

NOT DESIGNATED FOR PUBLICATION

DIVISION I

ARKANSAS COURT OF APPEALS

No. CA06-1469

Opinion Delivered October 24, 2007

JOEL BAKER, PH. D.
APPELLANT

APPEAL FROM THE DALLAS
COUNTY CIRCUIT COURT
[CV-2006-36-6]

V.

LAURA J. MURPHY
APPELLEE

HON. DAVID FREDRIC GUTHRIE,
CIRCUIT JUDGE

AFFIRMED

LARRY D. VAUGHT, Judge

Appellant Joel Baker appeals the trial court's sua sponte order of dismissal of his complaint against appellee Laura Murphy. In this pro se appeal, Baker contends that the trial court erred in dismissing his complaint for lack of personal and subject-matter jurisdiction. We affirm.

On May 22, 2006, Baker filed a complaint in the Dallas County Circuit Court against Laura Murphy alleging that she married James Murphy on June 26, 1960, and that they remained married until the 1990s when James Murphy passed away. The complaint further alleged that James Murphy died intestate "under the constitution of California (Arkansas); which are Community Property States, the surviving spouses are personally responsible for the debt of their spouses." The complaint continued with the allegation that James Murphy was "indebted" to Baker in the amount of \$5796.70 "to pay household expenses and property taxes." The complaint concluded that Laura Murphy, as the surviving spouse, was personally

liable for the debts of James Murphy, and sought a judgment against Laura Murphy in the amount of \$5796.70, along with interest, "damages for not immediately satisfying the debt," court costs, and legal fees.

The complaint was served upon Laura Murphy June 27, 2006, as evidenced by a file-marked proof-of-service dated July 7, 2006. The proof-of-service reflects that a Greer County sheriff in Oklahoma served the complaint.

The next file-marked pleading in the record is the trial court's order of dismissal entered August 25, 2006. In its order the trial court stated:

On its own motion, the Court has reviewed the pleadings filed herein by Plaintiff, pro se, and finds as follows:

1. Plaintiff is a resident of California. Defendant is a resident of Oklahoma with no alleged contact with the State of Arkansas.
2. The complaint alleges that Defendant is liable for a debt of her deceased husband who died intestate in the 1990's in California. There is no allegation that the decedent's estate was probated or that the statute of limitations has been tolled to allow the filing of this claim.
3. This Court does not have jurisdiction of the parties or subject matter of this action, and the action should be dismissed.

IT IS THEREFORE ORDERED that the captioned cause be and is hereby dismissed with prejudice.

The third and final file-marked pleading in the record is Baker's notice of appeal from this order.

Baker articulates his points on appeal as follows: (1) the trial court had subject-matter and personal jurisdiction; (2) the trial court erred in its dismissal; (3) the trial court's dismissal prevented it from obtaining the facts; (4) the trial court erred in its determination that the

California property was probated; (5) the trial court committed prejudicial error when it did not consider Baker's contract as property.

Our appellate courts review a trial court's decision on a motion to dismiss by treating the facts alleged in the complaint as true and by viewing them in the light most favorable to the plaintiff. *Branscumb v. Freeman*, 360 Ark. 171, 200 S.W.3d 411 (2004). In viewing the facts in the light most favorable to the plaintiff, the facts should be liberally construed in plaintiff's favor. *Id.* at 174, 200 S.W.3d at 413. The rules of civil procedure require fact pleading, and a complaint must state facts, not mere conclusions, in order to entitle the pleader to relief. *Id.* at 174-5, 200 S.W.3d at 413; citing Ark. R. Civ. P. 8(a)(1).

At the onset, we disagree with Baker that the trial court does not have the authority to sua sponte dismiss a case for lack of subject-matter jurisdiction. To the contrary, the trial court does have such power. See *Cincinnati Ins. Co. v. Johnson*, 367 Ark. 468, ___ S.W.3d ___ (2006). Furthermore, Rule 12(h)(3) of the Arkansas Rules of Civil Procedure mandates that whenever it appears, by suggestion of the parties or otherwise, that the court lacks jurisdiction of the subject matter, the court shall dismiss the action.

Subject-matter jurisdiction has been defined as the power to hear and determine the subject matter in controversy between the parties to the suit; to adjudicate or exercise any judicial power over them. *Young v. Smith*, 331 Ark. 525, 964 S.W.2d 784 (1998). In the instant case, the trial court found there was no subject-matter jurisdiction because the complaint failed to allege that the decedent's estate was probated or that the statute of limitations had been tolled to allow the filing of the claim. We affirm the trial court's finding

that it did not have subject-matter jurisdiction, but not based upon the reasoning set forth by the trial court. See *State v. Hatchie Coon Hunting & Fishing Club*, 98 Ark. App. 206, ___ S.W.3d ___ (2007) (holding that we may affirm where the trial court reaches the right result for the wrong reasons).

Baker alleged in his complaint that Laura Murphy is liable to him because James Murphy was “indebted” to Baker, but Baker does not explain how the indebtedness arose. Even treating the complaint’s allegations as true and viewing them in the light most favorable to Baker, the complaint contains no allegations regarding the breach or even the existence of a contract or promissory note between Baker and James Murphy. Likewise, there is no allegation of a contract created in Arkansas between Baker and Laura Murphy, an Oklahoma resident, that would be cognizable in an Arkansas court. In order to state a cause of action for breach of contract, one of the requirements is that the complaint assert the existence of an enforceable contract between the plaintiff and defendant. *Smith v. Eisen*, 97 Ark. App. 130, ___ S.W.3d ___ (2006). Further, Baker failed to attach a contract or promissory note to the complaint¹ in violation of Arkansas Rule of Civil Procedure 10(d).²

¹Baker did include a copy of a promissory note executed between Baker and James Murphy in January 1990 in his addendum. Because the promissory note is not part of the record, we cannot consider it on appeal. *AM Credit Corp. v. Riley*, 35 Ark. App. 168, 815 S.W.2d 392 (1991) (holding that the appellate court will not consider arguments based on matters not contained in record or reverse the trial judge on facts outside record).

²Arkansas Rule of Civil Procedure 10(d) provides: “Required exhibits. A copy of any written instrument or document upon which a claim or defense is based shall be attached as an exhibit to the pleading in which such claim or defense is averred unless good cause is shown for its absence in such pleading.”

Based on these facts, we hold that Baker's complaint failed to allege that the trial court had "the power to hear and determine the subject-matter in controversy between the parties to the suit; to adjudicate or exercise any judicial power over them." *Young, supra*. Baker failed to present a coherent claim that would define a controversy, making it impossible for the trial court to determine the nature of the cause of action. In such circumstances, jurisdiction cannot be exercised. As the trial court did not have subject-matter jurisdiction, it properly dismissed this case. Because we hold that the trial court had the authority to sua sponte dismiss the case for lack of subject-matter jurisdiction, we need not address Baker's remaining points on appeal. See *Barnett v. Natural Gas Pipeline Co.*, 62 Ark. App. 265, 970 S.W.2d 319 (1998).

Affirmed.

GLOVER and HEFFLEY, JJ., agree.