

STATE OF MICHIGAN
COURT OF APPEALS

DENNIS GUY ERDMAN,

Plaintiff-Appellant,

v

KILLEBREW & IHRIE, P.C., and ROBERT D.
IHRIE,

Defendants-Appellees.

UNPUBLISHED

May 6, 1997

No. 188528

Macomb Circuit Court

LC No. 94-003707 NM

Before: Cavanagh, P.J., and Reilly and White, JJ.

PER CURIAM.

In this legal malpractice action, plaintiff appeals as of right the order of the Macomb Circuit Court dismissing his complaint pursuant to MCR 2.403(N). We affirm.

Plaintiff first claims that he was improperly denied his constitutional right to a jury trial. We disagree. Deprivation of a right to trial by jury is of no consequence unless it is first established that one has a cause of action to be tried. *Kaiser v North*, 292 Mich 49, 55; 289 NW 325 (1939), overruled in part on other grounds *Sexton v Ryder Truck Rental, Inc*, 413 Mich 406, 413; 320 NW2d 843 (1982). In the instant case, the trial court found plaintiff's claim to be frivolous. Accordingly, plaintiff's claim that he was denied his constitutional right to a jury is without merit.

Plaintiff next argues that the trial court erred by finding his complaint to be frivolous without first conducting an evidentiary hearing. In support of this assertion, plaintiff cites *Knoke v Michlin Chemical Corp*, 188 Mich App 456; 470 NW2d 420 (1991). In *Knoke*, this Court held that before a court dismisses a claim pursuant to MCR 2.403(N), the trial court must review de novo a mediation panel's determination that a claim is frivolous. *Id.* at 458-460. However, we find *Knoke* to be distinguishable because in that case the trial court dismissed the plaintiff's claim because he failed to post a bond pursuant to MCR 2.403(N) without making an independent finding on the merit of the claim. In contrast, in the present case the trial court expressly found that plaintiff's claim was frivolous.¹ Accordingly, we find no error requiring reversal.

Finally, plaintiff claims that the trial court erred by denying his motions to compel discovery. A motion to compel discovery is a matter within the trial court's discretion, and the court's decision to grant or deny a discovery motion will be reversed only if there has been an abuse of that discretion. *Linebaugh v Sheraton Michigan Corp*, 198 Mich App 335, 343; 497 NW2d 585 (1993).

The trial court found that plaintiff failed to comply with MCR 2.119(E)(1) and local court rule 2.119(b). An appearance in propria persona does not excuse a party from compliance with the court rules. *Bachor v Detroit*, 49 Mich App 507, 512; 212 NW2d 302 (1973). The trial court further stated that it had reviewed plaintiff's motions, despite the procedural deficiencies, and determined that they lacked merit. Plaintiff has not demonstrated that the trial court abused its discretion.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Maureen Pulte Reilly
/s/ Helene N. White

¹ Plaintiff has provided no evidence to support his claim that the trial court was biased against him because of his status as a prisoner and because he was proceeding in propria persona.