

Commonwealth of Kentucky

Court of Appeals

NO. 2014-CA-001455-MR

PEPPY MARTIN

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE ANGELA MCCORMICK BISIG, JUDGE
ACTION NO. 14-CI-003459

JOE LEY ANTIQUES, INC.

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

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

TAYLOR, JUDGE: Peppy Martin brings this *pro se* appeal from an August 8, 2014, Opinion and Order of the Jefferson Circuit Court dismissing her complaint for failure to state a claim upon which relief could be granted. We affirm.

On June 30, 2014, Martin filed a *pro se* complaint in the Jefferson Circuit Court against Joe Ley Antiques, Inc., Joe Ley, and Sheila Ley (collectively referred to as defendants). In the complaint, Martin alleged that defendants took

possession of antiques from her home which were to be sold at Joe Ley Antiques in Louisville, Kentucky. Martin stated that some of the antiques were sold at low prices, and some were never sold by defendants. Martin also maintains that she had been unable to retrieve the remaining unsold antiques from defendants. Martin claimed that defendants violated Kentucky Revised Statutes (KRS) 514.040 (theft by deception), KRS 514.030 (theft by unlawful taking) and generally KRS 355.9 (Uniform Commercial Code – secured transactions).

In response, defendants filed a motion to dismiss for failure to state a claim upon which relief could be granted. Kentucky Rules of Civil Procedure (CR) 12.02(f). Defendants argued that Martin failed to set forth any claims for relief in her complaint. Martin then filed a response to the motion. In the response, Martin included a list of antiques still in defendants' possession. Thereafter, defendants also filed the affidavit of Sheila Ley in the record.

By Opinion and Order entered August 8, 2014, the circuit court dismissed Martin's complaint pursuant to CR 12.02(f). The circuit court concluded that Martin failed to allege any claims for relief in her complaint:

Reviewing Martin's Complaint, the Court is unable to determine what causes of action Martin seeks as basis for relief. Civil Rule 8.01 requires that a pleading contain "a short and plain statement of the claim showing that the pleader is entitled to relief[.]" CR 8.01(1). However, Martin's complaint is not clear as to the nature of her claims. For example, Martin states no claim for breach of contract because she has not even alleged the existence of a contract between herself and the Defendants. Nowhere in Martin's Complaint does she allege the

Defendants violated the terms of some agreement between the parties.

Opinion and Order at 2. This *pro se* appeal follows.

Martin has filed a *pro se* brief, and at times, her arguments are difficult to discern. We will, however, utilize our best efforts to thoroughly address her arguments in this appeal.¹

Martin argues that the circuit court erred by dismissing her complaint. Martin maintains that she is a *pro se* litigant unfamiliar with the procedures of court and that issues of material fact preclude dismissal of the complaint.

In this Commonwealth, it has been held that where “matters outside the record [are] . . . presented in support of a motion to dismiss [under CR 12(f)] and, if not excluded by the court, [it] convert[s] the motion to one for summary judgment.” *Craft v. Simmons*, 777 S.W.2d 618, 620 (Ky. App. 1989). As the affidavit of Sheila Ley was filed and was not excluded by the circuit court, we will review the August 8, 2014, order as a summary judgment.

Summary judgment is proper where there exists no material issues of fact and movant is entitled to judgment as a matter of law. CR 56; *Steelvest, Inc. v. Scansteel Service Center, Inc.*, 807 S.W.2d 476 (Ky. 1991). All facts and inferences therefrom are to be viewed in a light most favorable to the nonmoving party. *Id.*

In this case, Martin set forth myriad facts in her complaint. She did not, however, set forth any cognizable claims for relief. Martin does cite to two

¹ In the Notice of Appeal, Peppy Martin only named Joe Ley Antiques, Inc., as an appellee.

criminal statutes and generally to the entire KRS Chapter 355.9 entitled Uniform Commercial Code – secured transactions. Yet, upon review of the complaint, we are unable to discern a single cognizable claim for relief against Joe Ley Antiques. There is no reference to a security agreement or financing statement, evidencing a secured claim against appellee. And, although Martin is proceeding *pro se* and is entitled to some leniency, our Supreme Court held that “pro se ‘pleadings must give at least fair notice of the claim for relief to be sufficient.’” *Dillingham v. Com.*, 995 S.W.2d 377, 381-82 (Ky. 1999) (citation omitted). Here, Martin’s complaint fails to give fair notice of a claim as it fails to raise any claims. As no cognizable claim for relief was presented, we conclude that no material issues of fact exist and that Joe Ley Antiques is entitled to judgment as a matter of law. *See Steelvest*, 807 S.W.2d 476. Therefore, Joe Ley Antiques is entitled to summary judgment dismissing Martin’s complaint.

Martin also argues that the circuit court erroneously ordered page 2 of her response to the motion to dismiss stricken from the record. The circuit court ordered the page stricken from the record pursuant to CR 12.06 as the material was “immaterial, impertinent, or scandalous.” Order at 2. Considering our resolution of this appeal, we believe this issue is rendered moot. Nonetheless, even if we were to address the merits thereof, it is clear that any error would be merely harmless. CR 61.01.

We view any remaining contentions of error to be without merit.

For the foregoing reasons, the Opinion and Order of the Jefferson Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

Ann B. Oldfather
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