

RENDERED: OCTOBER 14, 2011; 10:00 A.M.  
NOT TO BE PUBLISHED

**Commonwealth of Kentucky**

**Court of Appeals**

NO. 2010-CA-000689-MR

ALISA BUCKMINSTER

APPELLANT

APPEAL FROM JEFFERSON CIRCUIT COURT  
v. HONORABLE JUDITH E. MCDONALD-BURKMAN, JUDGE  
ACTION NO. 08-CI-008500

LEIGH ANNE BOLAND

APPELLEE

OPINION  
AFFIRMING

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BEFORE: ACREE AND STUMBO, JUDGES; LAMBERT,<sup>1</sup> SENIOR JUDGE.

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<sup>1</sup> 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.

LAMBERT, SENIOR JUDGE: Appellant Alisa Buckminster appeals from a judgment of the Jefferson Circuit Court entered in a tort action filed by Appellee Leigh Anne Boland against Appellant. Appellant specifically challenges the circuit court's earlier entry of a default judgment as to liability in favor of Appellee. Appellant contends that the default judgment should have been set aside because Appellee's complaint failed to state a claim upon which relief could be granted. After our review, we conclude that the complaint satisfied the lenient standards for notice pleading. Thus, we affirm.

On August 14, 2008, Appellee filed a complaint against Appellant alleging "abuse of process arising from Kentucky common law" and seeking various damages in connection with the Jefferson District Court's rejection of a petition for an emergency protective order (EPO) filed by Appellant against Appellee. Appellee specifically alleged that Appellant "intentionally, maliciously, willfully, and wrongfully instituted civil proceedings against [Appellee] by acquiring an Emergency Protective Order (EPO) against her based on false allegations[.]" Appellant failed to respond to the complaint, so Appellee moved for default judgment pursuant to Kentucky Rules of Civil Procedure (CR) 55.01.

The circuit court entered a default judgment against Appellant as to the question of liability, and a hearing to determine damages was held.

Following the hearing, Appellant filed a memorandum that, among other things, asked the circuit court to vacate the default judgment on the ground that Appellee's complaint had failed to state a claim. The circuit court subsequently awarded Appellee \$6,122.67 plus interest in damages<sup>2</sup> but denied her claim for punitive damages. The court declined to reconsider its entry of default judgment. This appeal followed.

On appeal, Appellant again argues that the circuit court erred in failing to set aside the default judgment because Appellee's complaint failed to state a claim upon which relief could be granted. Generally, default judgments are disfavored, and the circuit court is vested with broad discretion to set aside such judgments. *Asset Acceptance, LLC v. Moberly*, 241 S.W.3d 329, 332 (Ky. 2007); *Hutcherson v. Hicks*, 320 S.W.3d 102, 104 (Ky. App. 2010). In order to set aside a default judgment, a party must show good cause, which includes: "(1) a valid excuse for the default; (2) a meritorious defense to the claim; and (3) absence of prejudice to the non-defaulting party." *PNC Bank, N.A. v. Citizens Bank of N. Ky., Inc.*, 139 S.W.3d 527, 531 (Ky. App. 2003), quoting *Sunrise Turquoise, Inc. v.*

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<sup>2</sup> This amount represented \$5,162.67 in attorneys' fees expended to defend the EPO action and \$960.00 in lost wages due to court appearances and meetings with counsel regarding that action.

*Chemical Design Co., Inc.*, 899 S.W.2d 856, 859 (Ky. App. 1995). Appellant has failed to address any of these requirements.

She instead argues that a default judgment never should have been entered because “[a] default judgment may not be based upon a complaint which fails to state a cause of action.” *Dalton v. First Nat. Bank of Grayson*, 712 S.W.2d 954, 956 (Ky. App. 1986). Appellant contends that since Appellee’s complaint failed to state a cognizable claim for “abuse of process” or “malicious prosecution,” default judgment was erroneously entered.

