

Commonwealth of Kentucky

Court of Appeals

NO. 2009-CA-001344-MR

ERIC C. DETERS

APPELLANT

v.

APPEAL FROM KENTON CIRCUIT COURT
HONORABLE PATRICIA M. SUMME, JUDGE
ACTION NO. 08-CI-02406

PHILIP TALIAFERRO; ROBERT
W. CARRAN; ALICE G. KEYS;
TALIAFERRO, SHIROONI, CARRAN,
& KEYS, PLLC; ROBERT E.
SANDERS; JAMES WEST; MARTIN
& WEST, PLLC; BRETT BENTON;
MARK HAMPTON; AND MATT
HICKS

APPELLEES

OPINION
AFFIRMING

** ** * ** * ** *

BEFORE: DIXON AND VANMETER, JUDGES; LAMBERT,¹ SENIOR
JUDGE.

¹ Senior Judge Joseph E. Lambert sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes (KRS) 21.580.

VANMETER, JUDGE: Eric C. Deters, *pro se*, appeals from the judgment and order of the Kenton Circuit Court dismissing his complaint for abuse of process against Philip Taliaferro, et al.² (hereinafter collectively referred to as Taliaferro) with prejudice. For the following reasons, we affirm.

Deters is an attorney who represented Lacy Burden following her arrest for a drug-related offense. On Burden's behalf, Deters filed a civil lawsuit against the arresting police officers, the city of Independence, Kentucky, and Kenton County. Prior to filing the lawsuit, Deters circulated a letter to his brother, Jed Deters, who serves as the city attorney for Independence, Garry Edmondson, the attorney for Kenton County, Peter Lefeave, an employee of the Kenton County School District, and Michael Lutes, an attorney who previously represented Burden. The letter set forth Deters' view of the facts and circumstances that supported Burden's civil suit against the police officers and their employers, as well as his theory that the arrest of Burden stemmed from the police officers' desire for Burden and their jealousy of Burden's boyfriend, who they suspected of drug use. Deters maintained the officers conspired against Burden by planting marijuana seeds in her car and by falsifying police reports.

Upon reading the letter, the police officers filed civil lawsuits against Deters seeking to recover damages for defamation of character and intentional infliction of emotional distress. Deters then filed a lawsuit against Taliaferro, three

² Robert W. Carran, Alice G. Keys, Taliaferro, Shirooni, Carran & Keys, PLLC, Robert E. Sanders, James West, Martin & West, PLLC, Mark Hampton, and Matt Hicks, and unknown defendants. Brett Benton was dismissed from this case.

police officers, as well as the law firms and attorneys representing the officers, alleging the complaint filed against him was a malicious retaliation for filing the suit against the police officers on behalf of Burden. Taliaferro moved to dismiss Deters' complaint under CR³ 12.02(f) contending that Deters had failed to state a claim upon which relief can be granted. The trial court dismissed with prejudice Deters' complaint for abuse of process. This appeal followed.

Deters contends the trial court erred by dismissing his complaint against Taliaferro because the complaint detailed specific wrongful and malicious retaliation and intimidation tactics by Taliaferro. We disagree.

The trial court should not grant a motion to dismiss for the failure to state a claim “unless it appears the pleading party would not be entitled to relief under any set of facts which could be proved in support of his claim.” *Pari-Mut. Clerks' Union of Ky., Local 541, SEIU, AFL-CIO v. Ky. Jockey Club*, 551 S.W.2d 801, 803 (Ky. 1977) (citation omitted). Additionally, “the pleadings should be liberally construed in a light most favorable to the plaintiff and all allegations taken in the complaint to be true.” *Gall v. Scroggy*, 725 S.W.2d 867, 869 (Ky.App. 1987) (citing *Ewell v. Cent. City*, 340 S.W.2d 479 (Ky. 1960)).

The Kentucky Supreme Court has defined an action for an abuse of process as follows:

An action for abuse of process is “the irregular or wrongful employment of a judicial proceeding.”

³ Kentucky Rules of Civil Procedure.

Abuse of process differs from malicious prosecution in that malicious prosecution consists of commencing an action or causing process to issue maliciously or without justification. Abuse of process, however, consists of “the employment of legal process for some other purpose than that which it was intended by the law to effect.”

.....

The essential elements of an action for abuse of process are (1) an ulterior purpose and (2) a willful act in the use of the process not proper in the regular conduct of the proceeding. Some definite act or threat not authorized by the process, or aimed at an objective not legitimate in the use of the process is required and there is no liability where the defendant has done nothing more than carry out the process to its authorized conclusion even though with bad intentions.

...

Such conduct “usually takes the form of coercion to obtain a collateral advantage, not properly involved in the proceeding itself, such as the surrender of property on the payment of money, by the use of the process as a threat or a club. There is, in other words, a form of extortion, and it is what is done in the course of negotiation, rather than the issuance or any formal use of the process itself, which constitutes the tort.”

Simpson v. Laytart, 962 S.W.2d 392, 394-95 (Ky. 1998) (citations omitted).

Here, Deters’ complaint fails to allege any actions by Taliaferro that exhibit a willful act in the use of the judicial process not proper in the regular conduct of the proceeding. Despite Deters’ allegation that Taliaferro filed lawsuits against him without any legal basis and for the purpose of retaliation, Deters fails to allege facts that Taliaferro did anything other than carry out the judicial process

to its authorized conclusion. The complaint is devoid of actions on behalf of Taliaferro that take the form of coercion to obtain an advantage not proper in the proceeding itself. Accordingly, we find no error in the trial court's decision to dismiss Deters' complaint alleging abuse of process against Taliaferro.

The judgment and order of the Kenton Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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