Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 102501

HAKEEM SULTAANA

PLAINTIFF-APPELLANT

vs.

HORSESHOE CASINO

DEFENDANT-APPELLEE

JUDGMENT:
AFFIRMED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CV-14-834312

BEFORE: McCormack, J., Jones, P.J., and Boyle, J.

RELEASED AND JOURNALIZED: October 1, 2015

FOR APPELLANT

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TIM McCORMACK, J.:

{¶1} Plaintiff-appellant, Hakeem Sultaana, appeals from a judgment of the Cuyahoga County Court of Common Pleas that granted defendant-appellee, Rock Ohio Caesars Cleveland, L.L.C.'s (hereafter "the casino") motion to dismiss. We affirm the judgment of the trial court. Furthermore, exercising our inherent power under Loc.App.R. 23(B) to prevent any further abuse of the judicial process, we declare Sultaana a vexatious litigator.

{¶2} Sultaana filed the instant complaint on October 14, 2014, against "Horseshoe Casino,"[1] Michael Russo of the Ohio Bureau of Motor Vehicles ("BMV"), and three other defendants. According to the complaint, the lawsuit related to a criminal case, *State v. Sultaana*, Cuyahoga C.P. No. CR-13-571616-A, in which Sultaana was a defendant.

{¶3} Sultaana's complaint was incongruously drafted. From what we are able to discern, Sultaana appeared to claim he was harmed by the casino's providing its business record regarding his player report during the discovery phase of his criminal case to Michael Russo, an investigator of the BMV.[2] The

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[1]The real party in interest in this matter is Rock Ohio Caesars Cleveland L.L.C. The complaint named "Horseshoe Casino" as a defendant. The trial court subsequently granted plaintiff's motion to change the defendant's name from "Horseshoe Casino" to "Rock Ohio Caesars Cleveland LLC."

[2]The complaint consists of 17 paragraphs. The main body of the complaint, paragraphs 9 to 17, states:

> 9. During the fall of 2012 Defendant Micheal [sic] Russo started an investigation pertaining to Plaintiff Hakeem Sultaana.

body of the complaint did not explain the casino's involvement in the criminal case. Several pages of what appeared to be his criminal trial transcript that he attached to the complaint reflect that the prosecutor in his criminal case used his player record to show that he gambled away a huge sum of money that he had stolen.

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10. In February 2013 Plaintiff Hakeem Sultaana was indicted by [the] Cuyahoga County Grand Jury pertaining to Defendant Micheal [sic] Russo Investigation, Case Number was Cuyahoga Common Pleas Case 571-616.
11. During the discover [sic] phase of Hakeem Sultaana['s] criminal proceedings in 2013, defendant Micheal [sic] Russo obtained Plaintiff Hakeem Sultaana['s] financial records from defendant[s] Horseshoe Casino, John Doe, and Caesar Gaming without the consent/Authorization of Plaintiff Hakeem Sultaana or a court subpoena.
12. During March 2013 up [t]o March 26, 2014 the defendants did act knowingly.
13. During Plaintiff Hakeem Sultaana['s] trial of 2014 Defendant Micheal [sic] Russo admitted he obtained Plaintiff Hakeem Sultaana['s] records from his colleague through a person at Horseshoe Casino.
14. Cuyahoga County Prosecutor did not issue subpoenas until March 26, 2014.
15. All prior paragraphs and averments are included as if fully restated herein.
16. As a result of all alleged counts, without authorization or consent, the Plaintiff Hakeem Sultaana have [sic] been [severely] harmed, ridiculed and suffered direct loss to reputation, loss of business, shame and dishonor and other egregious harm and damage.
17. Wherefore, the Plaintiff Hakeem Sultaana prays for relief as follows

1) An order not to release Plaintiff Hakeem Sultaana['s] Casino records without consent and or subpoenas.
2) For an award of damages against the defendant's jointly and severally, in an amount in excess of $150,000.00.

{¶4} Although the trial court's docket in the underlying criminal case is not part of the record in this case, we take judicial notice[3] and observe that Sultaana was convicted in that case in April 2014 of nearly 100 counts, including multiple counts of grand theft, engaging in pattern of corrupt activity, forfeiture, tampering with records, and forgery, and he was sentenced to 14 years of prison for his convictions.

