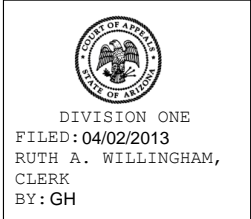


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz.R.Sup.Ct. 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24



CHARLES CROCKETT,) 1 CA-CV 12-0253
)
Plaintiff/Appellant,) DEPARTMENT D
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
) Rule 28, Arizona Rules
MARICOPA COUNTY SHERIFF'S) of Civil Appellate
OFFICE; COUNTY OF MARICOPA;) Procedure)
FULTON BROCK; ANDREW KUNASEK;)
DON STAPLEY; MAX WILSON; MARY)
ROSE WILCOX; DAVID SMITH; JOSEPH)
ARPAIO; EDWARD CESOLINI; D/O)
CROCK,)
)
Defendants/Appellees.)
)
)

Appeal from the Superior Court of Maricopa County

Cause No. CV2011-020227

The Honorable George H. Foster, Jr., Judge

REVERSED AND REMANDED

MayesTelles PLLC
By J. Blake Mayes
And David V. Telles
Attorneys for Plaintiff/Appellant

Phoenix, AZ

William G. Montgomery, Maricopa County Attorney
By Peter Muthig, Deputy County Attorney
Attorneys for Defendants/Appellees

Phoenix, AZ

T H O M P S O N, Judge

¶1 Appellant Charles Crockett (Crockett) was a prisoner at Lower Buckeye jail in 2011. In November 2011, Crockett filed a complaint in superior court against Mark Crock (Crock), a detention officer employed by Maricopa County, the Maricopa County Sheriff's Office, the State of Arizona, Maricopa County, the City of Phoenix, and various government officials.¹ Crockett alleged that Crock "arbitrarily and vindictively" closed his cell door on him on March 9, 2011, causing him a severe shoulder injury, and then prevented him from obtaining medical treatment.

¶2 Crock filed a motion to dismiss pursuant to Arizona Rule of Civil Procedure 12(b)(6) (Rule 12(b)(6)). He argued that Crockett failed to adequately state a claim upon which relief could be granted, and failed to comply with Arizona's notice statute, Arizona Revised Statutes (A.R.S.) section 12-821.01. The trial court agreed and dismissed the complaint. Crockett timely appealed.

¶3 When reviewing the trial court's judgment granting a Rule 12(b)(6) motion to dismiss, we view the facts alleged in the complaint as true and will uphold the dismissal "only if [the] plaintiff would not be entitled to relief under any facts susceptible of proof under the claim stated." *Mattison v. Johnston*, 152 Ariz. 109, 114, 730 P.2d 286, 291 (App. 1986)

¹ The trial court dismissed all of the defendants. Crockett appeals only as to the dismissal of defendant Crock.

(citation omitted). We review the legal issues under a de novo standard of review. *Mulleneaux v. State*, 190 Ariz. 535, 538, 950 P.2d 1156, 1159 (App. 1997) (citation omitted).

¶4 Rule 8(a), Arizona Rules of Civil Procedure, requires a complaint to contain “[a] short and plain statement of the claim showing that the pleader is entitled to relief.” In his hand-written complaint, Crockett alleged that Crock intentionally hurt him by closing the cell door on him and then ignored his requests for medical assistance, causing him a severe shoulder injury. Viewing the alleged facts as true, as we must, it is clear that Crockett has adequately pled, at a minimum, a tort claim.² Crock argues that we should affirm because the trial court could have summarily dismissed the complaint pursuant to Arizona Rule of Civil Procedure 7.1(b)³ after Crockett failed to file a timely response to the motion to dismiss. In granting the motion to dismiss, the trial court did

² In the answering brief, Crock argues, “Crockett’s complaint does not allege that Crock closed the cell door on Crockett intentionally, or that he did so intending to cause Crockett harm.” But the complaint alleges that Crock “arbitrarily and vindictively” closed the cell door without warning, severely injuring Crockett’s right shoulder. “Vindictively” means “proceeding from or showing a revengeful spirit.” Random House Dictionary of the English Language 2123 (2d ed. 1987).

