[Cite as *Wells v. Wells*, 2001-Ohio-3405.]

STATE OF OHIO, BELMONT COUNTY

IN THE COURT OF APPEALS

SEVENTH DISTRICT

JOHN E. WELLS, SR.	)	CASE NO. 00 BA 11
	)	
PLAINTIFF-APPELLANT	)	
	)	
VS.	)	O P I N I O N
	)	
MARK D. WELLS, ET AL	)	
	)	
DEFENDANTS-APPELLEES	)	

CHARACTER OF PROCEEDINGS: Civil Appeal from the Court of Common Pleas of Belmont County, Ohio
Case No. 99 CV 370

JUDGMENT: Reversed and Remanded.

APPEARANCES:

For Plaintiff-Appellant: John E. Wells, Sr., Pro Se
#344-727
Southern Ohio Correctional Inst
P.O. Box 45699
Lucasville, Ohio 45699

For Defendant-Appellee: Atty. James L. Nichelson
1002 Indiana Street
Martins Ferry, Ohio 43935

JUDGES:

Hon. Cheryl L. Waite
Hon. Gene Donofrio
Hon. Mary DeGenaro

Dated: September 24, 2001

WAITE, J.

{¶1} This is a timely appeal arising out of the Belmont County Court of Common Pleas' *sua sponte* dismissal of a complaint filed by John E. Wells, Sr. ("Appellant"). The trial court dismissed the complaint with prejudice, pursuant to Civ.R. 12(b)(6), for failure to state a claim upon which relief could be granted. Because the record demonstrates that this cause of action was dismissed erroneously, the trial court's decision must be reversed and the matter remanded.

{¶2} On or about October 2, 1997, police arrested Appellant and charged him with rape. While in custody, Appellant contacted his friends, Ron and Darlene Ruhl, and asked them to remove certain property from his home. By the time the Ruhls arrived at Appellant's home, much of this property had disappeared. Appellant asked the Ruhls to inform the police that the property had been stolen, but when they attempted to do so, the police advised them that Appellant had to report the theft himself and in person.

{¶3} Appellant subsequently learned that one of his brothers, Appellee, Mark Wells and another man, Appellee, Ray Flanagan, had taken the property.

{¶4} While on bond, Appellant filed a report with the Steubenville Police Department, submitting a partial list of the property that was allegedly stolen. On September 23, 1999, Appellant filed a civil complaint suing Appellees for conversion.

Appellee Wells filed a statement generally denying the allegations in the complaint but essentially refused to answer the interrogatories Appellant had propounded with the complaint. It appears that Appellee Ray Flanagan was not served with a copy of the complaint.

{¶5} On October 28, 1999, Appellant filed a motion asking the trial court to compel Appellee Wells to respond to the interrogatories. Instead of ruling on the motion, though, the trial court dismissed Appellant's claim with prejudice, stating that dismissal was warranted under Civ.R. 12(b)(6), because Appellant failed to state a claim upon which relief can be granted.

{¶6} Although Appellant claims four assignments of error in his appeal before us, they share a common basis in law and fact and are best addressed collectively. Those assignments of error are as follows:

{¶7} "I. THE TRIAL COURT COMMITTED PREJUDICIAL ERROR SUBSTANCIALLY (*SIC*) EFFECTING (*SIC*) THE RIGHTS OF THE APPELLANT BY DISMISSING APPELLANT'S CIVIL ACTION FAILURE (*SIC*) TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED."

{¶8} "II. THE TRIAL COURT COMMITTED PREJUDICIAL ERROR SUBSTANCIALLY (*SIC*) EFFECTING (*SIC*) THE RIGHTS OF THE APPELLANT BY DISMISSING THE APPELLANT'S CIVIL ACTION, WITH PREJUDICE, WITHOUT FIRST ALLOWING THE APPELLANT THE OPPORTUNITY TO AMEND HIS COMPLAINT."

{¶9} "III. THE TRIAL COURT COMMITTED PREJUDICIAL ERROR BY DISMISSING APPELLANT'S CIVIL ACTION FOR REASONS HAVING NOTHING TO DO WITH THE ALLEGATIONS CONTAINED IN THE ORIGINAL COMPLAINT."

{¶10} "IV. THE TRIAL COURT ABUSED IT'S DISCRETION BY DISMISSING APPELLANT'S ACTION FOR REASONS HAVING ABSOLUTELY NOTHING TO DO WITH APPELLANT'S COMPLAINT."

{¶11} Essentially, Appellant argues that the trial court improperly dismissed his complaint under Civ.R. 12(b)(6). Even a brief review of the judgment entered by the trial court in this case establishes that Appellant is correct and that the trial court's *sua sponte* dismissal with prejudice was erroneous.

