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NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2009-CA-000631-MR

MICHAEL MEZO — APPELLANT

v.

APPEAL FROM WARREN CIRCUIT COURT
HONORABLE STEVE ALAN WILSON, JUDGE
ACTION NO. 09-CI-00277

WARREN COUNTY PUBLIC LIBRARY
a/k/a BOWLING GREEN PUBLIC
LIBRARY — APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: COMBS, CHIEF JUDGE; CLAYTON AND STUMBO, JUDGES.

COMBS, CHIEF JUDGE: Michael Mezo appeals the dismissal of his complaint by the Warren Circuit Court in a lawsuit involving the Warren County Public Library. After carefully examining the record and the law, we affirm.

In May 2008, Mezo checked out nine books from the Warren County Public Library. The due date for returning the books was in June. During the month of May, Mezo moved from Kentucky to Illinois. Instead of returning the books to the library, he asked his mother to return them for him. She put them in a box on her back porch and presumably forgot about them.

In August 2008, Mezo began receiving notices from a collection agency concerning the overdue library books. By that time, his mother discovered that the books had been stolen from her back porch, and she filed a report with the Edmonson County Sheriff's Department. Mezo informed the library of the theft but did not reimburse the library for the books' value. Eventually, the collection agency informed credit reporting companies of Mezo's delinquent account.

In February 2009, Mezo filed a complaint in Warren Circuit Court and alleged that the library had breached its contract with him by holding him responsible for stolen books, that it defamed Mezo by reporting false information to a collection agency, and that it violated the Fair Credit Reporting Act. The library answered Mezo's complaint with a motion to dismiss. The trial court granted the motion, and Mezo filed this appeal.

Mezo's lawsuit was dismissed according to Kentucky Civil Rule[s] of Procedure (CR) 12.03, which sets forth the procedure for a party to file a motion for a "judgment on the pleadings." Our Supreme Court has explained that the rule is intended:

> to expedite the termination of a controversy where the ultimate and controlling facts are not in dispute. It is designed to provide a method of disposing of cases where the allegations of the pleadings are admitted and only a question of law is to be decided. . . . The judgment should be granted if it appears beyond doubt that the nonmoving party cannot prove any set of facts that would entitle him/her to relief.

City of Pioneer Village v. Bullitt County, 104 S.W.3d 757, 759 (Ky. 2003). Whether the dismissal was proper is a question of law; therefore, our review is *de novo*. *Benningfield v. Pettit Environmental, Inc*., 183 S.W.3d 567, 570 (Ky. App. 2005).

Mezo argues that the trial court considered evidence outside the pleadings, rendering the dismissal equivalent to a summary judgment under CR 56. (CR 12.03.) We have reviewed the pleadings and the findings of the trial court. The court relied solely on facts admitted by Mezo in his complaint: 1) Mezo voluntarily checked out nine library books; 2) Mezo relinquished possession of the books to another person rather than returning them to the library; and 3) the books were stolen after being left on a porch. As no facts beyond the pleadings were considered, the dismissal was not the equivalent of summary judgment but was solely premised on the pleadings and came within the scope of CR 12.03.

Mezo further contends that his library card represents a contract between him and the library, stating that he would be responsible for lost or damaged items. Mezo contends that loss and damage do not contemplate or include theft. The trial court, however, held that Mezo had entered into a bailment

relationship with the library and that he was, therefore, liable for loss of the books. We agree.

A bailment occurs when one person (the bailor) delivers possession of some personal property to another person (the bailee). The defining element of the transaction is the "requirement that the property be returned to the bailor, or duly accounted for by the bailee, when the purpose of the bailment is accomplished[.]" Am.Jur.2d *Bailments* § 1 (2009). It is not necessary for a contract to define a bailment; rather, a bailment is created by lawful possession by virtue of an entrustment and "the duty to account for the thing as the property of another." Am.Jur.2d *Bailments* §4 (2009).

A bailment can be for the benefit of the bailor or the bailee, or for the mutual benefit of both parties. When a bailment benefits only one party and no consideration is given, the bailment is gratuitous. *Slack v. Bryan*, 184 S.W.2d 873, 875-76 (Ky. 1945). The bailee who is the sole beneficiary of a bailment must exercise extraordinary care and will be liable for even a slight neglect. *Barret v. Ivison*, 57 S.W.2d 1005, 1008 (Ky. 1933). Furthermore, where the parties do not dispute the facts, and only "one conclusion can be drawn by ordinarily sensible men, the question of negligence is for the court and not for the jury, and this rule is peculiarly applicable to a case of bailment." *Id*. (citations omitted).

The case before us involves a gratuitous bailment. Mezo lawfully possessed the library's books and clearly understood that he had the duty to return them. He acknowledged their due date and asked his mother to return the books

for him. We note that the police report pertaining to the theft named the library as the victim – not Mezo or his mother. Leaving books on a back porch is not the exercise of extraordinary care; certainly, such treatment constitutes at the very least "slight neglect."

Though Kentucky courts have not specifically addressed the relationship between a public library and its patrons, the federal Tax Court has spoken on this very issue in a venerable old case:

> We may assume that the loan of the book was a bailment for the exclusive benefit of the bailee and that petitioner would be liable to the library for the payment of damages to the book arising from slight negligence on his part. By leaving the book unguarded . . . petitioner was guilty of negligence.

Smith v. Commissioner of Internal Revenue, 3 T.C. 696, 704-05 (T.C. 1944).

We are persuaded that the trial court acted appropriately in its dismissal of Mezo's lawsuit. In his complaint, Mezo admitted that he had entrusted the books to the care of another person and that they were left unguarded. Mezo was a gratuitous bailee who failed to exercise extraordinary care regarding the library's books. His liability is the inevitable result of his actions.

We affirm the dismissal of the Warren Circuit Court.

ALL CONCUR.

BRIEF FOR APPELLANT:

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