

IN THE COURT OF APPEALS OF OHIO  
TENTH APPELLATE DISTRICT

Piero A. Bugoni,	:	
Plaintiff-Appellant,	:	
v.	:	No. 12AP-62 (C.P.C. No. 10CVH-12-17850)
C and M Towing, A Corporation et al.,	:	(REGULAR CALENDAR)
Defendants-Appellees.	:	

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D E C I S I O N

Rendered on September 28, 2012

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*Piero A. Bugoni, pro se.*

*The Law Office of Suzanne E. Kelly, and Suzanne E. Kelly, for appellees.*

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APPEAL from the Franklin County Court of Common Pleas

KLATT, J.

{¶ 1} Plaintiff-appellant, Piero A. Bugoni, appeals a judgment of the Franklin County Court of Common Pleas dismissing his action against defendants-appellees, C and M Towing, A Corporation ("C&M Towing"), Charles (Last Name Unknown), and Doug Graff. For the following reasons, we reverse and remand.

{¶ 2} Bugoni initially filed a complaint against defendants on December 6, 2010. When service on the initial complaint failed, Bugoni filed a new complaint and requested service of that complaint. In his second complaint, filed February 18, 2011, Bugoni alleged that his vehicle was stolen on December 2, 2010. The police found his vehicle the next day. Bugoni hired a locksmith to cut a new key for the vehicle. Although the locksmith worked until 11:00 p.m., he was unable to make a new key. Bugoni placed a note in the vehicle's window stating that he would return the morning of December 4,

2010 to retrieve the vehicle. When Bugoni returned, he discovered that C&M Towing, owned by defendant Charles (Last Name Unknown), had towed his vehicle. C&M Towing informed Bugoni that it would not allow him access to or possession of the vehicle unless he paid a \$135 towing fee plus a \$12 per day storage fee.

{¶ 3} Defendants moved to dismiss Bugoni's complaint under Civ.R. 12(B) for lack of personal jurisdiction, lack of subject-matter jurisdiction, and failure to state a claim. On December 22, 2011, the trial court entered judgment granting defendants' motion on the basis that Bugoni's complaint failed to state a claim.

{¶ 4} Bugoni now appeals, and he assigns the following errors:

The Lower Court in this matter, The Court of Common Pleas, Franklin County, has erred as follows:

- 1) The Court below dismissed Appellant's complaint summarily for "failure to state a claim", and;
- 2) The Court below never granted any hearings or other Court dates for pre-trial litigation or rulings on the matter therein, thereby either violating, or failing to protect Appellant's Rights to Liberty, Property, Due Process, Meaningful Opportunity to Be Heard, Equal Protection of Law, To Be Free From Crime Being Committed Against him, as well as Appellant's Rights to Labor and Interstate Commerce, and;
- 3) The Court below failed to recognize that appellants [sic] are attempting to claim an unlawful debt, and are maintaining possession of Appellant's property pursuant to collection thereof.

{¶ 5} Before addressing the merits of Bugoni's arguments, we must consider defendants' request that we dismiss this appeal because Bugoni has not strictly complied with this court's rules of procedure. Bugoni was late in submitting his filing fee; failed to timely file his brief; failed initially to attach a copy of the final, appealable order to his brief; and did not attend a scheduled prehearing conference. An appellate court may dismiss an appeal for an appellant's failure to follow the Rules of Appellate Procedure. App.R. 3(A); *Pack v. Hilock Auto Sales*, 10th Dist. No. 12AP-48, 2012-Ohio-4076, ¶ 14. Likewise, this court may dismiss an appeal for an appellant's failure to appear at a prehearing conference. Loc.R. 5(F) of the Tenth District Court of Appeals. However, we

prefer to decide cases on their merits rather than on procedural default. *Pack* at ¶ 14. We thus decline to dismiss this appeal.

{¶ 6} By his first assignment of error, Bugoni argues that the trial court erred in granting defendants' motion to dismiss. We agree.

