawsuit.

{¶ 7} On May 31, 2005, Scaccia filed a motion seeking an extension of time for filing a response. He filed another motion for extension on June 30. On July 6, 2005, the trial court entered an order denying the June motion for extension. The order further indicated that the motion to strike was deemed submitted. On July 11, Scaccia filed a motion seeking a reconsideration of the decision to deny his request for a second extension. The following day, the trial court entered an order granting the motion to strike. The trial court's order required Scaccia to file an amended complaint by August 1. Upon Scaccias's motion, the trial court extended the filing date for the amended complaint to August 15.

{¶ 8} Scaccia filed his amended complaint on August 15. The amended complaint was shortened to 50 pages, 440 paragraphs, and eighteen causes of action. The defendants again filed a motion to strike. The motion also sought sanctions against Scaccia as well as dismissal of the action. Thereafter, Scaccia filed four motions seeking extensions of time to respond to the motion to strike. Scaccia's response was filed on November 11, 2005. Thereafter, on February 7, 2006, the trial court entered an order dismissing Scaccia's action.

¹ As noted during oral argument, Scaccia had previously filed a complaint with regard to this action in a different case in the Montgomery County Court of Common Pleas. He was ordered to amend that complaint for failing to comply with Civ.R. 8(A) and 12(F). However, Scaccia voluntarily dismissed that action without filing an amended complaint.

The issue of sanctions was set for hearing.

{¶ 9} Scaccia appeals from the trial court’s July 6, 2005 order denying his second request for an extension. He also appeals from the July 12 order granting the City’s motion to strike and ordering Scaccia to file an amended complaint. Finally, Scaccia appeals from the February 7, 2006 order dismissing his action.

II

{¶ 10} Scaccia’s First Assignment of Error states as follows:

{¶ 11} “THE TRIAL COURT ERRED WHEN IT ABUSED ITS DISCRETION AND DENIED PLAINTIFFS’ MOTION FOR AN EXTENSION OF TIME TO FILE A RESPONSE IN THIS MATTER.”²

{¶ 12} Scaccia contends that the trial court should have granted his second request for an extension of time to file a response to the original motion to strike. In support, he claims that the extension was warranted due to the complexity of the case. He further argues that there had only been one prior extension and he had “alerted the court to the reasons why he needed an extension.”

{¶ 13} Civ.R. 6(B) gives trial courts discretion to grant extensions of time to respond to pleadings. Absent an abuse of that discretion, the decision of the trial court to grant or to deny an extension will not be disturbed. *Marion Production Credit Ass’n v. Cochran* (1988), 40 Ohio St. 3d 265, 271. To constitute an abuse of discretion, the ruling must be unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d

² Throughout his appellate brief, Scaccia refers to “plaintiffs” to the action. However, we note that he is the sole plaintiff in the action.

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{¶ 14} In its order denying the requested extension, the trial court explained its decision, stating in part:

{¶ 15} “On May 24, [Scaccia] moved for an extension of time to respond to the Motion to Strike; the [City] ‘consented to this extension of time.’ Now before the Court is [Scaccia’s] June 23 Motion for Extension of Time. There is no consent from the [City] and no memorandum, but rather the statement that the extension is needed ‘due to counsel’s schedule in other cases and the complexity of the [City’s] motion. *** There is nothing complex about [the City’s] motion; it is almost identical to the [City’s] motion [in the prior action]. Further, without a memorandum or some facts, the bald reference by [Scaccia] to ‘counsel’s schedule’ cannot be given much weight.”

{¶ 16} Based upon our review of the record, we do not conclude that the trial court abused its discretion by denying the second extension request. First, as noted by the trial court in its order, Scaccia failed to comply with Local Rule 2.05 of the Montgomery County Common Pleas Court, which requires the submission of a “brief written memorandum” along with the motion. Second, at the point that the motion for extension was denied, Scaccia had been allowed two months in which to file a response, and had failed to do so. Scaccia’s First Assignment of Error is overruled.

III

{¶ 17} Scaccia’s Second Assignment of Error provides:

{¶ 18} “THE TRIAL COURT ERRED WHEN IT ABUSED ITS DISCRETION AND ORDERED THE PLAINTIFFS TO STRIKE PORTIONS OF THEIR COMPLAINT AND REFILE

AN AMENDED COMPLAINT.”

{¶ 19} Scaccia claims that the trial court also erred by granting the motion to strike his complaint and ordering him to file an amended complaint. His argument in support is two-fold. First, he argues that, given the nature of the action, the complaint was as compact as possible given the nature of the action. Second, he claims that the trial court abused its discretion when it “struck the complaint in its entirety, rather than the portions it considered to be in violation of the rules.”

