

RENDERED: JULY 25, 2008; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2007-CA-001326-MR

LUKE KEITH, JR.

APPELLANT

v.

APPEAL FROM LAUREL CIRCUIT COURT
HONORABLE RODERICK MESSER, JUDGE
ACTION NO. 07-CI-00428

POOJA VENTURES, LLC; THAKOR
MAGGEN; PRIYAKANT PATEL;
NARAYAN, LLC; COMMONWEALTH OF
KENTUCKY, TRANSPORTATION CABINET,
DEPARTMENT OF HIGHWAYS;
INTERCONTINENTAL HOTELS GROUP; AND
KENTUCKY UTILITIES – OLD DOMINION
POWER

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: ACREE, DIXON, AND STUMBO, JUDGES.

DIXON, JUDGE: Appellant, Luke Keith, Jr., *pro se*, appeals from an order of the Laurel Circuit Court dismissing his complaint against all Appellees herein.

Finding no error, we affirm.

Appellant is a former owner of a motel located on KY 3011 in London, Kentucky. Apparently, Appellant had on several occasions placed a sign advertising his motel on the state's right-of-way at the 41 mile marker on KY 3011. Each time, however, Appellee, the State Highway Department of the Transportation Cabinet (Cabinet), would remove the sign and take it to the dump site at the Department of Highway's Laurel County facility. Eventually, Appellant received permission from the Cabinet to place an oversized mailbox on the right-of-way at the entrance to his property, on which he could paint the name of the motel. Appellant thereafter contacted Appellee, Kentucky Utilities (KU) and requested that a power supply be provided so that he could install a floodlight to illuminate the mailbox. In accordance with its standard policy, KU agreed to provide power service so long as the Cabinet approved such in writing.

Appellant's written request for approval to the Cabinet was subsequently denied.

Although it is unclear from any of the pleadings when, at some point Appellees, Pooja Ventures, LLC, Thakor Maggen, Priyakant Patel, and Narayan, LLC, (Pooja Ventures), constructed a hotel near Appellant's property and thereafter erected a "high rise" sign advertising their hotel in the right-of-way at the 38 mile marker on KY 3011.¹

¹ The Cabinet points out that there is an action pending in the Laurel Circuit Court to remove Pooja Ventures' sign. *Commonwealth of Kentucky, Transportation Cabinet, Department of*

On March 31, 2007, Appellant filed a *pro se* complaint in the Laurel Circuit Court seeking two million dollars in restitution and lost income from the date his motel opened in 1990 until it closed in 2006. Appellant claimed that all Appellees “aided and abetted” each other in causing the financial ruin of his business. In lieu of filing an answer, Appellees all filed motions to dismiss on the grounds that Appellant failed to state a claim upon which relief could be granted². On May 27, 2007, the trial court entered an order dismissing Appellant’s action against all Appellees. This appeal followed.

Admittedly, it is difficult to discern from Appellant’s *pro se* brief the exact nature of his argument. He does not explain how the trial court erred, but rather asserts in his belief that he was wronged by Appellees and is entitled to have his case heard before a jury of his peers. Essentially, he claims that he is owed restitution from the Cabinet and KU for treating him differently than they did Pooja Ventures. Appellant contends that any signs he attempted to erect were removed by the Cabinet within hours, yet Pooja Ventures’ sign was permitted to remain. Yet, he then makes the illogical argument that the Cabinet’s lawsuit against Pooja Ventures is evidence that KU supplied power to Pooja Ventures’ sign without the prior permission of the Cabinet. Thus, he claims that KU aided and abetted the other Appellees. Finally, although Appellant declares that Pooja

Highways v. Priyakant Patel d/b/a Holiday Inn Express, 04-CI-00503.

²

□ The Cabinet additionally argued that Appellant’s suit was barred by sovereign immunity and that Appellant had failed to properly serve the Attorney General in accordance with CR 4.04(6).

Ventures contributed to his “financial ruin,” he does not articulate what they did to contribute to such ruin or what cause of action he has against them.

Kentucky Rules of Civil Procedure (CR) 12.02(f) provides that a claim may be dismissed if the plaintiff has failed to state a claim upon which relief can be granted. It is well settled in this jurisdiction that when considering a motion to dismiss under CR 12.02(f), the pleadings should be liberally construed in a light most favorable to the plaintiff and all allegations taken in the complaint to be true.

James v. Wilson, 95 S.W.3d 875, 889 (Ky. 2002); *Ewell v. Central City*, 340

S.W.2d 479 (Ky. 1960); *Gall v. Scroggy*, 725 S.W.2d 867, 869 (Ky. App. 1987).

A trial court should not grant a motion to dismiss for failure to state a claim unless it appears that the pleading party would not be entitled to relief under any set of facts which could be proved in support of his claim. *Pari-Mutuel Clerks' Union of Kentucky, Local 541, SEIU, AFL-CIO v. Kentucky Jockey Club*, 551 S.W.2d 801, 803 (Ky. 1977); *Ingram v. Ingram*, 283 S.W.2d 210 (Ky. 1955). Appellate courts must review dismissals for failure to state a claim de novo. *James, supra*, at 889.

We are of the opinion that the trial court correctly dismissed Appellant’s complaint. Clearly, Appellant has failed to state a cognizable claim against any of the Appellees. His main grievance that the Cabinet refused him access to the right-of way is without merit. Kentucky’s Billboard Act, Kentucky Revised Statutes (KRS) 177.830 et seq., grants the Cabinet wide authority to regulate what advertising devices are permitted along state highways and in right-of ways. *Owensboro Metropolitan Board of Adjustments v. Midwest Outdoor*

Advertising, Inc., 729 S.W.2d 446 (Ky. App. 1987). Pursuant to KRS 177.870, “[a]ny advertising device erected, maintained, replaced, relocated, repaired or restored” in violation of the Billboard Act is deemed “a public nuisance and such device may without notice be abated and removed by any officer or employee of the state department of highways or upon request of the commissioner by any peace officer.”

Similarly, we fail to discern any cause of action against either KU or Pooja Ventures. Without question, Appellant believes that these Appellees worked in concert to cause the demise of his business. However, the record simply does not support such a claim and we cannot conclude that Appellant has a viable cause of action against any of the Appellees herein. As such, the trial court properly granted all Appellees’ motions to dismiss.

The order of the Laurel Circuit Court is affirmed.

ALL CONCUR.

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