We consider Appellant’s claim with the understanding that “the modern rule is to require only the most general and conclusory pleadings in order to sustain a cause of action[.]” *Id.* The Rules of Civil Procedure must be “liberally construed” with respect to whether a party has stated a cause of action and “much leniency should be shown in construing whether a complaint on which a default judgment is based states a cause of action[.]” *Morgan v. O’Neil*, 652 S.W.2d 83, 85 (Ky. 1983).

By its own terms, CR 8.01 requires only that a complaint provide “a short and plain statement of the claim showing that the pleader is entitled to relief[.]” CR 8.01(1). This entails simply setting out facts or conclusions sufficiently to identify the basis of the claim. *Grand Aerie Fraternal Order of*

*Eagles v. Carneyhan*, 169 S.W.3d 840, 845 (Ky. 2005). Ultimately, “[t]he test is whether the pleading sets forth *any* set of facts which—if proven—would entitle the party to relief. If so, the pleading is sufficient to state a claim.” *Mitchell v. Coldstream Laboratories, Inc.*, 337 S.W.3d 642, 645 (Ky. App. 2010). This determination is a question of law that we consider *de novo*. *Id.* For purposes of testing the sufficiency of the complaint, we assume that the allegations contained therein are true. *First Nat. Bank of Mayfield v. Gardner*, 376 S.W.2d 311, 315 (Ky. 1964).

As noted above, Appellee alleged abuse of process in her complaint. In her brief, however, Appellee suggests that she was actually asserting a malicious prosecution claim. These torts require proof of different elements. *See Simpson v. Laytart*, 962 S.W.2d 392, 394 (Ky. 1998); *Raine v. Drasin*, 621 S.W.2d 895, 899 (Ky. 1981). Of particular relevance here, “[a]buse of process differs from malicious prosecution in that malicious prosecution consists of commencing an action or causing process to issue maliciously or without justification,” *i.e.*, without probable cause. *Simpson*, 962 S.W.2d at 394.

Appellant argues that Appellee’s complaint failed to set forth any of the elements for an abuse-of-process claim and, therefore, a default judgment as to such was unwarranted. As the basis of her claim, Appellee alleged that Appellant

“intentionally, maliciously, willfully, and wrongfully instituted civil proceedings against [Appellee] by acquiring an Emergency Protective Order (EPO) against her based on false allegations[.]” This language applies more suitably to a malicious-prosecution claim than one for abuse of process, but the fact that Appellee may have mistakenly labeled her legal theory is irrelevant since “the name or title ascribed to the cause of action is not controlling” in considering whether a complaint states a claim. *Gardner*, 376 S.W.2d at 314; *see also McCollum v. Garrett*, 880 S.W.2d 530, 533 (Ky. 1994). Instead, the sole issue that concerns us is whether the facts stated in the complaint warrant relief under *any* theory. *See Gardner*, 376 S.W.2d at 314-15; *see also Smith v. Isaacs*, 777 S.W.2d 912, 915 (Ky. 1989).

Appellant further argues that Appellee’s complaint also fails to make a viable claim of malicious prosecution. She relies solely upon the fact that the complaint failed to specifically allege a “want or lack of probable cause for the proceeding.” We believe that this question is a close one in light of how sparse Appellant’s complaint is and the fact that malicious prosecution is a “disfavored” tort. *Raine*, 621 S.W.2d at 899; *Reid v. True*, 302 S.W.2d 846, 847–48 (Ky. 1957).

However, given the lenient standards of notice pleading, we have inferred that such was not required. Appellee’s complaint claims that the EPO

proceedings initiated by Appellant were done so maliciously based on false allegations. Assuming, as we must, that these allegations are true, *Gardner*, 376 S.W.2d at 315, we hold that Appellant presented a valid claim of malicious prosecution since initiating an EPO proceeding maliciously based on false allegations implies want of probable cause. Thus, since Appellee's complaint presented a claim, the circuit court did not err in its default judgment against Appellant or in declining to vacate that judgment.

For the foregoing reasons, the decision of the Jefferson Circuit Court is affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

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