

[Cite as *Key v. State*, 2004-Ohio-5341.]

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

James Key,	:	
Plaintiff-Appellant,	:	
v.	:	No. 04AP-113 (C.P.C. No. 03CV11-768)
State of Ohio, Common Pleas Court,	:	(ACCELERATED CALENDAR)
Defendant-Appellee.	:	

O P I N I O N

Rendered on September 30, 2004

James Key, pro se.

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

APPEAL from the Franklin County Court of Common Pleas.

SADLER, J.

{¶1} Plaintiff-appellant, James Key ("appellant"), appeals the Franklin County Court of Common Pleas' sua sponte dismissal of his complaint against defendant-appellee, State of Ohio, Common Pleas Court. For the following reasons, we affirm.

{¶2} On October 24, 2003, appellant filed a civil complaint in the Franklin County Court of Common Pleas against appellee, seeking a declaratory judgment explaining his

rights regarding R.C. 2939.20. Specifically, appellant alleged that appellee violated R.C. 2939.20, which provides that when at least twelve of the grand jurors concur in the finding of an indictment, the foreman must indorse on the indictment the words "a true bill" and subscribe his name as foreman. Because the words "a true bill" were pre-printed on his indictment form in his prior criminal case¹ rather than being handwritten by the grand jury foreperson, appellant alleged that appellee had violated his constitutional rights.

{¶3} On November 17, 2003, service was made upon an entity identified as "Ohio State Court of Common Pleas." On December 24, 2003, appellant filed two documents, titled, "Response to Clerk's Notification of Conflict of Service" and "Request for Leave to File Default Judgment pursuant to Civ.R. 55(A)." Rather than addressing appellant's motion for leave to file a default judgment, the trial court sua sponte dismissed appellant's complaint on January 22, 2004, for failure to state a claim upon which relief may be granted, and because the complaint was frivolous, pursuant to R.C. 2323.51(A)(2)(a)(ii) and 2323.51(A)(2)(b)(i).

{¶4} On appeal, appellant asserts the following assignment of error for our review:

Appellant has been denied a mandatory statutory procedural function mandated by the General Assembly.

{¶5} It is evident that the trial court dismissed appellant's complaint, in part, pursuant to Civ.R. 12(B)(6). This court's review of a trial court's decision to dismiss a case pursuant to Civ.R. 12(B)(6) is de novo. *Singleton v. Adjutant General of Ohio*,

¹ Appellant has not indicated, nor can we discern from the court record, the specific criminal case to which he referred in his complaint.

Franklin App.No. 02AP-971, 2003-Ohio-1838 at ¶16, citing *State ex rel. Drake v. Athens County Bd. of Elections* (1988), 39 Ohio St.3d 40, 528 N.E.2d 1253. In reviewing a complaint upon a motion to dismiss pursuant to Civ.R. 12(B)(6), "it must appear beyond doubt from the complaint that the plaintiff can prove no set of facts entitling him to recovery." *O'Brien v. Univ. Community Tenants Union, Inc.* (1975), 42 Ohio St.2d 242, 71 O.O.2d 223, 327 N.E.2d 753, syllabus. The court must presume all factual allegations in the complaint to be true and draw all reasonable inferences in favor of the non-moving party. *Bridges v. Natl. Engineering & Contracting Co.* (1990), 49 Ohio St.3d 108, 112, 551 N.E.2d 163.

{¶6} A court may sua sponte dismiss a complaint without notice and an opportunity to respond, pursuant to Civ.R. 12(B)(6), if "the complaint is frivolous or the claimant obviously cannot prevail on the facts alleged in the complaint." *State ex rel. Fogle v. Steiner* (1995), 74 Ohio St.3d 158, 161, 656 N.E.2d 1288 (citation omitted).

{¶7} On appeal, appellant argues that pursuant to R.C. 2939.20, a grand jury foreman is required to physically print the words "a true bill" on the indictment form. As such, appellant contends that since the words "a true bill" were pre-printed on his indictment, the indictment was invalid. Therefore, according to appellant, the trial court erred in dismissing his complaint.

{¶8} R.C. 2939.20 provides that "[a]t least twelve of the grand jurors must concur in the finding of an indictment. When so found, the foreman shall indorse on such indictment the words 'A true bill' and subscribe his name as foreman."

{¶9} The Supreme Court of Ohio has previously addressed appellant's argument in *Ruch v. State* (1924), 111 Ohio St. 580, 2 Ohio Law Abs. 485, 146 N.E. 67. In *Ruch*, the court held that there was sufficient compliance with the law when the words "a true bill" were on pre-printed indictment forms. The court opined that handwriting the words "a true bill" is "exceedingly technical [in] nature, and it is difficult to see how in any event the defendant has been prejudiced * * *." *Id.* at 585.

{¶10} In accordance with the Supreme Court's holding in *Ruch*, we find that appellant's assignment of error is without merit. The trial court correctly determined that appellant could not prevail on the facts alleged in his complaint. As such, the trial court properly dismissed appellant's complaint pursuant to Civ.R. 12(B)(6).

{¶11} We note that appellant's brief fails to address the trial court's finding that his complaint was frivolous pursuant to R.C. 2323.51(A)(2)(a)(ii) and 2323.51(A)(2)(b)(i). See App.R. 12(A)(2) and 16(A). Even if appellant's assignment of error did encompass the trial court's finding that his complaint was frivolous, in accordance with the Supreme Court's holding in *Ruch*, *supra*, this issue is moot.

{¶12} Accordingly, appellant's single assignment of error is overruled, and the judgment of the Franklin County Court of Common Pleas is affirmed.

Judgment affirmed.

LAZARUS, P.J., and PETREE, J., concur.
