[Cite as *Johnson v. Baker*, 2018-Ohio-617.]

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

DUANE JOHNSON	:	JUDGES:
	:	
	:	Hon. John W. Wise, P.J.
Plaintiff-Appellant	:	Hon. Patricia A. Delaney, J.
	:	Hon. Craig R. Baldwin, J.
-vs-	:	
	:	Case No. 2017CA00202
	:	
WRONG DOER, ET AL.	:	
NANCY L. BAKER	:	
	:	
Defendants-Appellees	:	O P I N I O N

CHARACTER OF PROCEEDING:	Appeal from the Stark County Court of Common Pleas, Case No. 2017CV01930
JUDGMENT:	AFFIRMED
DATE OF JUDGMENT ENTRY:	February 12, 2018

APPEARANCES:

For Plaintiff-Appellant:	For Defendants-Appellees:
DUANE JOHNSON, PRO SE 825 Diagonal Road Akron, OH 44320	CHRISTOPHER A. TIPPING STARK & KNOLL CO., L.P.A. 3475 Ridgewood Road Akron, OH 44333

Delaney, P.J.

{¶1} Plaintiff-appellant Duane Johnson appeals from the "Sua Sponte Dismissal of Plaintiff's Complaint" dated September 29, 2017 of the Stark County Court of Common Pleas. Defendant-appellee Nancy L. Baker is named in the complaint as one of a number of "wrongdoers."

FACTS AND PROCEDURAL HISTORY

{¶2} On September 22, 2017, appellant presented for filing a document entitled "Claim," styled in the "Johnson Court" at the "Stark County Court House." The claim is labeled trespass and includes a demand for three million dollars. The "nature of claim" states, "Your Manger (*sic*) knew this man was anti-social and dangerous. I did not deserve this type of incident, an assault from patronizing your establishment, and I spent about a year in recovering from my injury."

{¶3} On September 29, 2017, the trial court issued a sua sponte dismissal of the "claim" via judgment entry with prejudice and finding "that the subject filing is not actionable."

{¶4} Appellant now appeals from the trial court's judgment entry of September 29, 2017.

{¶5} Appellant has not raised any assignments of error per se. In his filing of December 28, 2017 entitled "Brief," appellant argues he claims harm by the wrongdoers in this case and filed the action outside Summit County "to avoid any appearance of impropriety as the wrong doers harmed i by their actions or in-actions while acting as public servant in Summit County (*sic* throughout)."

{¶6} This case comes to us on the accelerated calendar. App.R. 11.1 governs accelerated-calendar cases and states in pertinent part:

> (E) Determination and judgment on appeal.
>
> The appeal will be determined as provided by App.R. 11.1. It shall be sufficient compliance with App.R. 12(A) for the statement of the reason for the court's decision as to each error to be in brief and conclusionary form.
>
> The decision may be by judgment entry in which case it will not be published in any form.

{¶7} One of the most important purposes of the accelerated calendar is to enable an appellate court to render a brief and conclusory decision more quickly than in a case on the regular calendar where the briefs, facts, and legal issues are more complicated. *Crawford v. Eastland Shopping Mall Assn.*, 11 Ohio App.3d 158, 463 N.E.2d 655 (10th Dist.1983).

{¶8} This appeal shall be considered in accordance with the aforementioned rules.

ASSIGNMENT OF ERROR

{¶9} [THE TRIAL COURT ERRED IN DISMISSING APPELLANT'S "CLAIM."]

ANALYSIS

{¶10} Appellant argues the trial court should not have dismissed his Claim. We disagree.