³ Rule 7.1 provides, in relevant part: “If . . . the opposing party does not serve and file the required answering memorandum . . . such non-compliance may be deemed a consent to the denial or granting of the motion, and the court **may** dispose of the motion summarily.” (Emphasis added.)

not proceed under Rule 7.1(b).⁴ Although we would deferentially review the trial court's decision had it chosen to exercise its discretion and dismiss under Rule 7.1(b), we decline to affirm for this reason when the trial court did not do so. Accordingly, we reverse the trial court's dismissal based on a failure to state a claim against Crock.

¶5 Crock further argues that we should affirm because Crockett failed to comply with Arizona's notice of claim statute, A.R.S. § 12-821.01 (2003).⁵ A.R.S. § 12-821.01 requires persons who have claims against a public employee to file a claim "with the person or persons authorized to accept service for the . . . public employee as set forth in the Arizona rules of civil procedure within [180] days after the cause of action accrues." The trial court found that Crockett failed to properly serve any of the county defendants, including Crock, pursuant to Arizona Rule of Civil Procedure 4.1(i), and that the notice of claim failed to state sufficient facts to allow the

⁴In his reply, Crockett argues that "the trial court abused its discretion when it summarily dismissed Crockett's complaint for failing to file a response." However, the minute entry ruling does not address dismissal based on Rule 7.1(b), nor is the argument made in the motion to dismiss.

⁵To the extent that Crockett's complaint can be viewed as stating a claim under 42 U.S.C. § 1983, the notice of claim statute does not apply. See *Mulleneaux v. State*, 190 Ariz. 535, 540, 950 P.2d 1156, 1161 (App. 1997).

defendants to understand the basis of their liability. Crockett submitted a notice of claim on August 29, 2011.

¶6 Crockett served one copy of his notice of claim on the Maricopa County Sheriff's Office's Legal Liaison (and one copy on the clerk of the Board of Supervisors). A cover sheet on the notice of claim specifically directed the notice of claim to "Sheriff J. Arpaio, Captain Cesolini, and Detention Officer Crock." On the notice of claim form, in a box titled "Person or Entity Against Whom the Claim is Asserted," Crockett wrote "See attached paper entitled 'Persons and Entities Against Whom the Claim is Asserted,'" and then attached a list of fifteen individuals and entities including Crock.

¶7 Crock admits on appeal that service on the Legal Liaison would be proper as to either Crock or the Maricopa County Sheriff's Office, had Crockett not provided just one copy of the notice of claim to the Legal Liaison. He argues that "there was no clear indication as to what entity or individual was being served with the *single* Notice of Claim." (Emphasis in the original.) We disagree. The notice of claim was addressed to Crock and served on the Legal Liaison, who was authorized to accept service for its deputy Crock. Service of the notice of claim was proper.

¶8 Finally, Crock argues that the notice of claim failed to state sufficient facts to allow him to understand the basis

for his alleged liability. See A.R.S. § 12-821.01 ("The claim shall contain facts sufficient to permit the . . . public employee to understand the basis upon which liability is claimed."). "The claim statute anticipates that government entities will investigate claims, and the supporting facts requirement is intended to be a relatively light burden on claimants, just enough to facilitate the government's investigation." *Yollin v. City of Glendale*, 219 Ariz. 24, 32, ¶ 25, 191 P.3d 1040, 1048 (App. 2008) (citation omitted). Crockett's notice of claim, similar to the complaint, alleged that on March 9, 2011 Crockett "arbitrarily and vindictively" closed his cell door on him causing him a severe shoulder injury. We find that the notice of claim was sufficient.

¶9 For the foregoing reasons, we reverse the trial court's decision dismissing Crockett's complaint pursuant to Rule 12(b)(6) and remand for further proceedings.

/s/

JON W. THOMPSON, Judge

CONCURRING:

/s/

JOHN C. GEMMILL, Presiding Judge

/s/

DONN KESSLER, Judge