{¶5} The instant complaint alleged Sultaana was "servery [sic] harmed, ridiculed and suffered direct loss to reputation, loss of business, shame and dishonor and other egregious harm and damage." The complaint did not plead any causes of action. A boldfaced heading on the top of the complaint reads: "COMPLAINT FOR INVASION OF PRIVACY, CIVIL CONSPIRACY, HARASSMENT, INTENTIONAL EMOTIONAL DISTRESS, GROSS NEGLIGENCE, VIOLATION OF OHIO PRIVACY, WANTON, RECKLESS."

{¶6} The casino filed a motion to dismiss, which the trial court granted. The trial court dismissed the complaint with prejudice. This appeal followed.[4]

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[3]*See Hutz v. Gray*, 11th Dist. Trumbull No. 2008-T-0100, 2009-Ohio-3410, ¶ 40 (the court of appeals taking judicial notice of the trial court's docket in different case).

[4]In the instant appeal, Sultaana filed the notice of appeal without a praecipe in violation of Loc.App.R. 9(B). As a result, this court initially sua sponte dismissed Sultaana's appeal. This court subsequently granted his request to file the praecipe but required him to file it before March 9, 2015. We then extended the deadline to file the appellant's brief to March 30, 2015. Sultaana let the deadline expire and filed a motion to extend time two days later. In all, he filed nearly a dozen motions in this appeal. He also filed a second reply brief, which was struck by this court.

{¶7} Sultaana raises three assignments of error. Under the first assignment of error, he claims the trial court erred in granting the casino's Civ.R. 12(B) motion to dismiss.

{¶8} We review de novo the trial court's decision to dismiss a case pursuant to Civ.R. 12(B)(6). *Revocable Living Trust of Mandel v. Lake Erie Utils. Co.*, 8th Dist. Cuyahoga No. 97859, 2012-Ohio-5718, ¶ 17.

{¶9} In order for the trial court to dismiss a complaint pursuant to Civ.R. 12(B)(6) 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. Univ. Community Tenants Union*, 42 Ohio St.2d 242, 327 N.E.2d 753 (1975), syllabus.

{¶10} Because Ohio is a notice-pleading state, Ohio law ordinarily does not require a plaintiff "to plead operative facts with particularity." *Cincinnati v. Beretta U.S.A. Corp.*, 95 Ohio St.3d 416, 2002-Ohio-2480, 768 N.E.2d 1136, ¶ 29. However, "the 'notice pleading' requirement is not meaningless." *Dottore v. Vorys, Sater, Seymour & Pease, L.L.P.*, 8th Dist. Cuyahoga No. 98861, 2014-Ohio-25, ¶ 13.

{¶11} Civ.R. 8(A) requires "a short and plain statement of the claim showing that the party is entitled to relief." "Although a complaint need not state with precision all elements that give rise to a legal basis for recovery, fair notice of the nature of the action must be provided." *McWreath v. Cortland*

Bank, 11th Dist. Trumbull No. 2010-T-0023, 2012-Ohio-3013, ¶ 40, citing *Bridge v. Park Natl. Bank*, 10th Dist. Franklin No. 03AP-380, 2003-Ohio-6932, ¶ 5. "Under the notice pleading requirements, 'to constitute fair notice, the complaint must still allege sufficient underlying facts that relate to and support the alleged claim, and may not simply state legal conclusions.'" *Id.*, citing *Gonzalez v. Posner*, 6th Dist. Fulton No. F-09-017, 2010-Ohio-2117, ¶11.

{¶12} As this court further explained in *Digiorgio v. Cleveland*, 8th Dist. Cuyahoga No. 95945, 2011-Ohio-5878, ¶ 49, quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 129 S.Ct. 1937, 173 L.Ed.2d 868 (2009), quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 557, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007):

> "[T]he pleading standard Rule 8 announces does not require 'detailed factual allegations,' but it demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation. A pleading that offers 'labels and conclusion' or 'a formulaic recitation of the elements of a cause of action will not do.' Nor does a complaint suffice if it tenders 'naked assertions' devoid of 'further factual enhancement.'"

