

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24



DIVISION ONE
FILED: 02-09-2010
PHILIP G. URRY, CLERK
BY: DN

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

MOLLY SCHWAKE,) 1 CA-CV 09-0071
)
Plaintiff/Appellant,) DEPARTMENT B
)
v.) MEMORANDUM DECISION
)
ARIZONA ATTORNEY GENERAL'S)
OFFICE,) Not for Publication -
) (Rule 28, Arizona Rules
Defendant/Appellee.) of Civil Appellate Procedure)
)
)
)
)

Appeal from the Superior Court in Maricopa County

Cause No. CV 2008-070482

The Honorable Harriett Chavez, Judge

AFFIRMED

Molly Schwake
Plaintiff/Appellant *In Propria Persona*

Waddell

Terry Goddard, Attorney General
By Hunter Perlmeter, Assistant Attorney General
Attorney for Defendant/Appellee

Phoenix

B A R K E R, Judge

¶1 Molly Schwake ("Schwake") appeals the trial court's dismissal of her complaint for failure to state a claim upon

which relief can be granted. For the following reasons, we affirm.

Facts and Procedural History

¶2 On August 29, 2008, Schwake filed a pro per complaint on behalf of herself, Frenz-a-Salon LLC, and On Judy's Wings LLC, against the Office of the City Attorney General. The complaint did not contain factual allegations or state the relief sought. On September 26, 2008, the Arizona Attorney General moved to dismiss the complaint under Arizona Rule of Civil Procedure 12(b)(6) or in the alternative request for a more definite statement. Schwake filed a motion to deny the motion to dismiss on October 10, 2008. This motion was also difficult to understand. On December 10, 2008, the trial court granted the Attorney General's motion to dismiss, but did not sign a final order. The court noted that it found "it difficult to understand the basis of Plaintiff's complaint and, therefore, there is insufficient notice of claim." Schwake appealed on December 29, 2009. The trial court issued a signed order on April 29, 2009, which reinstated the appeal.

¶3 We have jurisdiction pursuant to Arizona Revised Statute section 12-2101(B) (2003).

Discussion

¶4 On appeal from a motion to dismiss for failure to state a claim, we assume the allegations of the complaint are true and uphold the dismissal only if Schwake is not entitled to any relief stated in the facts of the complaint. *McAlister v. Citibank*, 171 Ariz. 207, 211, 829 P.2d 1253, 1257 (App. 1992).

¶5 While we recognize Schwake is not trained in the law, legal conclusions, without any supporting factual allegations, do not satisfy Arizona's notice pleading standard under Arizona Rule of Civil Procedure 8. *Cullen v. Auto-Owners Ins. Co.*, 218 Ariz. 417, 419, ¶ 7, 189 P.3d 344, 346 (2008). Rule 8 requires a "short and plain statement of the claim showing that the pleader is entitled to relief." Ariz. R. Civ. P. 8(a)(2). This gives the "opponent fair notice of the nature and basis of the claim and indicate[s] generally the type of litigation involved." *Mackey v. Spangler*, 81 Ariz. 113, 115, 301 P.2d 1026, 1027-28 (1956). Neither this court nor the trial court are permitted to "'speculate about hypothetical facts that might entitle the plaintiff to relief.'" *Cullen*, 218 Ariz. at 420, ¶ 14, 189 P.3d at 347 (quoting *Cullen v. Koty-Leavitt Ins. Agency, Inc.*, 216 Ariz. 509, 515, ¶ 12, 168 P.3d 917, 923 (App. 2007)).

¶6 Schwake's complaint was laden with legal jargon and conclusions, void of supporting facts or a prayer for relief, and contained very few complete sentences. On appeal, Schwake

argues that the Attorney General should have investigated the overall circumstances surrounding the real property purchase she sets forth in her opening brief. However, from the complaint and motion to deny, it is entirely impossible to decipher that this was the relief she was seeking. As an example, we set forth the complaint's concluding paragraph:

Made part of this Complaint; Defendants City Attorneys, Attorney General Department, Superior Court of the Maricopa County Intensive Collection Management Program, actions taken are a proposal of rebellion and Treason, Violation of Anti-Trust Laws, Internal Espionage, breach by all Banks, all utilities companies, all public department involved in veterans Funding, social security accounts, all secure accounts, all public department Collecting for fee's and fines and administrating Justus in the Maricopa County for the State of Arizona. All performances are illegal Actions and are still considered treason against the American Public and the Public of the Maricopa County in the State of Arizona. Therefore Not legal standing in the Civil Courts.

With a pleading of this nature, the trial court's dismissal for failure to state a claim was appropriate.

¶7 On appeal, Schwake presents a well-written brief with factual allegations and argument, albeit with no citations to the record. However, based on the unintelligible complaint, there is no means to link the assertions in the opening brief to the complaint filed below. Accordingly, the opening brief provides no basis to reverse the dismissal.

Conclusion

¶18 For the above stated reasons, we affirm the trial court's dismissal for failure to state a claim.

/s/

DANIEL A. BARKER, Judge

CONCURRING:

/s/

PATRICIA K. NORRIS, Presiding Judge

/s/

PETER B. SWANN, Judge