{¶ 7} A motion to dismiss for failure to state a claim upon which relief can be granted tests the sufficiency of the complaint. *Volbers-Klarich v. Middletown Mgt., Inc.*, 125 Ohio St.3d 494, 2010-Ohio-2057, ¶ 11. In construing a complaint upon a Civ.R. 12(B)(6) motion, a court must presume that all factual allegations in the complaint are true and make all reasonable inferences in the plaintiff's favor. *Id.* at ¶ 12; *LeRoy v. Allen, Yurasek & Merklin*, 114 Ohio St.3d 323, 2007-Ohio-3608, ¶ 14. " '[A]s long as there is a set of facts, consistent with the plaintiff's complaint, which would allow the plaintiff to recover, the court may not grant a defendant's motion to dismiss.' " *Cincinnati v. Beretta U.S.A. Corp.*, 95 Ohio St.3d 416, 2002-Ohio-2480, ¶ 5, quoting *York v. Ohio State Hwy. Patrol*, 60 Ohio St.3d 143, 144 (1991). Appellate court review of a trial court's decision to dismiss a claim pursuant to Civ.R. 12(B)(6) is de novo. *Ohio Bur. of Workers' Comp. v. McKinley*, 130 Ohio St.3d 156, 2011-Ohio-4432, ¶ 12.

{¶ 8} In the case at the bar, Bugoni, who is a pro se litigant, filed before the trial court multiple documents in addition to his complaint. Defendants also submitted documentary evidence to the trial court and this court. These documents are irrelevant to our analysis. When determining a Civ.R. 12(B)(6) motion, courts cannot rely on evidence or allegations outside the complaint. *State ex rel. Fuqua v. Alexander*, 79 Ohio St.3d 206, 207 (1997). Consequently, we restrict our review to Bugoni's February 18, 2011 complaint.

{¶ 9} Based on the allegations in that complaint, at the very least, Bugoni has stated a claim for conversion. "Conversion" "is the wrongful exercise of dominion over property to the exclusion of the rights of the owner, or withholding it from his possession under a claim inconsistent with his rights." *Joyce v. Gen. Motors Corp.*, 49 Ohio St.3d 93, 96 (1990). Here, Bugoni alleges that defendants took his vehicle without his consent and are refusing to return it unless he pays them money. These allegations are sufficient to state a claim for conversion.

{¶ 10} Defendants argue that Bugoni's action must fail because he violated R.C. 4513.60(B) by leaving his vehicle parked in a marked private tow-away zone without proper permission. Pursuant to R.C. 4513.60(B)(2):

If a vehicle is parked on private property that is established as a private tow-away zone in accordance with division (B)(1) of this section, without the consent of the owner of the property or in violation of any posted parking condition or regulation, the owner or the owner's agent may remove, or cause the removal of, the vehicle, the owner and the operator of the vehicle shall be deemed to have consented to the removal and storage of the vehicle and to the payment of the towing and storage charges specified in division (B)(1)(a)(iii) of this section, and the owner, subject to division (C) of this section, may recover a vehicle that has been so removed only in accordance with division (E) of this section.

The complaint, however, contains no allegation that Bugoni's vehicle was parked in a properly marked tow-away zone located on private property, that C&M Towing was the property owner or owner's agent, or that the vehicle was parked without the property owner's consent or in violation of a posted condition. Thus, defendants' argument is not a basis on which to grant a Civ.R. 12(B)(6) motion.

{¶ 11} Because Bugoni's complaint states a claim, the trial court erred in granting defendants' motion to dismiss. We, therefore, sustain Bugoni's first assignment of error. Given our ruling on that assignment of error, the remaining assignments of error are moot.

{¶ 12} For the foregoing reasons, we sustain Bugoni's first assignment of error and render the second and third assignments of error moot. We reverse the judgment of the Franklin County Court of Common Pleas, and we remand this matter to that court for further proceedings consistent with law and this decision.

*Judgment reversed; cause remanded.*

BROWN, P.J., and FRENCH, J., concur.

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