

Commonwealth of Kentucky

Court of Appeals

NO. 2010-CA-001081-MR

ANTHONY MATTINGLY

APPELLANT

v.

APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE THOMAS L. CLARK, JUDGE
ACTION NO. 09-CI-05596

GREATER KENTUCKY
CREDIT UNION

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: TAYLOR, CHIEF JUDGE; ACREE AND COMBS, JUDGES.

TAYLOR, CHIEF JUDGE: Anthony Mattingly brings this *pro se* appeal from a March 8, 2010, summary judgment of the Fayette Circuit Court dismissing his complaint against Greater Kentucky Credit Union (GKCU). We affirm.

In October 2007, Mattingly purchased a motor vehicle that was financed by a loan from GKCU in the amount of \$13,821. The motor vehicle was

pledged as security for the loan and Mattingly executed a note and security agreement. GKCU subsequently received notification from Mattingly's insurance company that insurance on the vehicle had lapsed for nonpayment. By letter dated June 20, 2008, GKCU notified Mattingly that it had obtained motor vehicle insurance for the uninsured vehicle per the security agreement and would appropriately adjust his monthly payments on the loan. Mattingly subsequently failed to make the required monthly payments on the loan. On August 23, 2008, GKCU informed Mattingly that his loan was in default and that GKCU retained self-help repossession rights under the security agreement. The vehicle was repossessed in Palm Coast, Florida, on November 30, 2008.

By letter dated December 1, 2008, GKCU advised Mattingly that it was in possession of the vehicle and would sell the vehicle after December 11, 2008. The notice further advised Mattingly of his redemption rights under applicable law. Mattingly was also put on notice that his personal property had been removed from the vehicle and would be discarded if not claimed within forty-five days. The vehicle sold at auction for \$7,092. The proceeds from the sale proved insufficient to satisfy the outstanding balance of the loan. Mattingly did not claim his personal property.

Subsequently, on October 22, 2009, Mattingly filed a *pro se* complaint against GKCU in the Fayette Circuit Court. Therein, Mattingly alleged that GKCU did not timely notify him prior to repossessing the vehicle. GKCU

filed an answer and counterclaim.¹ In its counterclaim, GKCU sought a deficiency judgment of \$8,919.80, plus interest, representing the outstanding balance of the loan. On February 9, 2010, GKCU filed a motion for judgment on the pleadings. Kentucky Rules of Civil Procedure (CR) 12.05. The motion was supported by the sworn affidavit of GKCU's member services manager and was noticed for a hearing on March 5, 2010. Mattingly was incarcerated and unable to attend the hearing on March 5, 2010. The circuit court ultimately granted GKCU's motion and dismissed Mattingly's complaint on March 8, 2010.² This appeal follows.

When dismissing Mattingly's complaint, the circuit court clearly considered matters outside the pleadings, including an affidavit attached to the motion. When matters outside the pleadings are considered by the circuit court, we must treat its judgment as a summary judgment. *Waddle v. Galen of Kentucky, Inc.*, 131 S.W.3d 361 (Ky. App. 2004). Summary judgment is proper where there exists no genuine issue of material fact and movant was entitled to judgment as a matter of law. CR 56; *id.* And, to defeat a properly supported motion for summary judgment, the opposing party must present at least some affirmative evidence demonstrating a genuine issue of material fact. *Id.*; *Steelvest, Inc. v. Scansteel Service Center, Inc.*, 807 S.W.2d 476 (Ky. 1991).

¹ As Anthony Mattingly was incarcerated, the circuit court appointed a *guardian ad litem* to defend Mattingly's interest in the counterclaim against him. The counterclaim was dismissed by agreed order entered April 29, 2010.

² This order included complete Kentucky Rules of Civil Procedure 54.02 language.

Mattingly is proceeding *pro se*, and we have used our best efforts to discern the rather convoluted arguments as set out in his brief. Mattingly initially contends the circuit court erred by granting GKCU's motion and dismissing his complaint. Mattingly specifically asserts that he did not receive the "ten-day notice" required by "(Kentucky Revised Statutes) KRS Chapter 355.9-611" before the vehicle was sold.

Based upon GKCU's uncontroverted evidence, it is clear that Mattingly received sufficient notice. By letter dated December 1, 2008, GKCU informed Mattingly that his vehicle had been repossessed and that such vehicle would be sold after December 11, 2008. GKCU presented testimony by affidavit to support that such notice was sent. Mattingly did not produce any facts by affidavit or otherwise to demonstrate that such notice was not received. The bare allegations Mattingly presented in his pleadings are insufficient to create a material issue of fact. As such, we believe the circuit court properly granted summary judgment and dismissed Mattingly's complaint.

Mattingly next contends the circuit court erred by denying his CR 59 motion to alter, amend or vacate the court's March 8, 2010, order that resulted from Mattingly's failure to comply with the Rules of Fayette Circuit Court (RFCC) 15(A)(1). Mattingly asserts that as a *pro se* litigant he is not subject to application of the circuit court's local rules.

The circuit court's May 12, 2010, order stated as follows:

This matter is before the Court on the Plaintiff's Motion to Alter, Amend, or Vacate the Court's March 5, 2010[,] order dismissing Plaintiff's complaint with prejudice. Plaintiff's Motion to Alter, Amend, or Vacate was filed on March 19, 2010[,] and was noticed to be heard at the Court's convenience. This is in direct violation of Local Rule 15(A)(1) which requires "the notice of hearing shall specify the date, time, and place for the hearing."

Plaintiff's failure to comply with the notice requirements set out in the Local Rules of Procedure require the following result. The Court hereby **ORDERS** Plaintiff's Motion be **OVERRULED**. There being no just cause for delay this is a final and appealable order.

While it is true that "*pro se* litigants are sometimes held to less stringent standards than lawyers in drafting formal pleadings," *pro se* litigants are required to adhere to the rules of procedure. *Watkins v. Fannin*, 278 S.W.3d 637, 643 (Ky. App. 2009). Furthermore, we believe any error was harmless. The CR 59 motion merely raises the same issues Mattingly previously raised before the circuit court. As such, we cannot say the circuit court erred by denying Mattingly's CR 59 motion.

Finally, Mattingly contends the circuit court erred by dismissing his complaint without conducting a hearing. In this case, appellees filed their motion to dismiss on February 9, 2010. The certificate of service certified that the motion was also served by first-class mail to Mattingly at the address listed in his complaint on February 9, 2010. A hearing on GKCU's motion was noticed for March 5, 2010. On the day of the hearing, Mattingly was incarcerated at Little Sandy Correctional Complex and was not present at the hearing. Unlike criminal

proceedings, we are unaware of any authority that would allow the transporting of an inmate to a civil proceeding initiated by the inmate. Notice of the hearing was duly served on Mattingly and there is nothing in the record that indicates his failure to attend resulted in any prejudice whatsoever.

In sum, we hold that the circuit court properly rendered summary judgment dismissing Mattingly's complaint against GKCU.

For the foregoing reasons, the order of the Fayette Circuit Court dismissing the complaint is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Anthony Mattingly, *Pro Se*
Sandy Hook, Kentucky

BRIEF FOR APPELLEE:

Stephen Barnes
W. Scott Hunt
M. Evan Buckley
Lexington, Kentucky