

Commonwealth of Kentucky
Court of Appeals

NO. 2015-CA-000489-MR

EDWARD H. FLINT

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE ANGELA MCCORMICK BISIG, JUDGE
ACTION NO. 15-CI-000009

FRED JACOBS

APPELLEE

OPINION
AFFIRMING

** ** * ** * ** *

BEFORE: ACREE, CLAYTON AND DIXON, JUDGES.

ACREE, JUDGE: Edward H. Flint, a condominium owner at the Coach House Condominiums in Louisville, Kentucky, appeals the Jefferson Circuit Court's order granting summary judgment in favor of Fred Jacobs, former President of the Board of Directors of the association of Coach House Condominiums. We affirm.

I. Factual and Procedural Background

Beginning in 2009, Edward Flint began his crusade against Coach House, Inc., its Board of Directors, and any other person affiliated with its condominium association after a losing bid for a vacant seat on the Board in 2007. Fred Jacobs is Flint's target in this action. Jacobs served as the condominium association's President of the Board of Directors although the record does not disclose the time frame of Jacobs' term. But, we also point out that Flint has sued Jacobs in his individual capacity.

Flint filed his complaint containing thirty-four allegations against Fred Jacobs on January 5, 2015. The circuit court determined that Flint's complaint contained allegations of discrimination and harassment by Jacobs as well as accusations against Jacobs of withholding certain information about condominium association activities. Flint also asserts that Jacobs violated fiduciary duties owed to Flint and failed to follow the condominium association's by-laws.

Jacobs answered the complaint denying Flint's allegations. He then filed a motion to dismiss Flint's complaint citing numerous past lawsuits filed by Flint against Coach House, Inc., and the condominium's board of directors containing many of the same allegations in this action.¹ All of the previous, similarly-styled

¹ Jacobs asserts the following cases demonstrate the repetitive nature of Flint's lawsuits: *Flint v. Coach House, Inc.*, 2009-CA-000136-MR, 2009 WL 3878145, at *1 (Ky. App. Nov. 20, 2009); *Flint v. Coach House, Inc.*, 2010-CA-001166-MR, 2011 WL 4502348, at *1 (Ky. App. Sept. 30, 2011); *Flint v. Coach House, Inc.*, 2012-CA-000580-MR, 2013 WL 869649, at *1 (Ky. App. Mar. 8, 2013); *Flint v. Coach House, Inc.*, 2012-CA-001056-MR, 2014 WL 354650, at *1 (Ky. App. Jan. 31, 2014). Each case was summarily dismissed and the dismissals affirmed on appeal. This collection of Flint cases represents only a fraction of his activity in our courts. To date, Flint has filed upward of twenty appeals to this Court alone. And as a result of decisions rendered that are unfavorable to Flint, he has instituted numerous lawsuits against federal and

claims referenced by Jacobs were ultimately dismissed as meritless, and the dismissals were affirmed on appeal. Because Jacobs directed the circuit court to matters outside of the pleadings, the circuit court treated Jacobs' motion to dismiss as a motion for summary judgment pursuant to CR² 12.02 and CR 12.03.³

The circuit court granted summary judgment in Jacobs' favor providing (1) Jacobs owed no fiduciary duty to Flint as a condominium owner; (2) Flint put forth only conclusory allegations with no factual support; and (3) Flint had presented these same allegations and issues in prior litigation which were summarily dismissed as baseless. Flint now appeals.

II. Standard of Review

“The standard of review on appeal of summary judgment is whether the trial court correctly found there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law.” *Carter v. Smith*, 366 S.W.3d 414, 419 (Ky. 2012). “Because summary judgment involves only legal questions and the existence of any disputed material issues of fact, an appellate court need not defer to the trial court’s decision and will review the issue *de novo*.” *Lewis v. B & R Corporation*, 56 S.W.3d 432, 436 (Ky. App. 2001) (citations omitted).

state judges for ruling against him.

² Kentucky Rules of Civil Procedure.

³ When “matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56[.]” CR 12.02 and CR 12.03.

III. Analysis

We begin by noting that Flint's brief does not address any substantive issues involved in this lawsuit. Flint mostly utilizes his brief to comment about the Kentucky Constitution and how the circuit court failed to apply his selected portions of it to his case. Generally, Flint contends that the circuit court erred in granting Jacobs' motion for summary judgment because Flint asked for a trial by a jury. We find no error.

The circuit court, in considering Jacobs' motion, examined Flint's complaint and his response to the motion to determine whether there were any causes of action which might entitle Flint to any relief and whether there was any evidentiary support for such claims.

First, the circuit court concluded that there was insufficient evidence to support Flint's claims that Jacobs breached any fiduciary duty in his role as the President of the Board of Directors for Coach House. Directors of a condominium association's non-profit corporation owe a fiduciary duty only to the corporation, not to the individual condominium association members. *Ballard v. 1400 Willow Council of Co-Owners, Inc.*, 430 S.W.3d 229, 241 (Ky. 2013); see KRS 273.215. Jacobs, when serving as President of the Board, owed no fiduciary duty to Flint as a condominium owner. Further, Flint's complaint makes empty accusations of Jacobs keeping association information from Flint, mispending association money, and failing to follow the association's by-laws. Flint provided no further factual support or evidence of misconduct by Jacobs which would create a genuine

issue of material fact relating to Jacobs' role as the former President of the Board for trial.

Next, the circuit court considered Flint's conclusory allegations of discrimination, harassment, and conspiracy by Jacobs. Flint simply states that Jacobs discriminated against him and treated him differently than the other owners. Flint does not cite to any statute giving rise to his claim. *Kentucky Commission on Human Rights v. Fraser*, 625 S.W.2d 852, 854 (Ky. 1981) (“[T]he right to be free from discrimination based on race, color, religion, national origin, sex and age is a creature of statute[.]”). Moreover, in Flint's response to Jacobs' motion to dismiss, Flint does not state any actions taken on the part of Jacobs' which would constitute discriminatory behavior. Accordingly, there is no evidence of record creating a genuine issue of material fact supporting Flint's discrimination claim.

Additionally, Flint's allegation of harassment by Jacobs provides that Jacobs would go out of his way to embarrass Flint at meetings. Again, there are no other specific facts or evidence of record supporting these allegations. Even when viewing the complaint in a light most favorable to Flint, these assertions do not rise to the level necessary to support an intentional infliction of emotional distress cause of action. Such a claim does not provide relief for “petty insults, unkind words and minor indignities.” *Kroger Company v. Willgruber*, 920 S.W.2d 61, 65 (Ky. 1996).

Like the harassment allegation, Flint offers no legal support for his conspiracy claim. Flint's complaint states that Jacobs conspired to keep Flint off

the Board of Directors. Without more, this claim must fail. A party opposing summary judgment cannot rely solely on the unsupported allegations of his pleadings, but is required to present “some affirmative evidence showing that there is a genuine issue of material fact for trial.” *Hallahan v. The Courier Journal*, 138 S.W.3d 699, 705 (Ky. App. 2004), quoting *Steelvest, Inc. v. Scansteel Service Center, Inc.*, Ky., 807 S.W.2d 476, 482 (Ky. 1991). Flint has offered no such evidence. This lawsuit is simply another one of Flint’s baseless actions in relation to his war against Coach House. Accordingly, we find no error in the circuit court’s conclusion that Jacobs was entitled to judgment as a matter of law.

IV. Conclusion

For the foregoing reasons, the order of the Jefferson Circuit Court granting summary judgment in favor of Fred Jacobs is affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

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BRIEF FOR APPELLEE:

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