

RENDERED: MAY 17, 2019; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2016-CA-001040-MR

PEPPY MARTIN

APPELLANT

v. APPEAL FROM HART CIRCUIT COURT
HONORABLE JOHN DAVID SEAY, JUDGE
ACTION NO. 16-CI-00090

U.S. DEPARTMENT OF TRANSPORTATION,
KENTUCKY TRANSPORTATION CABINET,
AND HART COUNTY FISCAL COURT

APPELLEES

OPINION
AFFIRMING

** ** * ** * ** *

BEFORE: COMBS, NICKELL AND K. THOMPSON, JUDGES.

COMBS, JUDGE: Peppy Martin (Martin) appeals from an order of the Hart Circuit Court granting a motion of the Hart County Fiscal Court (Fiscal Court) to dismiss for failure to state a claim. After our review, we affirm.

I. BACKGROUND

On April 29, 2016, Martin, *pro se*, filed a complaint in the Hart Circuit Court against the Fiscal Court, the Kentucky Transportation Cabinet (KYTC), and the United States Department of Transportation (USDOT).¹ In her complaint, Martin claimed that the widening of Interstate 65 disrupted her life and negatively impacted her property. Martin's grievances against the Fiscal Court related to the lack of development at the Bonnieville exit on I-65, the construction of the I-65 project, failure to request grant money from KYTC, the speed limit on Chestnut Grove Road, and "vagrants" living near her property. As relief, Martin requested one hundred million dollars in damages -- as well as a commercial entrance to her property.

In response, the Fiscal Court filed a motion to dismiss for failure to state a claim upon which relief could be granted. CR² 12.02(f). Fiscal Court argued that it was entitled to sovereign immunity from monetary damages and that Martin did not provide adequate notice of a cause of action and relief sought. On June 22, 2016, the circuit court granted the motion, finding that the Fiscal Court was entitled to sovereign immunity and that Martin had "not sufficiently identified

¹ Martin's claims against KYTC and USDOT were removed to federal court where they were dismissed based both upon Martin's failure to state a claim and upon immunity of the agencies. *Martin v. U.S. Department of Transportation*, 2017 WL 3174939 (W.D. Ky. 2017).

² Kentucky Rules of Civil Procedure.

a cause of action to give Fiscal Court fair notice of the claim.” This appeal followed.

We review a dismissal under CR 12.02 *de novo*. *Carruthers v. Edwards*, 395 S.W.3d 488, 491 (Ky. App. 2012). “The [circuit] court should not grant the motion 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-Mutuel Clerks’ Union of Kentucky, Local 541, SEIU, AFL-CIO v. Kentucky Jockey Club*, 551 S.W.2d 801, 803 (Ky. 1977). Upon review, “all reasonable inferences” must be drawn in the plaintiff’s favor. *Carruthers*, 395 S.W.3d at 491 (citations omitted).

Before reaching Martin’s arguments on appeal, we must address the deficiencies of her brief. CR 76.12 details the requirements which parties must meet in briefing or face the penalty of having their brief stricken and their appeal dismissed. CR 76.12(8)(a). “Compliance with CR 76.12 is mandatory.” *Smothers v. Baptist Hospital East*, 468 S.W.3d 878, 881 (Ky. App. 2015) (citation omitted). Therefore, “[w]e are not required to consider portions of the Appellants’ brief not in conformity with CR 76.12, and may summarily affirm the trial court on the issues contained therein.” *Leamon v. Phillips*, 423 S.W.3d 759, 762 (Ky. App. 2014) (citations omitted).

First, Martin’s brief fails to comply with CR 76.12(4)(c)(iii), which requires the brief to include:

A “STATEMENT OF POINTS AND AUTHORITIES,” which shall set forth succinctly and in the order in which they are discussed in the body of the argument, the appellant’s contentions with respect to each issue of law relied upon for a reversal, listing under each the authorities cited on that point and the respective pages of the brief on which the argument appears and on which the authorities are cited.

Martin has failed to comply with this requirement. Her brief includes no “Statement of Points and Authorities.”

Second, Martin’s brief fails to comply with CR 76.12(4)(c)(iv), which requires a brief to include:

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.

Again, Martin’s brief does not include a “Statement of the Case” and includes no references to the record.

Third, Martin’s brief fails to comply with CR 76.12(4)(c)(v), which requires a brief to include:

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.

Although Martin’s brief does not include a section titled “Argument,” the majority of her brief essentially consists of her argument. However, it contains no “supportive references to the record[,]” “citations of authority pertinent to each issue of law[,]” or “a statement with reference to the record showing whether the issue was properly preserved for review[.]” *Id.* In her eight-page argument, Martin does not make a single reference to the record. Furthermore, she fails to cite any controlling law to support her arguments.

Additionally, Martin’s brief does not include the brief introduction required by CR 76.12(4)(c)(i), the statement concerning oral arguments required by CR 76.12(4)(c)(ii), or the certificate required by CR 76.12(6).

Despite the fact that these deficiencies would warrant dismissal of the appeal on those grounds alone, we have nonetheless elected to address the merits of the appeal.

First, Martin’s complaint fails to raise any cognizable claim against the Fiscal Court. CR 8.01(1) provides that: “[a] pleading which sets forth a claim for relief . . . shall contain (a) a short and plain statement of the claim showing that

the pleader is entitled to relief[.]” Furthermore, “[e]ven though the standards are relaxed for *pro se* litigants, nonetheless, *pro se* ‘pleadings must give at least fair notice of the claim for relief to be sufficient.’” *Dillingham v. Commonwealth*, 995 S.W.2d 377, 381-82 (Ky. 1999) (quoting *Beecham v. Commonwealth*, 657 S.W.2d 234, 236 (Ky. 1983)). Although Martin’s complaint contains an extensive list of grievances against Fiscal Court, it does not give fair notice of any specific grievance because it raises no cognizable claim for relief. Therefore, dismissal of Martin’s complaint against Fiscal Court was proper.

Finally, even if Martin’s complaint had contained a cognizable claim for relief, Fiscal Court would have been entitled to sovereign immunity. “Any action against fiscal court members in their official capacities is essentially an action against the county which is barred by sovereign immunity.” *Estate of Clark ex. rel. Mitchell v. Daviess County*, 105 S.W.3d 841, 844 (Ky. App. 2003) (citations omitted). Furthermore, “in the absence of waiver, the county is immune from tort liability.” *Franklin County v. Malone*, 957 S.W.2d 195, 203 (Ky. 1997). Here, the record shows no waiver of Fiscal Court’s immunity. Therefore, any claim that Martin attempted to assert against Fiscal Court must be dismissed.

We affirm the order of the Hart Circuit Court dismissing the complaint against Hart County Fiscal Court.

ALL CONCUR.

BRIEF FOR APPELLANT:

Peppy Martin, *pro se*
Bonnieville, Kentucky

BRIEF FOR APPELLEE:

Sarah Payne-Jarboe
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