

[Cite as *Hill v. Pfeiffer*, 2011-Ohio-5623.]

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

Mark A. Hill,	:	
	:	
Plaintiff-Appellant,	:	
	:	No. 11AP-295
v.	:	(C.P.C. No. 10CVH 06 8819)
	:	
Beverly Y. Pfeiffer,	:	(REGULAR CALENDAR)
	:	
Defendant-Appellee.	:	

D E C I S I O N

Rendered on November 1, 2011

Mark A. Hill, pro se.

Ron O'Brien, Prosecuting Attorney, and *A. Paul Thies*, for appellee.

APPEAL from the Franklin County Court of Common Pleas.

BROWN, J.

{¶1} This is an appeal by plaintiff-appellant, Mark A. Hill, from a judgment of the Franklin County Court of Common Pleas granting a motion to dismiss filed by defendant-appellee, Judge Beverly Y. Pfeiffer, for failure to state a claim under Civ.R. 12(B)(6).

{¶2} On June 11, 2010, appellant filed an "APPLICATION SHOWING CAUSE TO ORDER DIRECT AND INDIRECT CONTEMPT OF COURT." The application alleged "criminal contempt conduct" by appellee in presiding over appellant's criminal trial. On

July 7, 2010, appellee filed a motion to dismiss pursuant to Civ.R. 12(B)(6). On November 29, 2010, appellant filed a memorandum in opposition to appellee's motion to dismiss. By decision and entry granted March 2, 2011, the trial court granted appellee's motion to dismiss.

{¶3} On appeal, appellant sets forth the following assignment of error for this court's review:

APPELLANT WAS PREJUDICED AND DEPRIVED OF EQUAL PROTECTION OF THE LAW AND FREEDOM TO REDRESS OF GRIEVANCES WHEN THE TRIAL COURT BIASEDLY ABUSED ITS DISCRETION BY INTERPRETING THE LEGISLATIVE INTENT OF R.C. 2705.02(B) AS NOT INCLUDING A JUDGE AS AN OFFICER OF THE COURT WITHIN ITS STATUTORY DEFINITION.

{¶4} Under his single assignment of error, appellant argues that the trial court erred in its interpretation of R.C. 2705.02(B) in failing to find that a judge is deemed "an officer of the court." As noted under the facts, in his "application," appellant argued that the trial court engaged in acts of misbehavior in presiding over appellant's criminal trial. More specifically, appellant alleged that the trial court misrepresented facts in a judgment entry, violated rules of court, and misrepresented facts in ruling on motions. The application alleged that the trial court's acts constituted "criminal indirect contempt," citing R.C. 2705.02(B).

{¶5} Under Ohio law, "[i]n order to sustain dismissal of a complaint under Civ.R. 12(B)(6) for failure to state a claim upon which relief may be granted, it must appear beyond doubt that the plaintiff can prove no set of facts in support of the claim that would entitle the plaintiff to relief." *LeRoy v. Allen, Yurasek & Merklin*, 114 Ohio St.3d 323, 2007-Ohio-3608, ¶14, citing *Doe v. Archdiocese of Cincinnati*, 109 Ohio St.3d 491, 2006-

Ohio-2625, ¶11. Further, "[t]he allegations of the complaint must be construed as true," and "the complaint's material allegations and any reasonable inferences drawn therefrom must be construed in the nonmoving party's favor." *Leroy* at ¶14. This court's standard of review on a Civ.R. 12(B)(6) motion to dismiss is de novo. *Perrysburg Twp. v. Rossford*, 103 Ohio St.3d 79, 2004-Ohio-4362, ¶5.

{¶6} R.C. 2705.02 lists certain acts deemed to constitute contempt of court, including "[m]isbehavior of an officer of the court in the performance of official duties." R.C. 2705.02(B). In general, "[c]ontempt of court consists of conduct which brings the administration of justice into disrespect, or which tends to embarrass, impede or obstruct a court in the performance of its functions." *State v. Daly*, 2d Dist. No. 2007 CA 26, 2007-Ohio-5170, ¶51, citing *Windham Bank v. Tomaszczyk* (1971), 27 Ohio St.2d 55, paragraph one of the syllabus. Further, "'[c]riminal contempt is generally described as an offense against the dignity or process of the court.'" *Daly* at ¶51, quoting *Highland Square Mgt., Inc. v. Willis & Linnen Co., L.P.A.*, 9th Dist. No. 21234, 2003-Ohio-2630, ¶10.

{¶7} In the present case, in granting appellee's motion to dismiss, the trial court construed the language of R.C. 2705.02(B) to hold that "the phrase 'officers of the court' does not include the judge." We need not reach the issue of whether a trial judge is deemed an "officer of the court," for purposes of R.C. 2705.02, because we find appellant's reliance upon that statute to be misplaced. As noted, appellant's application alleged that the trial court engaged in acts of indirect criminal contempt, which is defined as involving "acts occurring outside the presence of the court that demonstrate a lack of respect for the court or its lawful orders." *State v. Brandon*, 2d Dist. No. 06-CA-137,

2008-Ohio-403, ¶7. See also *Collette v. Baxter*, 9th Dist. No. 24519, 2009-Ohio-5151, ¶31 ("Since the alleged contempt occurred outside of court and the court's sanction was intended to punish instead of remedy a situation, it involves indirect criminal contempt"). Here, the allegations in appellant's application do not raise plausible claims of indirect criminal contempt.

{¶8} Further, it is well-settled that "Ohio judges have absolute immunity for actions taken within their official discretion." *Phelps v. Office of the Attorney Gen.*, 10th Dist. No. 06AP-751, 2007-Ohio-14, ¶9. The allegations in appellant's application, directed toward judicial acts taken by appellee in presiding over appellant's criminal proceedings, "invoke the doctrine of judicial immunity." *Id.* See also *McCormick v. Carroll*, 8th Dist. No. 83770, 2004-Ohio-5969, ¶18 (complaint alleging misconduct by trial judge in relation to actions taken by judge with respect to appellant's sentencing and probation in his criminal case failed to state a claim for relief as alleged actions "fall within the scope of judicial immunity").

{¶9} Accordingly, the trial court did not err in granting appellee's motion to dismiss. Based upon the foregoing, appellant's single assignment of error is overruled, and the judgment of the Franklin County Court of Common Pleas is hereby affirmed.

Judgment affirmed.

KLATT and DORRIAN, JJ., concur.