{¶13} The complaint filed by Sultaana was clearly in violation of Civ.R. 8(A). It lacked "a short and plain statement of the claim showing that the party is entitled to relief" for *any* of the claims purportedly raised. In fact, it is not even readily discernable from the complaint what and how many causes of action were being asserted against the defendants. A series of labels strung together in the heading of the complaint ("complaint for invasion of privacy, civil conspiracy, harassment, intentional emotional distress, gross negligence,

violation of Ohio privacy, wanton, recklessness"), with nothing more, falls woefully short of proper pleading required by Civ.R. 8(A). There was not even a formulaic recitation of the elements of any of the causes of action purportedly asserted, not to mention sufficient operative facts to establish the elements of each of the claims.

{¶14} A violation of Civ.R. 8(A) is a valid ground for dismissal under Civ.R. 12(B)(6). *See, e.g., Simpson v. Lakewood*, 8th Dist. Cuyahoga No. 82624, 2003-Ohio-4953; *Karras v. Rogers*, 10th Dist. Franklin No. 08AP-221, 2008-Ohio-5760. Therefore, the trial court here properly dismissed the instant complaint. The first assignment of error is overruled.

{¶15} Under the second assignment of error, Sultaana argues the trial court erred in dismissing his complaint *with* prejudice.

{¶16} The determination as to whether a dismissal is with or without prejudice rests within the discretion of the trial court. *Quonset Hut, Inc. v. Ford Motor Co.*, 80 Ohio St.3d 46, 47, 684 N.E.2d 319 (1997).

{¶17} A dismissal under Civ.R. 12(B)(6) operates as an adjudication on the merits and properly results in a dismissal with prejudice. *FCR Project, L.L.C. v. Canepa Media Solutions, Inc.*, 8th Dist. Cuyahoga No. 97845, 2013-Ohio-259, ¶ 20, citing *Grippi v. Cantagallo*, 11th Dist. Ashtabula No. 2011-A-0054, 2012-Ohio-5589, ¶ 13-14, citing *Reasoner v. Columbus*, 10th Dist. Franklin No. 04AP-800, 2005-Ohio-468, ¶ 8-10, *Collins v. Natl. City Bank*, 2d Dist.

Montgomery No. 19884, 2003-Ohio-6893, ¶ 51, *Cairns v. Ohio Sav. Bank*, 109 Ohio App.3d 644, 650, 672 N.E.2d 1058 (8th Dist.1996), *Birgel v. Bd. of Commrs.*, 12th Dist. Butler No. CA94-02-042, 1995 Ohio App. LEXIS 160, *4 (Jan. 23, 1995), *Mayrides v. Franklin Cty. Prosecutor's Office*, 71 Ohio App.3d 381, 594 N.E.2d 48 (10th Dist.1991), and *Euclid v. Weir*, 10th Dist. Franklin No. 77AP-958, 1978 Ohio App. LEXIS 10727, *4 (June 27, 1978).[5] The trial court did not abuse its discretion in dismissing Sultaana's complaint with prejudice. The second assignment of error is without merit.

{¶ 18} Under the third assignment of error, Sultaana claimed the trial court abused its discretion in denying his request for a stay of this case.

{¶ 19} This assignment of error relates to Michael Russo, an investigator of the BMV named as one of the defendants in the complaint. Because Russo is a state employee, the Attorney General's Office filed a motion to dismiss on his

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[5]Sultaana cites *Fletcher v. Univ. Hosps. of Cleveland,* 120 Ohio St.3d 167, 2008-Ohio-5379, 897 N.E.2d 147, to support his claim that the dismissal of his complaint should have been without prejudice. In that case, the plaintiff failed to include an affidavit of merit required in a medical malpractice suit. The Supreme Court of Ohio reasoned that the dismissal was not on the merits of the plaintiff's claim but instead was granted due to the complaint's failure to include a necessary affidavit. Thus, the dismissal was without prejudice. *Id.* at ¶ 18. Within a year of the *Fletcher* decision, however, the court, in *State ex rel. Arcadia Acres v. Ohio Dept. of Job & Family Servs.*, 123 Ohio St.3d 54, 2009-Ohio-4176, 914 N.E.2d 170, ¶ 15, affirmed the notion that a dismissal grounded on a complaint's failure to state a claim upon which relief can be granted constitutes an adjudication on the merits. *Id.* at ¶ 15. This holding represents the latest pronouncement from the Supreme Court of Ohio on this issue. *See George v. State,* 10th Dist. Franklin Nos. 10AP-4 and 10AP-97, 2010-Ohio-5262, ¶ 14.

