

RENDERED: December 31, 1997; 10:00 a.m.

NOT TO BE PUBLISHED

NO. 97-CA-1092-MR

DAVID FLOYD HOUSTON

APPELLANT

v.

APPEAL FROM BOYLE CIRCUIT COURT  
HONORABLE STEPHEN M. SHEWMAKER  
ACTION NO. 96-CI-0517

DON SHEPARD; JAMES MORGAN;  
BRAD MITCHELL; MARION BURRIS;  
EARL WESTERFIELD; JOHN DAMRON;  
BOYCE CROCKER

APPELLEES

OPINION  
REVERSING AND REMANDING

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BEFORE: GUIDUGLI, JOHNSON AND SCHRODER, JUDGES.

GUIDUGLI, JUDGE. David Floyd Houston appeals pro se from an order dismissing an action he filed against employees of the Department of Corrections. Houston asserts that the circuit court improperly dismissed his action for failure to state a claim. We agree and reverse.

Houston is an inmate currently confined in the Eastern Kentucky Correctional Complex. He filed a complaint in Boyle Circuit Court on November 27, 1996, alleging that Corrections employees at Northpoint Training Center, where he was then

confined, seized thousands of Administrative Office of the Court (AOC) forms from him and sent them to Frankfort. Houston claimed he had purchased these forms, and valued them at \$4250.00. He sought damages for conversion and under other legal theories. Corrections moved to dismiss under Kentucky Rule of Civil Procedure (CR) 12 on December 23, 1996. Houston filed a response on January 16, 1997. On April 11, 1997, the court entered an order granting Corrections' motion to dismiss. This appeal followed.

Houston argues that the circuit court erred by dismissing his action under CR 12.02(f). Corrections did not file a brief, but relies on its motion below. When considering a motion to dismiss under CR 12.02(f) for failure to state a claim upon which relief can be granted, the pleadings should be liberally construed in a light most favorable to the plaintiff and all allegations in the complaint taken to be true. Gall v. Scroggy, Ky. App., 725 S.W.2d 867, 869 (1987). Conversion is the wrongful exercise of dominion and control over property of another, and the measure of damages is the value of the property at the time of conversion. State Auto. Mut. Ins. Co. v. Chrysler Credit Corp., Ky. App., 792 S.W.2d 626, 627 (1990).

Taking its allegations as true, Houston's complaint states a claim for conversion. In its motion to dismiss, Corrections asserted that Houston's claim was ludicrous because the AOC provides these forms for free and thus Houston could not

prove either that he bought the forms or the value of the forms. In his response to this motion, Houston claimed that he had the forms printed at his own expense for use in his law firm before entering prison. It is not the province of the trial court nor of this Court to decide whether Houston may be able to prove his allegations or ultimately prevail. City of Louisville v. Stock Yards Bank & Trust Co., Ky., 843 S.W.2d 327, 328 (1992); W. Bertelsman and K. Philipps, Kentucky Practice, 4th ed., Rule 12.02 (1984). The trial court erred by dismissing the action under CR 12.

Accordingly, the order of dismissal is reversed and the case remanded.

ALL CONCUR.

BRIEF FOR APPELLANT:

David Floyd Houston, Pro Se  
West Liberty, Kentucky

BRIEF FOR APPELLEES:

No brief was filed for the  
appellees.