IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

MICHAEL ROY RILEY, JR.,
Plaintiff/Appellant,

v.

CITY OF BUCKEYE, et al.,
Defendants/Appellees.

No. 1 CA-CV 17-0306
FILED 5-31-2018

Appeal from the Superior Court in Maricopa County
No. CV2016-010283
The Honorable Daniel J. Kiley, Judge

AFFIRMED

COUNSEL

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Counsel for Plaintiff/Appellant

Pierce Coleman PLLC, Phoenix
By Justin S. Pierce, Kylie Crawford TenBrook
Counsel for Defendant/Appellee

MEMORANDUM DECISION

Judge Jennifer M. Perkins delivered the decision of the Court, in which Presiding Judge Diane M. Johnsen and Judge Kent E. Cattani joined.

P E R K I N S, Judge:

¶1 Appellant Michael Riley appeals the trial court's order dismissing his complaint against the City of Buckeye. For the following reasons, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

¶2 Riley was employed by the City from April 2015 until his termination in January 2016. He worked as a web and digital media coordinator. After Riley worked with the City for a few months, his superior, the chief communications officer, told him that he was going to be reclassified as a webmaster and would receive a corresponding increased pay rate. In November 2015 he and other City employees received reclassification letters, but Riley's reclassification letter did not include an updated job title or increased pay rate. Riley had to communicate with the City's Human Resources Department multiple times between November 2015 and January 2016 to clarify his new pay rate and title. During this time, personnel from the Human Resources Department and his own department told him that he would soon be reclassified and receive a pay increase.

¶3 Riley's December 24, 2015, paycheck reflected his expected pay increase. During this period of confusion, Riley worked eighteen hours of preapproved overtime, only to be told he was not eligible to receive overtime pay due to his reclassification. Riley contacted his superior and the City's Human Resources Department to clarify the terms of his reclassification. Riley alleges he was unable to meet with Human Resources and that, in January 2016, his superior began informing other employees Riley had lunged at her over her desk. Riley was terminated the following day.

¶4 In February 2016, Riley served a Notice of Claim letter on the City. In his Notice of Claim, Riley stated he was willing to accept settlement "in the amount equivalent to one year's salary and/or reinstatement of his job with back pay." Riley's Notice of Claim also stated, in the same section

setting forth his settlement demand, "Mr. Riley also received city employee benefits including medical, insurance, retirement, and sick time. For the purpose of this notice of claim these benefits are valued at $10,000 per year."

¶5 Riley filed a lawsuit against the City and his former superior in December 2016 alleging breach of contract, breach of the duty of good faith and fair dealing, defamation, negligent infliction of emotional distress, and wrongful termination. The City moved to dismiss, arguing Riley had failed to comply with Arizona Revised Statutes ("A.R.S.") section 12-821.01(A) (2018) by failing to include a specific amount for which his claim could be settled in his Notice of Claim. Riley's former superior also moved to dismiss, arguing she had never been served with a Notice of Claim pursuant to A.R.S. § 12-821.01. Riley subsequently withdrew his claims against his former superior. The trial court dismissed Riley's claims against the City with prejudice, finding his Notice of Claim did not state a specific amount for which the claim could be settled. Riley now appeals.

DISCUSSION

¶6 The grant of a motion to dismiss under Arizona Rule of Civil Procedure 12(b)(6) is a question of law we review *de novo*. *Coleman v. City of Mesa*, 230 Ariz. 352, 355–56, ¶ 7 (2012). On review, we assume the truth of all well-pled factual allegations and entertain reasonable inferences; however, mere conclusory statements are insufficient to state a claim. *Cullen v. Auto-Owners Ins. Co.*, 218 Ariz. 417, 419, ¶ 7 (2008). We will affirm dismissal only if, as a matter of law, the plaintiff is not entitled to relief under any interpretation of the facts susceptible to proof. *Fidelity Sec. Life Ins. Co. v. State Dep't of Ins.*, 191 Ariz. 222, 224, ¶ 4 (1998).

¶7 The dispositive issue on appeal is whether Riley's Notice of Claim complied with A.R.S. § 12-821.01. Before filing a claim against a public entity or public employee, a claimant must serve a Notice of Claim containing sufficient facts to permit the entity or employee to understand the basis for the claimed liability. A.R.S. § 12-821.01(A). The Notice of Claim must also contain "a specific amount for which the claim can be settled and the facts supporting that amount." *Id.*

¶8 The language of A.R.S. § 12-821.01 clearly and unequivocally requires claimants to provide a specific amount of money for which their claim can be settled. *Deer Valley Unified School Dist. No. 97 v. Houser*, 214 Ariz. 293, 296, ¶ 9 (2007). Thus, when a claimant's Notice of Claim fails to include a valid settlement offer, the claim is barred. *Yahweh v. City of Phoenix*, 243 Ariz. 21, 22, ¶ 8 (App. 2017). Invitations to negotiate and offers

requiring a request for clarification by a public entity, as well as notices containing references to indefinite sums, are insufficient to comply with A.R.S. § 12-821.01. *Id.* at ¶¶ 10, 12; *Deer Valley Unified School Dist. No. 97*, 214 Ariz. at 296, ¶ 10.

¶9 Riley, in his Notice of Claim, stated he would accept settlement in an amount "equivalent to one year's salary and/or reinstatement of his job with back pay." Moreover, Riley's Notice of Claim stated his benefits were worth $10,000 per year, but did not explicitly tie this comment to his settlement demand. Riley offered numerous and ambiguous alternative options in his Notice of Claim, yet failed to provide the City with a specific amount for which his claim could be settled. Thus, Riley's Notice of Claim was insufficient under A.R.S. § 12-821.01.

¶10 On appeal, Riley argues he was unable to specify an amount for which he would settle because the City had created uncertainty about what pay rate he was due. This argument is unavailing. First, nothing prevented Riley from presenting a fixed dollar amount he would accept in settlement of all claims rather than offering to settle for "one year's salary." Second, although Riley argues the City knows exactly what his salary is, Riley's complaint alleges he had received conflicting information from the City about his pay rate and whether or not he was eligible for overtime pay. Thus, it is unclear whether Riley's request for "one year's salary" should be calculated based on his prior pay rate of $26.89 per hour or his December 2015 pay rate of $30.78 per hour. Compounding the uncertainty of Riley's request, Riley further alleges that he received a second reclassification letter in January 2016 indicating a pay rate of $26.89 per hour. Moreover, Riley alleges, in his complaint, he was either no longer eligible for overtime because of his first reclassification or that he was improperly denied overtime. As such, even though the City may have been able to readily ascertain what its records reflected Riley's salary was when he was terminated, Riley's Notice of Claim fails to provide a specific amount for which he is willing to settle because it is unclear what he believed "one year's salary" amounted to.

CONCLUSION

¶11 Riley's action is barred by A.R.S. § 12-821.01. Accordingly, we affirm the trial court's dismissal of Riley's complaint.

AMY M. WOOD • Clerk of the Court
FILED: AA