[Cite as *Wilson v. Benson*, 2004-Ohio-1647.]

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

Kenneth Jay Wilson

Appellant

v.

Darryl Benson, et al.

Appellees

Court of Appeals No. L-03-1304

Trial Court No. CI-03-1388

DECISION AND JUDGMENT ENTRY

Decided: March 31, 2004

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Kenneth Jay Wilson, pro se.

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PIETRYKOWSKI, J.

{¶1} This is an accelerated appeal from a judgment of the Lucas County Court of Common Pleas.

{¶2} Pro se appellant Kenneth Jay Wilson, an inmate at the Toledo Correctional Institution, filed a complaint against five fellow inmates, who work in the institute's food service, for watering down the Kool-Aid. Two of the defendants, Darryl Benson and Christopher Johnson, filed motions to dismiss the complaint for failure to state a claim upon which relief can be granted. The trial court granted the motions and dismissed the complaint.

{¶3} Appellate review of a trial court's decision to dismiss a claim pursuant to Civ.R. 12(B)(6) is de novo. *Hunt v. Marksman Prod., Div. of S/R Industries, Inc.* (1995), 101 Ohio App.3d 760, 762. In order for a trial court to dismiss a complaint for failure to state a claim upon which relief can be granted, it must appear beyond doubt from the complaint that the plaintiff can prove no set of facts entitling him to recovery. *O'Brien v. University Community Tenants Union* (1975), 42 Ohio St.2d 242, syllabus. The court must presume that all factual allegations in the complaint are true and construe all inferences that may be reasonably drawn therefrom in favor of the non-moving party. *Desenco, Inc. v. Akron* (1999), 84 Ohio St.3d 535, 538.

{¶4} It is unclear from appellant's complaint whether his action is in tort or in contract. Regardless, the only damage appellant has alleged in his complaint is his inability to drink watered down Kool-Aid. We fail to see how this injures appellant. Moreover, our research has failed to uncover any constitutional, statutory or common law right of any individual to have Kool-Aid made with a water to powder ratio of seven to one, which appellant alleges is proper.

{¶5} Accordingly, the trial court did not err in dismissing appellant's complaint and appellant's assignments of error are not well-taken.

{¶6} On consideration whereof, the court finds that substantial justice has been done the party complaining and the judgment of the Lucas County Court of Common Pleas is affirmed. Court costs of this appeal are assessed to appellant.

JUDGMENT AFFIRMED.

Richard W. Knepper, J. _____
JUDGE

Mark L. Pietrykowski, J. _____
JUDGE

Arlene Singer, J. _____
CONCUR.
JUDGE