This Court subjects dismissals under Civ.R. 12(b)(6) to *de novo* review. *Witcher v. Fairlawn* (1996), 113 Ohio App.3d 214, 216. Civ.R. 12(b)(6). The *de novo* standard of review requires this Court to presume that all factual allegations set forth in the complaint are true and to draw all reasonable inferences in favor of the non-moving party. *Mitchell v. Lawson Milk Co.* (1988), 40 Ohio St.3d 190, 192. Dismissal under Civ.R. 12(b)(6) is warranted only where it appears, "beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *O'Brien v. Univ. Community Tenants Union, Inc.* (1975), 42 Ohio St.2d 242, 245.

{¶12} The pleading threshold for complaints is fairly low. As a general rule, a complaint merely needs to provide reasonable notice of the plaintiff's claim. *State ex rel. Edwards v. Toledo City School Dist. Bd. of Education* (1995), 72 Ohio St.3d 106, 109. Furthermore, the plaintiff is never obligated to prove the case at the pleadings stage. *Id.* Although a trial court may dismiss

an action on its own pursuant to 12(b)(6), such dismissals are fundamentally unfair unless the plaintiff receives notice of the trial court's intent to do so and an opportunity to respond. *Mayrides v. Franklin County Pros.* (1991), 71 Ohio App.3d 381, 383.

{¶13} In the instant case, presuming that the allegations in the complaint are true, as this Court must, Appellant has pleaded the elements of an action for conversion. To prevail on a claim of civil conversion, the plaintiff must plead and ultimately prove by a preponderance of the evidence that the defendant wrongfully exercised dominion and control over property to the exclusion of, or inconsistent with, the plaintiff's rights. *Joyce v. General Motors Corp.* (1990), 49 Ohio St.3d 93, 96. Moreover, to have converted the property, the defendant must deprive the plaintiff of actual or constructive possession of his property. *One Greenstreet, Inc. v. First National Bank of Dayton* (1984), 19 Ohio App.3d 161, 163. Finally, a plaintiff enjoying no interest in the personal property converted lacks standing to sue. *Zacchini v. Scripps-Howard Broadcasting Co.* (1976), 47 Ohio St.2d 224, 226.

{¶14} Appellant's complaint alleges that Appellees went into his home and removed his property, intending to deprive him of it. Without Appellant's permission, Appellees took Appellant's furniture, electronic items, tools, and automobiles, pawning some of them at a pawn shop in West Virginia. The complaint then seeks actual and punitive monetary damages from Appellees. This is

incontrovertibly the tort of conversion.

{¶15} Accordingly, the trial court's finding, that the allegations in Appellant's complaint were not legally sufficient to sustain an actionable claim, was erroneous and its dismissal based on that conclusion was improper.

{¶16} It appears that the trial court reached its erroneous conclusion based on ministerial confusion. The trial court's dismissal order, entered on February 1, 2000, in part states:

> **{¶17}** "Plaintiff has filed a civil action against defendants * * * that attempts to restate his version of the facts, which provided the basis for criminal charges of rape for which he was found guilty beyond a reasonable doubt and sentenced to life in prison. * * * Meanwhile, plaintiff's only demand herein is for retraction of the accusations." (Feb. 1, 2000, Judgment Entry)

{¶18} Obviously, this language does not refer to Appellant's conversion claim.

{¶19} The conversion in this case was alleged to have taken place in October of 1997 after Appellant was taken into custody for rape. Appellant was thereafter convicted of the crime of rape and, in December 1997, was sentenced to life in prison. On July 29, 1999, Appellant filed suit against his wife, Drema Wells, and his two brothers, Joseph and Appellee Mark Wells, claiming the tort of defamation in trial court Case No. 99-CV-288. The defamation lawsuit implicates facts which were undoubtedly addressed and resolved against Appellant in light of his 1997 conviction and life sentence for rape. The conversion case that

is the subject of this appeal, filed under trial court Case No. 99-CV-370, however, was not. Nevertheless, the trial court dismissed both of these suits in identical orders issued on the same day.

{¶20} The facts underlying Appellant's conversion claim have nothing to do with Appellant's conviction for rape. Contrary to the trial court's finding, the suit was not an effort to relitigate the facts underpinning his criminal conviction. Under the circumstances, the trial court's *sua sponte* dismissal of the conversion complaint under Case No. 99-CV-370 with prejudice is hereby reversed and the matter must be remanded for further proceedings according to law and consistent with this Court's opinion.

Donofrio, J., concurs.

DeGenaro, J., concurs.