{¶11} A Civ.R. 12(B)(6) dismissal for failure to state a claim upon which relief can be granted is reviewed de novo since it involves a pure legal issue. *Bilbaran Farm, Inc. v.*

Bakerwell, Inc., 5th Dist. Knox No. 12-CA-21, 2013-Ohio-2487, 993 N.E.2d 795, ¶ 12, citing *Perrysburg Twp. v. Rossford*, 103 Ohio St.3d 79, 2004-Ohio-4362, 814 N.E.2d 44, ¶ 5. To affirm the trial court's dismissal for failure to state a claim, it must appear beyond doubt that appellant can prove no set of facts warranting the relief requested. *State ex rel. Findlay Publishing Co. v. Schroeder,* 76 Ohio St.3d 580, 581, 669 N.E.2d 835 (1996), citing *State ex rel. Seikbert v. Wilkinson,* 69 Ohio St.3d 489, 490, 633 N.E.2d 1128 (1994). In conducting this review, the court must presume all the factual allegations in the complaint are true and make all reasonable inferences in favor of the nonmovant. *Id.*

{¶12} Where documents are attached or incorporated into the complaint, the face of the complaint to be evaluated includes those documents. *See* Civ.R. 10(C). "Material incorporated in a complaint may be considered part of the complaint for purposes of determining a Civ.R. 12(B)(6) motion to dismiss." *State ex rel. Crabtree v. Franklin Cty. Bd. of Health,* 77 Ohio St.3d 247, 249, fn. 1, 673 N.E.2d 1281 (1997). "If the plaintiff decides to attach documents to his complaint, which he claims establish his case, such documents can be used to his detriment to dismiss the case if they along with the complaint itself establish a failure to state a claim." *Adlaka v. Giannini,* 7th Dist. No. 05 MA 105, 2006-Ohio-4611, 2006 WL 2575053, ¶ 34 citing *Aleman v. Ohio Adult Parole Auth.,* 4th Dist. No. 94CA17, 1995 WL 257833 (Apr. 24, 1995).

{¶13} In the instant case, three documents are attached to the "claim" filed in the trial court: a photocopy of a dictionary definition of "common law;" a "notice" stating appellant claims ownership of the case and only a "wrongdoer" will be heard in the "Johnson court;" and an "order to the court" stating appellant orders the wrongdoer to make payment through their insurance provider of three million dollars.

{¶14} *Sua sponte* dismissal without notice may be approved where the complaint is frivolous or the claimant obviously cannot possibly prevail on the facts alleged in the complaint. *State ex rel. Edwards v. Toledo City School Dist. Bd. of Edn.*, 72 Ohio St.3d 106, 108, 1995-Ohio-251, 647 N.E.2d 799, citing *Baker v. Dir., U.S. Parole Comm.*, 916 F.2d 725 (C.A.D.C.1990), and *English v. Cowell*, 10 F.3d 434 (C.A.7, 1993). In the instant case, appellant's "Claim" states no facts and is devoid of any cogent claim for relief. Appellant's "claim" is thus not properly a complaint because it does not comply with any requirement of Civ.R. 8, omitting any "short and plain statement of the claim showing that the party is entitled to relief." Civ.R. 8(A).

{¶15} The record does not indicate any justiciable controversy exists and appellant could not prevail on the statements contained in the "claim." *Fant v. Greater Cleveland Regional Transit Auth.*, 8th Dist. Cuyahoga No. 72848, 1998 WL 83202, *1. Construing the "claim" in a light most favorable to appellant, it is devoid of any relevant facts or pertinent legal authority to support an apparent allegation of "assault" by appellee and/or other unnamed "wrongdoers." See, *Ebbing v. Stewart*, 12th Dist. Butler No. CA2016-05-085, 2016-Ohio-7645, ¶ 18, *appeal not allowed,* 149 Ohio St.3d 1434, 2017-Ohio-4396, 76 N.E.3d 1209. Bare legal assertions are insufficient to constitute fair notice and an opportunity to respond, as required under Ohio's notice-pleading standard. *Id.*, citing *Klan v. Med. Radiologists, Inc.,* 12th Dist. Warren No. CA2014–01–007, 2014–Ohio–2344, ¶ 13.

{¶16} Appellant's sole assignment of error is overruled.

CONCLUSION

{¶17} The sole assignment of error is overruled and the judgment of the Stark County Court of Common Pleas is affirmed.

By: Delaney, J., and

Wise, John, P.J.

Baldwin, J., concur.