RENDERED: DECEMBER 21, 2018; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2015-CA-001395-MR

WILLIAM C. SHEHAN, JR. — APPELLANT

v.

APPEAL FROM KENTON CIRCUIT COURT
HONORABLE GREGORY M. BARTLETT, JUDGE
ACTION NO. 14-CI-00704

THE BANK OF KENTUCKY, INC.;
JOHN/JANE DOE 1;
JOHN/JANE DOE 2; AND
JOHN/JANE DOE 3 — APPELLEES

OPINION
DISMISSING

** ** ** ** **

BEFORE: COMBS, J. LAMBERT, AND K. THOMPSON, JUDGES.

LAMBERT, J., JUDGE: William C. Shehan, Jr., *pro se*, appeals the Kenton Circuit Court's order dismissing his numerous claims in a suit he filed against the Appellees in 2014. The Bank of Kentucky, Inc. (acquired by Branch Bank &

Trust Company in 2017, referred to in the court below and here as "the Bank") has moved to strike Shehan's brief. We grant that motion, review Shehan's appeal for manifest injustice, and affirm. *Hawkins v. Miller*, 301 S.W.3d 507 (Ky. App. 2009).

Our recitation of the procedural history is taken from the circuit court's August 11, 2015, order dismissing the action, namely:

> In the Verified Complaint filed on April 9, 2014, the Plaintiff [Shehan] asserts that, "This is an action for damages against the Bank and John and/or Jane Does 1, 2 and 3 for their outrageous conduct in intentionally interfering with Shehan's criminal tax case." He goes on to state the following claims for relief against the Bank: Tortious Interference with Plea Agreement; Tortious Interference with Prospective Plea Agreement; Intentional Infliction of Emotional Distress/Tort of Outrage. Against John and/or Jane Does 1, 2 and 3, he alleges Aiding and Abetting Liability. He further alleges Civil Conspiracy against both the Bank and John and/or Jane Does, and seeks punitive damages.
>
> The Plaintiff alleges that the Bank's Interference in [Shehan]'s criminal tax case was motivated by the Bank's desire to divert attention from its liability arising from problem loans made to the First Baptist Church for the construction of a sanctuary. That loan was made in March of 2008. Years prior to the church borrowing from the Bank of Kentucky, [Shehan] was being investigated for attempt to evade payment of taxes. The IRS began an audit of Shehan in 2001 and concluded that audit in 2004. In 2005, [Shehan] was given notice of the government's initiation of a criminal investigation. In 2008, [Shehan's] lawyer was advised by the U. S. Attorney that the government had decided to move forward with criminal charges. In November of 2010,

> [Shehan] was indicted on one count of evasion of tax payment. [Shehan] was eventually sentenced on January 6, 2012 to serve 24 months in the federal correctional facility and pay restitution of $500,000.00.
>
> [Shehan] maintains that in May of 2011, his attorney had reached an agreement with the U. S. Attorney whereby [Shehan] would plead guilty to an 18-month cap on his potential sentence. However, he claims that prior to appearing in court to enter his plea, he was notified by the U. S. Attorney that there had ben a misunderstanding and that the plea agreement would include a 24 month cap and would require $500,000.00 in restitution at sentencing. Thereafter, the presiding Federal Judge refused to accept the agreement as presented. Eventually [Shehan] agreed to plead guilty to an agreement which included a 27-month maximum cap and payment of restitution at sentencing. Ultimately, in January of 2012, the Federal Judge sentenced [Shehan] to 24 months, plus the payment of restitution.

The circuit court then addressed the Bank's motion to dismiss, made pursuant to Kentucky Rule of Civil Procedure (CR) 12.02(f) ("failure to state a claim upon which relief can be granted"), construing Shehan's complaint "in a light most favorable to the Plaintiff" and "consider[ing] the allegations contained therein as true," citing *Carruthers v. Edwards*, 395 S.W.3d 488 (Ky. 2013), and *Wood v. Wyeth-Ayerst Laboratories, Div. of American Products*, 82 S.W.3d 849 (Ky. 2002).

> [Shehan] offers no specific facts upon which to base his claim that the Bank interfered with the criminal negotiations between his attorney and the Department of Justice and/or the U. S. Attorney. Indeed, his Complaint acknowledges that the "exact nature of the interference

and identities of the perpetrator have been concealed." He also states in his Complaint, that it was "very odd" that the criminal case against him was revived after being dormant for five years. He further declares, "It is apparent that the Bank and certain John and/or Jane Does, intentionally and actively interfered with the ongoing plea negotiations." From a review of [Shehan's] Complaint, it is evident that his claims are based upon speculation and suspicion that something untoward occurred between the Bank or its representatives and the federal officials. He has referenced no facts to support these allegations.

This Court is of the opinion and finds that [Shehan's] Complaint alleging "Tortious Interference with Plea Agreement" and "Tortious Interference with a Prospective Plea Agreement" fails to state a legally recognizable cause of action. *See Morgan v. Botts*, 348 S.W.3d 599 (Ky. 2011). Where no recognized legal cause of action exists, dismissal under CR 12.02 is appropriate. *Carruthers, supra*. Likewise, [Shehan] has failed to state a cause of action which would support a claim for Intentional Infliction of Emotional Distress/Tort of Outrage. *See St. Luke Hospital, Inc. v. Straub*, 354 S.W.3d 529 (Ky. 2011); *Kroger v. Willgruber*, 920 S.W.2d 61 (Ky. 1966). Finally, he fails to assert any facts upon which he could support a claim for Civil Conspiracy.