behalf.[6] In response to the Attorney General's motion to dismiss, Sultaana voluntarily dismissed his claims against Russo. He then filed at the trial court a "motion to stay pending connecting action in Ohio Court of Claims via R.C. 9.86 determination." The trial court denied the motion at the same time it dismissed this case.

{¶20} The decision of whether to stay proceedings rests within the trial court's discretion and will not be disturbed absent a showing of an abuse of discretion. *State ex rel. Verhovec v. Mascio*, 81 Ohio St.3d 334, 336, 691 N.E.2d 282 (1998). The complaint here failed to meet the basic pleading requirements of Civ.R. 8(A) and was properly dismissed for failing to state a claim pursuant to Civ.R. 12(B)(6) against *any* of the defendants. Therefore, the trial court appropriately denied Sultaana's request to stay. The third assignment of error is overruled. The judgment of the trial court is affirmed.

Vexatious Litigator

{¶21} R.C. 2323.52, Ohio's vexatious litigator statute, provides:

> (3) "Vexatious litigator" means any person who has habitually, persistently, and without reasonable grounds engaged in vexatious conduct in a civil action or actions, whether in the court of claims or in a court of appeals, court of common pleas,

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[6]The grounds for dismissal were: (1) Sultaana did not file the affidavit inmates that are required by R.C. 2969.25 to be included when filing civil suits against the state or state employees, (2) any suit against a state employee in his or her individual capacity must be preceded by the Court of Claims' determination of whether the employee is entitled to immunity, and (3) claims for money damages against Russo in his official capacity can only be brought in the Court of Claims.

> municipal court, or county court, whether the person or another person instituted the civil action or actions, and whether the vexatious conduct was against the same party or against different parties in the civil action or actions. * * *

{¶22} R.C. 2323.52(A)(2) defines "vexatious conduct":

> "Vexatious conduct" means conduct of a party in a civil action that satisfies any of the following:
>
> (a) The conduct obviously serves merely to harass or maliciously injure another party to the civil action.
>
> (b) The conduct is not warranted under existing law and cannot be supported by a good faith argument for an extension, modification, or reversal of existing law.
>
> (c) The conduct is imposed solely for delay.

{¶23} In accordance with the statute, this court has adopted Loc.App.R. 23. Under Loc.App.R. 23(A), this court may determine that "an appeal, original action, or motion is frivolous or is prosecuted for delay, harassment, or any other improper purpose" and impose appropriate sanctions.

{¶24} Loc.App.R. 23(B) further provides that a party that "habitually, persistently, and without reasonable cause engages in frivolous conduct under division (A) of this rule," may be found by this court, sua sponte, to be a vexatious litigator.

{¶25} A review of this court's docketing system reveals that Sultaana filed 25 appeals and nine original actions in this court since 2007. In the criminal case Cuyahoga C.P. No. CV-13-571616 alone, he filed six appeals, as well as one

original action against the trial judge who presided over his criminal trial. Among the six appeals, in 8th Dist. Cuyahoga No. 101492 alone, he filed 67 motions, 21 notices, five correspondences, and nine other miscellaneous items, many of them incongruous or plainly absurd.[7] In another appeal relating to the same criminal case, 8th Dist. Cuyahoga No. 103119, this court sua sponte dismissed his appeal for a lack of a final appealable order. He appealed this court's dismissal to the Supreme Court of Ohio. Because of his improper and frivolous filings with the Supreme Court of Ohio in that appeal, the Supreme Court of Ohio recently declared him as a vexatious litigator pursuant to S.Ct.Prac.R. 403(B). *8/26/2015 Case Announcements*, 2015-Ohio-3427.