{¶ 20} Of relevance to this issue are the provisions of Civ.R. 8(A), 8(E) and 12(F). Civ.R. 8(A) provides that a “pleading which sets forth a claim for relief * * * shall contain (1) a short and plain statement of the claim showing that the pleader is entitled to relief, and (2) a demand for judgment for the relief to which he deems himself entitled. Relief in the alternative or of several different types may be demanded.” “The purpose of Civ.R. 8(A) is to provide the adverse party with notice of the claim and the grounds upon which it was based.” *Walton v. Beck* (Nov. 27,1990), Wyandot App. No. 16-89-15. “However, Civ.R. 8(A) does not contemplate evidentiary pleading.” *Collins v. National City Bank*, Montgomery App. No. 19884, 2003-Ohio-6893, ¶58. Civ.R. 8(E)(1) provides that “each averment of a pleading shall be simple, concise and direct.” Civ. R. 12(F) provides that a trial court may “order stricken from any pleading any insufficient claim or defense or any redundant, immaterial, impertinent, or scandalous matter.”

{¶ 21} We have reviewed the first complaint, and agree with the trial court that it failed to set forth a short and plain statement showing that Scaccia was entitled to relief. For example, at one point in the complaint, Scaccia devotes five paragraphs to describing his qualifications for employment rather than merely averring that he was qualified for the position

he sought. In another portion of the complaint, Scaccia devotes approximately twenty paragraphs to describing the birth of his child and the City's failure to provide him with appropriate leave rather than merely stating that the City acted inappropriately by denying the leave. These are merely two examples of page after page of tedious detail of numerous events that could, and should, have been distilled into a more concise statement.

{¶ 22} In a different vein, as noted by the City, many of Scaccia's allegations appear irrelevant to the action, and seem to be in the nature of personal attacks. For example, he alleges that the "administrative aid[e]" of a former Dayton mayor was given a "special, noncompetitive grant package in excess of \$2,500 for the purchase of his home." Neither the aide nor the mayor are parties to the lawsuit. Scaccia also alleged that a city commissioner was involved in an automobile accident for which he was not cited, despite being at fault. There are also numerous allegations of wrongdoing on the part of individuals who are either not involved in the suit or whose alleged actions have no bearing on the case at hand. The complaint also refers to a "clique," as well as to "graft, corruption, nepotism and cronyism."

{¶ 23} This complaint does not constitute a short and plain statement of Scaccia's claims for relief. We agree with the trial court that the complaint contains numerous redundancies and irrelevant allegations. Therefore, we conclude that the trial court did not err in granting the motion to strike and requiring Scaccia to file an amended complaint. Furthermore, given that the vast majority of the complaint appears superfluous and irrelevant, we do not fault the trial court for striking it in its entirety, as opposed to taking the trouble to cull out the few portions that were salvageable.

{¶ 24} Scaccia's Second Assignment of Error is overruled.

IV

{¶ 25} Scaccia’s Third Assignment of Error states:

{¶ 26} “THE TRIAL COURT ERRED WHEN IT ABUSED ITS DISCRETION WHEN IT GRANTED THE DEFENDANTS’ MOTION AND DISMISSED THE PLAINTIFFS’ CLAIM WITH PREJUDICE.”

{¶ 27} Scaccia argues that the trial court should not have dismissed his complaint.

{¶ 28} Pursuant to Civ. R. 41, a trial court may dismiss an action for failure to prosecute where the plaintiff fails to comply with the Civil Rules or court orders. In this case, Scaccia failed to comply with the trial court order mandating conformity with the provisions of Civ.R. 8 and 12.

{¶ 29} While Scaccia’s amended complaint contained fewer pages and paragraphs than the original, we find no abuse of discretion in the trial court’s decision to dismiss. A comparison of the two complaints reveals that Scaccia did not amend his complaint so much as alter its appearance. Specifically, he used a smaller font size for the amended complaint, which accounts for the fact that it contained fewer pages than the original. Additionally, he merely re-numbered and combined a large number of the paragraphs contained within the original complaint, without changing their content. While Scaccia did remove some of the paragraphs containing examples of wrongdoing by City personnel, the amended complaint still managed to mention the words “clique, graft, corruption, nepotism and cronyism.” Additionally, he included a paragraph regarding free travel to a City employee and to “illegal meetings” held by various City employees. The amended complaint spends numerous

paragraphs detailing legal cases that Scaccia had handled for the City. It also still contained seventeen paragraphs devoted to the fact that he was not given leave for the birth of his child.

{¶ 30} The amended complaint was riddled with the same defects of the original complaint. Scaccia is, as averred in his complaint, an experienced attorney charged with knowledge of the law and civil rules. It is clear that despite the leniency afforded him by the trial court, Scaccia failed to file a complaint in conformity with Civ.R. 8(A) and 12(F). It is further clear that he made, at most, a cursory attempt to cure the deficiencies in his complaint. Therefore, we conclude that the trial court did not abuse its discretion when it dismissed the complaint. Scaccia’s Third Assignment of Error is overruled.

V

{¶ 31} All of Scaccia’s assignments of error having been overruled, the judgment of the trial court is Affirmed.

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BROGAN and GRADY, JJ., concur.

Copies mailed to:

- John J. Scaccia
- Neil F. Freund
- Leonard J. Bazalak
- Hon. Dennis J. Langer