[Shehan] has failed to cite any case from Kentucky or any other jurisdiction that would recognize a cause of action for Tortious Interference with a Plea Agreement in a criminal case. At most, [Shehan] proposes that the tort of interfering with contractual relations should be applied to a criminal plea agreement. However, he cites no authority for such a proposal. In order for him to prevail in his claim that the Bank interfered with and affected his plea agreement, he would have to establish that the U. S. Attorney, the Department of Justice and the Federal Judge were in fact influenced in the ultimate outcome of

> his case. At best, he could prove that the Bank or its representative attempted to influence the outcome of his criminal case. However, once again, [Shehan] has offered no authority that such a cause of action exists.

The Kenton Circuit Court thereby dismissed with prejudice all of Shehan's claims pursuant to CR 12.02. Shehan, whose counsel was permitted to withdraw by this Court after filing notice of appeal and the prehearing statement, proceeds *pro se*. After some procedural missteps, Shehan filed his brief in April 2017.

The Bank filed a motion to strike Shehan's brief, which was passed to the merits panel addressing this appeal. The Bank filed its appellee brief in January 2018.

We first consider the motion to strike Shehan's brief. The Bank's motion points to numerous deficiencies in Shehan's brief, citing several sections of CR 76.12(4)(c), specifically:

> (iv) A "STATEMENT OF THE CASE" consisting of a chronological summary of the facts and procedural events necessary to an understanding of the issues presented by the appeal, **with ample references to the specific pages of the record, or tape and digital counter number in the case of untranscribed videotape or audiotape recordings, or date and time in the case of all other untranscribed electronic recordings, supporting each of the statements narrated in the summary**.
>
> (v) An "ARGUMENT" conforming to the statement of Points and Authorities, **with ample supportive references to the record and citations of authority pertinent to each issue of law and which shall contain**

> **at the beginning of the argument a statement with reference to the record showing whether the issue was properly preserved for review and, if so, in what manner**.
>
> . . . .
>
> (vii) An "APPENDIX" with appropriate extruding tabs containing copies of the findings of fact, conclusions of law, and judgment of the trial court, any written opinions filed by the trial court in support of the judgment, the opinion or opinions of the court from which the appeal is taken, and any pleadings or exhibits to which ready reference may be considered by the appellant as helpful to the appellate court. The first item of the appendix shall be a listing or index of all documents included in the appendix. **The index shall set forth where the documents may be found in the record**. The appellant shall place the judgment, opinion, or order under review immediately after the appendix list so that it is most readily available to the court. Except for matters of which the appellate court may take judicial notice, **materials and documents not included in the record shall not be introduced or used as exhibits in support of briefs**. In workers' compensation cases the appendix shall include the opinions of the Administrative Law Judge, the Workers' Compensation Board and the Court of Appeals.
>
> (viii) Any "INDEX" the appellant may wish to provide.

(Emphases ours.)

Without belaboring this opinion, we agree with each of the Bank's named deficiencies in Shehan's brief. We also agree with the Bank's assertion that

the deficiencies are substantive rather than technical. *See Hallis v. Hallis*, 328 S.W.3d 694 (Ky. App. 2010).[1]

"We have wide latitude to determine the proper remedy for a litigant's failure to follow the rules of appellate procedure. *Age v. Age*, 340 S.W.3d 88, 97 (Ky. App. 2011). Furthermore, dismissing an appeal for non-compliance with CR 76.12 is a matter within our discretion. *Baker v. Campbell County Bd. of Ed.*, 180 S.W.3d 479, 482 (Ky. App. 2005)." *Craig v. Kulka*, 380 S.W.3d 546, 548 (Ky. App. 2012).

> While we recognize that [the Appellant] is pursuing this appeal without the assistance of legal counsel, we note that these rules are not unknown to him. As the Appellees note, [the Appellant] is no stranger to our court system. Under these circumstances, we cannot allow an advocate of experience such as [the Appellant] to ignore our Rules to the prejudice of the Appellees. Therefore, **we deem it appropriate to strike [the Appellant's] briefs**, proceed in accordance with *Elwell v. Stone*, 799 S.W.2d 46 (Ky. App. 1990), **and review the trial court's order dismissing [the Appellant's] claims for manifest injustice**.

Hawkins v. Miller, 301 S.W.3d 507, 508 (Ky. App. 2009) (emphases ours) (footnotes omitted).

[1] "But the rules are not only a matter of judicial convenience. They help assure the reviewing court that the arguments are intellectually and ethically honest. Adherence to those rules reduces the likelihood that the advocates will rely on red herrings and straw-men arguments—typically unsuccessful strategies. Adherence enables opposing counsel to respond in a meaningfully way to the arguments so that dispute about the issues on appeal is honed to a finer point." *Hallis*, 328 S.W.3d at 697.

Since Shehan has provided no appropriate evidence to support any of his claims, dismissal by the circuit court was appropriate, and there was no manifest injustice.

The order of the Kenton Circuit Court is affirmed.

COMBS, JUDGE, CONCURS.

THOMPSON, K., JUDGE, CONCURS IN RESULT ONLY.

BRIEF FOR APPELLANT:

William C. Shehan, Jr., *pro se*
Florence, Kentucky

BRIEF FOR APPELLEE
THE BANK OF KENTUCKY, INC.:

Steven C. Martin
Daniel A. Hunt
Covington, Kentucky