

STATE OF MICHIGAN
COURT OF APPEALS

JIMMIE BENTLEY,

Plaintiff-Appellant,

v

OFFICER JOHN H. TODD III and SAGINAW
POLICE DEPARTMENT,

Defendants-Appellees.

UNPUBLISHED

February 7, 1997

No. 189110

Saginaw Circuit Court

LC No. 95-007597-AZ

Before: Young, P.J., and O'Connell and Nykamp,* JJ.

PER CURIAM.

Plaintiff appeals by right from an order granting summary disposition for defendants pursuant to MCR 2.116(C)(8). Plaintiff was convicted of cocaine possession by jury in a separate action during which defendant Todd¹ testified for the prosecution. Plaintiff thereafter filed the instant action, concurrent with a motion to waive fees and costs pursuant to MCR 2.002 ("Waiver or Suspension of Fees and Costs for Indigent Persons"), alleging perjury, larceny and forgery by defendant Todd in connection with that testimony. The complaint also sought the issuance of an arrest warrant for defendant Todd pursuant to MCR 6.102(A). The trial court thereafter granted defendant's motion for summary disposition pursuant to MCR 2.116(C)(8). We affirm.

Pursuant to MCR 6.102(A), a court must issue an arrest warrant if (1) it is presented with a proper complaint, and (2) it finds probable cause to believe that the accused committed the alleged offense. We therefore find no basis for the determination by the trial court that it was "without jurisdiction" to grant plaintiff's relief. However, this Court will not reverse when the right result is reached for the wrong reason, *Welch v District Court*, 215 Mich App 253, 256; 545 NW2d 15 (1996), and we find that plaintiff's complaint nonetheless should have been dismissed.

The requisites for a "proper" complaint filed pursuant to MCR 6.102(A) are set forth in MCR 6.101:

* Circuit judge, sitting on the Court of Appeals by assignment.

(A) Definition and Form. A complaint is a written accusation that a named or described person has committed a specified criminal offense. The complaint must include the substance of the accusation against the accused and the name and statutory citation of the offense.

(B) Signature and Oath. *The complaint must be signed and sworn to before a judicial officer or court clerk.*

(C) Prosecutor's Approval or Posting of Security. *A complaint may not be filed without a prosecutor's written approval endorsed on the complaint or attached to it, or unless security for costs is filed with the court. [Id. (emphasis added).]*

Plaintiff's complaint did not comply with the provisions of MCR 6.101(B) and (C) set forth above. First, a review of the complaint reveals that, while it was signed by plaintiff, it was not sworn to before a judicial officer or court clerk. MCR 6.101(B). Indeed, only plaintiff's accompanying affidavit was sworn to, and that was before a notary public. Second, plaintiff's complaint was not filed with either (1) a prosecutor's written approval, or (2) security for costs filed with the trial court. MCR 6.101(C).² Given that plaintiff failed to file a proper complaint pursuant to MCR 6.102(A), summary disposition pursuant to MCR 2.116(C)(8) was proper. *Peters v Dep't of Corrections*, 215 Mich App 485, 486-487; 546 NW2d 668 (1996).

Because we find that plaintiff's complaint was defective, we do not reach plaintiff's contention that probable cause existed to believe defendant had committed the substantive offenses alleged by plaintiff.

Affirmed.

/s/ Robert P. Young, Jr.

/s/ Peter D. O'Connell

/s/ Wesley J. Nykamp

¹ Plaintiff's complaint named only Officer Todd as a defendant, and all references to "defendant" hereinafter shall be to Officer Todd.

² We acknowledge that plaintiff wrote a letter to the office of the Saginaw County Prosecutor seeking a warrant for defendant's arrest, but was apparently rebuffed.

Furthermore, with regard to plaintiff's failure to post security for costs with the trial court, we believe that such resulted from the trial court's ostensible waiver of such costs upon the application of plaintiff pursuant to MCR 2.002. However, MCR 2.002 *alone* only provides the trial court with the power to waive the requirement for costs that are owed and payable *to the court*. See *Wells v Dep't of Corrections*, 447 Mich 415, 419-420 & n 9; 523 NW2d 217 (1994); *Gaffier v St Johns Hosp*, 68 Mich App 474, 475-478; 243 NW2d 20 (1976) ("impoverished" plaintiffs not excused from posting

security *for other litigants*). Thus, the trial court's ostensible waiver of security for costs required by MCR 6.101(C) was improper.