[Cite as *Hughley v. McFall*, 2009-Ohio-5568.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 92901

KEVIN HUGHLEY

PLAINTIFF-APPELLANT

vs.

KEVIN MCFAUL, ET AL.

DEFENDANTS-APPELLEES

JUDGMENT:
AFFIRMED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CV-673394

BEFORE: Sweeney, J., Rocco, P.J., and Kilbane, J.

RELEASED: October 22, 2009

JOURNALIZED:

FOR APPELLANT

Kevin Hughley
No. 532-743
5900 B.I.S. Road
Lancaster, Ohio 43130

ATTORNEY FOR APPELLEE KEVIN MCFAUL, ET AL.

Mary L. Cibella
Rockefeller Building, Suite 1300
614 West Superior Avenue
Cleveland, Ohio 44113

ATTORNEYS FOR CLEVELAND BAR ASSOCIATION

Lori E. Brown
Monica A. Sansalone
Gallagher Sharp
Sixth Floor, Bulkley Building
1501 Euclid Avenue
Cleveland, Ohio 44115

N.B. This entry is an announcement of the court's decision. See App.R. 22(B) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(C) unless a motion for reconsideration with supporting brief, per App.R. 26(A), is filed within ten (10) days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this courts announcement of decision by the clerk per App.R. 22(C). See, also, S.Ct. Prac.R. II, Section 2(A)(1).

JAMES J. SWEENEY, J.:

{¶ 1} Plaintiff-appellant Kevin Hughley ("plaintiff") appeals the court's dismissal of his complaint against defendants Kevin McFaul ("defendant McFaul") and the Cleveland Metropolitan Bar Association ("defendant CMBA"). After reviewing the facts of the case and pertinent law, we affirm.

{¶ 2} On October 29, 2006, plaintiff filed a grievance with defendant CMBA against defendant McFaul, an attorney who represented plaintiff in various cases. On October 17, 2007, defendant CMBA filed a three-count disciplinary action with the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio ("the Board") against defendant McFaul. Count two of this action alleged that defendant McFaul violated the Ohio Rules of Professional Conduct governing attorneys in his representation of plaintiff.

{¶ 3} On June 19, 2008, after an investigation and a hearing, the Board dismissed count two after finding that "The Cleveland Bar Association [1] determined that the allegations in Count Two lacked credibility." The disciplinary action proceeded against defendant McFaul on counts one and three, which are unrelated to plaintiff.

{¶ 4} On October 15, 2008, plaintiff filed a pro se complaint against defendants McFaul and CMBA alleging "breach of contract, breach of fiduciary duty, civil conspiracy, negligence, recklessness, intentional misrepresentation,

[1] The Cleveland Bar Association is now known as the CMBA.

neglection [sic] an entrusted, [and] intentional infliction of emotional distress," in relation to the Board's dismissal of count two.

{¶ 5} On February 10, 2009, the trial court dismissed plaintiff's complaint against both defendants pursuant to Civ.R. 12(B). Plaintiff appeals and raises one assignment of error for our review:

{¶ 6} "I. Trial court erred by dismissing appellant's complaint when supporting facts were present that could be proven entitling appellant to relief."

{¶ 7} We review a courts granting a motion to dismiss de novo. *Tisdale v. Javitch, Block & Rathbone*, Cuyahoga App. No. 83119, 2003-Ohio-6883. When ruling on a motion to dismiss for failure to state a claim, the court must assume that all factual allegations in the complaint are true, and it must appear beyond a reasonable doubt that the plaintiff can prove no set of facts warranting recovery. *Tulloh v. Goodyear Atomic Corp.* (1992), 62 Ohio St.3d 541.

{¶ 8} We also note that "'an appellate court will ordinarily indulge a pro se litigant where there is some semblance of compliance with the appellate rules.' However, pro se litigants are presumed to have knowledge of the law and legal procedures and are held to the same standards as litigants who are represented by counsel.'" *Thomas McGuire Bail Bond Co. v. Hairston*, Cuyahoga App. No. 89307, 2007-Ohio-6648, at ¶6, quoting *Delaney v. Cuyahoga Metro. Housing Auth*. (July 7, 1994), Cuyahoga App. No. 65714.

{¶ 9} As to defendant CMBA, we hold that investigatory and prosecutorial proceedings by local bar associations and grievance boards are quasi-judicial

functions, thus entitling those entities to absolute immunity from lawsuits based on the proceedings. See *Cody v. Portage County Bar Association* (Aug. 22, 1997), Portage App. No. 96-P-0264; *Baker v. Cuyahoga County Bar Association* (Sept. 17, 1986), Summit App. No. 12594. See, also, *Hecht v. Levin* (1993), 66 Ohio St.3d 458, at syllabus (holding that a "statement made in the course of an attorney disciplinary proceeding enjoys an absolute privilege against a civil action based thereon as long as the statement bears some reasonable relation to the proceeding").

{¶ 10} Accordingly, there is no set of facts that warrant recovery against the CMBA under any legal theory.

{¶ 11} Likewise, defendant McFaul argues that because defendant CMBA is immune from suit, and he cooperated with defendant CMBA's investigation pursuant to Gov. Bar R. V(4)(G)[2], he should enjoy that same immunity. We decline to adopt this reasoning as it is unsupported by case law. Nonetheless, we find that the court's dismissal of plaintiff's complaint against defendant McFaul was proper under Civ.R. 12(B)(6) for the following reasons.

---

[2] Gov. Bar R. V(4)(G) states as follows: "The Board, the Disciplinary Counsel, and president, secretary, or chair of a Certified Grievance Committee may call upon any justice, judge, or attorney to assist in an investigation or testify in a hearing before the Board or a panel for which provision is made in this rule, including mediation and ADR procedures, as to any matter that he or she would not be bound to claim privilege as an attorney at law. No justice, judge, or attorney shall neglect or refuse to assist or testify in an investigation or hearing."

{¶ 12} Plaintiff argues that defendant McFaul "failed his obligations owed to [plaintiff] pursuant to all Rules of Professional Conduct" and that McFaul "violated disciplinary rules DR-1-102(A)(4) & DR-102(A)(6)." However, it is undisputed that the grievance and claim against defendant McFaul arising from his representation of plaintiff was eventually dismissed and no disciplinary action was taken against defendant McFaul in relation to plaintiff.

{¶ 13} Plaintiff cites to no statutory or case law to support his claims of breach of contract, conspiracy, intentional infliction of emotional distress, etc., nor does he allege that defendant McFaul did, or omitted to do, anything that could constitute a "wrongdoing" in relation to the grievance plaintiff filed with defendant CMBA and the Board's eventual dismissal of count two. In other words, plaintiff complained about defendant McFaul's representation of him when he filed a grievance with defendant CMBA. Ultimately, however, plaintiff's allegations were deemed to be without merit by defendant CMBA and the Board. Nothing in plaintiff's complaint shows that the Board's dismissal of count two was made negligently, recklessly, or in bad faith.

{¶ 14} Accordingly, the court did not err when it dismissed plaintiff's complaint against defendant McFaul. Plaintiff's sole assignment of error is overruled.

Judgment affirmed.

It is ordered that appellee recover from appellant his costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to the Court of Common Pleas to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

JAMES J. SWEENEY, JUDGE

KENNETH A. ROCCO, P.J., and
MARY EILEEN KILBANE, J., CONCUR