{¶26} We further take judicial notice of the docket of the Cuyahoga Court of Common Pleas, which reflects Sultaana's penchant for filing lawsuits against individuals or entities. Since 2006, he has filed ten lawsuits in Cuyahoga County under either Hakeem Sultaana or his former name Kevin Hughley, all pro se and free of court costs through the filing of a poverty affidavit. Other than the instant lawsuit against the casino, he filed *Sultaana v. Drummond Fin. Servs., L.L.C. d.b.a. Loan Max*, Cuyahoga C.P. No. CV-13-808554; *Sultaana v. Giant Eagle*, Cuyahoga C.P. No. CV-06-590891; *Hughley v. Ellsworth Di Donna,*

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[7]For example, on February 4, 2015, he filed a motion titled "Appellant's keys to this instant appeal which no final appealable order exist (flummoxed notice) 'objection notice'"; on July 7, 2015, he filed a "Motion by appellant, pro se, for leave to supplement the record with judicial notice of this court's case no's 103028 and 103119 (game changer notice)."

Cuyahoga C.P. No. CV-11-753051; *Hughley v. Ellsworth D. Donna*, Cuyahoga C.P. No. CV-11-750690; *Hughley v. McFaul, et al.*, Cuyahoga C.P. No. CV-08-673394; *Hughley v. Cleveland Police Dept. 2d Dist. et al.*, Cuyahoga C.P. No. CV-08-672730; *Hughley v. Cintron, et al.*, Cuyahoga C.P. Nos. CV-08-676870 and CV-08-656705; *Hughley v. Wade*, Cuyahoga C.P. No. CV-07-620866; *Hughley v. Simone*, Cuyahoga C.P. No. CV-06-606825.

{¶27} The constitutional right of access to courts guaranteed under Section 16, Article I of the Ohio Constitution is not unfettered. It "does not include the right to impede the normal functioning of judicial processes." (Citation omitted.) *State v. ex rel. Richard v. Cuyahoga Cty. Bd. of Commrs.*, 100 Ohio App.3d 592, 598, 654 N.E.2d 443 (8th Dist.1995). By repeatedly filing meritless cases, appeals, and motions, Sultaana has continually taxed the limited and precious resources of this court, the trial court, and the clerk of courts. Exercising our inherent power under Loc.App.R. 23, we, sua sponte, declare Sultaana a vexatious litigator to prevent any further abuse by him of the judicial process. *See State v. Henderson*, 8th Dist. Cuyahoga No. 100374, 2014-Ohio-2274; *State ex rel. McGrath v. McClelland*, 8th Dist. Cuyahoga No. 97209, 2012-Ohio-157.

{¶28} Accordingly, Sultaana is prohibited from instituting any appeals or original actions, continuing any appeals or original actions, or filing any motions in any pending appeals or original actions, pro se, in the Eighth District Court

of Appeals, without first obtaining leave of this court. He is further prohibited from filing any appeal or original actions, pro se, in the Eighth District Court of Appeals without the filing fee and security for costs required by Loc.App.R. 3(A). *See McGrath*. Any request to file an appeal or original action shall be submitted to the clerk of this court for the court's review.

{¶29} The judgment of the trial court is affirmed. It is further ordered that Hakeem Sultaana be declared a vexatious litigator pursuant to Loc.App.R. 23.

It is ordered that appellee recover of appellant costs herein taxed.

The court finds there were no reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court 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.

TIM McCORMACK, JUDGE

LARRY A. JONES, SR., P.J., and
MARY J. BOYLE, J., CONCUR

FILED AND JOURNALIZED
PER APP.R. 22(C)

OCT 01 2015

CUYAHOGA COUNTY CLERK
OF THE COURT OF APPEALS
By _____ Deputy

THE STATE OF OHIO } SS. I, THE CLERK OF THE COURT
Cuyahoga County } OF COMMON PLEAS WITHIN
AND FOR SAID COUNTY,
HEREBY CERTIFY THAT THE ABOVE AND FOREGOING IS TRULY
TAKEN AND COPIED FROM THE ORIGINAL
Judgment Entry
NOW ON FILE IN MY OFFICE.
WITNESS MY HAND AND SEAL OF SAID COURT THIS 5
DAY OF October A.D. 20 15
CUYAHOGA COUNTY CLERK OF COURTS
By _____, Deputy