

FILED

06/26/2018

Clerk of the
Appellate Courts

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs October 2, 2017

MARDOCHE OLIVIER v. TRAVIS EXCAVATING, ET AL.

Appeal from the Circuit Court for Montgomery County
No. MC-CC-2017-CV-280 Ross H. Hicks, Judge

No. M2017-00954-COA-R3-CV

Trial court dismissed the plaintiff's complaint due to its failure to state a claim, pursuant to Rule 12.02(6) of the Tennessee Rules of Civil Procedure. Plaintiff appeals. We affirm.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed

RICHARD H. DINKINS, J., delivered the opinion of the court, in which D. MICHAEL SWINEY, C.J., and J. STEVEN STAFFORD, P.J., W.S., joined.

Mardoche Olivier, Clarksville, Tennessee, Pro Se.

Lance Baker, D. Mark Nolan, and Kathryn W. Olita, Clarksville, Tennessee, for the appellee, City of Clarksville, Tennessee.

Darrick Lee O'Dell, Nashville, Tennessee, for the appellee, Travis Excavating.

MEMORANDUM OPINION¹

In this appeal, Mardoche Olivier appeals the dismissal of a suit he filed in Montgomery County Circuit Court on February 9, 2017, naming Travis Excavating, Mike

¹ Rule 10 of the Rules of the Court of Appeals states:

This Court, with the concurrence of all judges participating in the case, may affirm, reverse or modify the actions of the trial court by memorandum opinion when a formal opinion would have no precedential value. When a case is decided by memorandum opinion it shall be designated "MEMORANDUM OPINION," shall not be published, and shall not be cited or relied on for any reason in any unrelated case.

Baker, Lance Baker, Mayor Kim McMillian, and the City of Clarksville as defendants. Mr. Olivier sought to recover for the alleged destruction of his real and personal property under various theories, including inverse condemnation, conversion, civil rights violations, violations of the Tennessee and United States constitutions, emotional distress, racketeering and conspiracy.²

The trial court dismissed the complaint *sua sponte* on five grounds: (1) failure to comply with Tennessee Rule of Civil Procedure 8.01; (2) that the City of Clarksville was immune from suit under the Governmental Tort Liability Act; (3) that Mr. Olivier failed to allege essential elements of his claim; (4) that the action was time-barred in that it was essentially an appeal of a decision the Clarksville Building and Codes Department made to demolish a structure on his property on April 12, 2016, and should have been filed within sixty days thereof; (5) certain of Mr. Olivier's claims were barred by *res judicata*; and (6) pursuant to Tennessee Rule of Civil Procedure 12.02(5) for failure to serve the individual defendants and Rule 12.02(6) for failure to state a claim for relief as to Travis Excavating. Mr. Olivier filed a motion for additional findings of fact, which the trial court denied, stating that the six-page order of dismissal "contains all the findings and conclusions this Court intends to make in the matter."

Mr. Olivier appeals, stating the sole issue for our review as follows: "Whether the court erred when it dismissed Mr. Olivier *pro se* complaint against City of Clarksville under rule 12.02(6) failure to state a claim-involuntary dismissal of pro se complaint."

In considering an appeal from a trial court's dismissal of a complaint pursuant to Rule 12.02(6) of the Tennessee Rules of Civil Procedure, the Court takes all allegations of fact in the complaint as true, and reviews the trial court's legal conclusions *de novo* with no presumption of correctness. Tenn. R. App. P. 13(d); *Owens v. Truckstops of America*, 915 S.W.2d 420, 424 (Tenn. 1996). "The failure to state a claim upon which relief can be granted is determined by an examination of the complaint alone." *Cook v. Spinnaker's of Rivergate, Inc.*, 878 S.W.2d 934, 938 (Tenn. 1994). "The basis for the motion is that the allegations contained in the complaint, considered alone and taken as true, are insufficient to state a claim as a matter of law." *Id.* In considering a motion to dismiss, courts should construe all averments liberally in favor of the pleader and treat the allegations of the complaint as true. *Stein v. Davidson Hotel Co.*, 945 S.W.2d 714, 716 (Tenn. 1997).

As we stated in another of our decisions involving the same circumstances as those in the instant case:

² Mr. Olivier has pursued similar claims against many of these same defendants in other suits; *see, e.g. Olivier v. City of Clarksville*, No. M2017-00054-COA-R3-CV, 2017 WL 4217158 (Tenn. Ct. App. Sept. 20, 2017), *perm. app. denied* (Feb. 14, 2018).

No transcript or statement of evidence from the hearing was filed, and there are no citations to the record or any *relevant* legal authority in the argument section of his brief. This court is “under no duty to blindly search the record to find ... evidence,” nor can Plaintiff shift this burden to us. *See Pearman v. Pearman*, 781 S.W.2d 585, 588 (Tenn. Ct. App. 1989). Failure to comply with the Rules of Appellate Procedure and the Rules of the Tennessee Court of Appeals constitutes a waiver of the issues raised. *See Wright v. Wright*, No. E2009-01932-COA-R3-CV, 2011 WL 2569758, at *2–3 (Tenn. Ct. App. June 30, 2011).

Olivier v. City of Clarksville, No. M2017-00054-COA-R3-CV, 2017 WL 4217158, at *2 (Tenn. Ct. App. Sept. 20, 2017), *perm. app. denied* (Feb. 14, 2018) (emphasis in original).

We have thoroughly reviewed the complaint, which is difficult to follow, construing it as liberally as possible. The complaint does not contain adequate factual allegations to support any of the causes of action, and wholly fails to comply with Rule 8.01. With respect to the other grounds upon which the complaint was dismissed, we find no error with the court’s reasoning, rationale, or holding. To the contrary, the court devoted substantial time and effort in distilling from the rambling narrative of a twenty-two page complaint the essence of Mr. Olivier’s cause of action, and dutifully considered whether that complaint stated a cognizable claim for relief. The court determined that it did not, and we concur.

Accordingly, we affirm the judgment of the trial court dismissing the complaint.

RICHARD H. DINKINS, JUDGE