

RENDERED: NOVEMBER 1, 2019; 10:00 A.M.  
NOT TO BE PUBLISHED

**Commonwealth of Kentucky**  
**Court of Appeals**

NO. 2017-CA-001406-MR

AHAMARA BREWSTER

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT  
HONORABLE MITCHELL PERRY, JUDGE  
ACTION NO. 17-CI-000350

DAVID NICHOLSON, INDIVIDUALLY AND IN HIS OFFICIAL  
CAPACITY AS THE CIRCUIT COURT CLERK OF JEFFERSON  
COUNTY, KENTUCKY; KEVIN CONNELL, BRADLEY  
GARPETTI, GINNY LEE, STACI O'NEIL, CHARLOTTE VOWELS,  
JOHN DOE, JANE DOE, AND UNKNOWN DEFENDANTS, ALL  
INDIVIDUALLY AND IN THEIR OFFICIAL CAPACITIES AS  
DEPUTY CIRCUIT COURT CLERKS OF JEFFERSON COUNTY,  
KENTUCKY

APPELLEES

OPINION  
AFFIRMING

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BEFORE: COMBS, JONES AND L. THOMPSON, JUDGES.

THOMPSON, L., JUDGE: Ahamara Brewster (“Appellant”) appeals from an  
opinion and order of the Jefferson Circuit Court dismissing her action alleging a  
governmental conspiracy to have her arrested and terminated from employment,

race discrimination in violation of the Kentucky Civil Rights Act,<sup>1</sup> denial of Equal Protection and Due Process, violation of the Kentucky Whistleblowers Act,<sup>2</sup> intentional infliction of emotional distress, and other causes of action. Appellant argues that the Jefferson Circuit Court committed reversible error by improperly adopting a federal standard of pleading and improperly dismissing her complaint without any discovery. For the reasons addressed below, we find no error and AFFIRM the order on appeal.

### **Facts and Procedural History**

Appellant is a former employee of the Jefferson County Circuit Court Clerk's Office. During the course of her employment as a probationary deputy clerk, Appellant was arrested for failing to appear at a pretrial conference on a traffic violation. As a result of her arrest, which occurred in the midst of her shift at the Clerk's Office, Appellant's employment was terminated.

Thereafter, Appellant filed a complaint in Jefferson Circuit Court setting out nine causes of action against Jefferson County Circuit Court Clerk, David Nicholson, and several known and unknown Clerk's Office employees. The complaint asserted a litany of governmental conspiracy, civil rights, racial discrimination and wrongful termination claims. The matter proceeded in

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<sup>1</sup> Kentucky Revised Statutes (KRS) 344.040.

<sup>2</sup> KRS 61.102.

Jefferson Circuit Court, whereupon Nicholson, *et al.*, (hereinafter “Appellees”) filed a motion to dismiss alleging that Appellant failed to state a claim upon which relief may be granted. Upon considering the motion, reply and supportive memoranda, the circuit court entered an order on July 24, 2017, granting the motion to dismiss. In support of the order dismissing, the Jefferson Circuit Court determined that Appellant’s conspiracy claims contained no factual allegations demonstrating the existence of the conspiracies and that she pointed to no overt act pursuant to or in furtherance of a conspiracy. The court found that Appellant’s complaint made no allegation that Appellees, under color of a Clerk’s Office policy, deprived her of any Equal Protection or Due Process rights. In addition, the court determined that the Clerk’s Office and its employees were entitled to qualified official immunity as the decision to terminate Appellant’s employment was a policy decision and there was not a credible allegation that the Appellees acted in anything other than good faith.

In examining Appellant’s Whistleblower claim, the circuit court concluded that Appellant could not prove the elements of the claim as set out in *Thornton v. Office of the Fayette County Attorney*, 292 S.W.3d 324, 329 (Ky. App. 2009), that there was no allegation that Appellant was attempting to make a good faith disclosure, nor that her employment was adversely affected by a theoretical good faith report. And finally, the court found that Appellant’s complaint

contained no allegations sufficient to support a claim of emotional distress, and that such a claim must be dismissed as a matter of law. This appeal followed.

### **Arguments and Analysis**

Appellant, through counsel, now argues that the Jefferson Circuit Court committed reversible error in granting Appellees' motion to dismiss. She asserts that the circuit court improperly adopted the higher federal standard of pleading under Federal Rules of Civil Procedure (FRCP) 8(a)(2) as set out in *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555, 127 S.Ct. 1955, 1964-65, 167 L.Ed.2d 929 (2007), and *Ashcroft v. Iqbal*, 556 U.S. 662, 677-78, 129 S.Ct. 1937, 1949, 173 L.Ed.2d 868 (2009), which she contends abandoned Kentucky's "notice pleading" requirements. Appellant maintains that the new federal standard of pleading requires the plaintiff to plead enough facts to plausibly suggest a conspiracy, rather than requiring mere "notice pleading" which would have allowed Appellant to engage in discovery. According to Appellant, the Jefferson Circuit Court's standard of review required that Appellant should have alleged such specific facts that a jury could have ruled in favor of Appellant without any additional discovery. Appellant argues that this improper, higher standard denied her procedural Due Process and Equal Protection in violation of the Constitutions of the United States and the Commonwealth. She also contends that the circuit court erred in invading the province of the jury by dismissing the complaint

without any discovery. Appellant requests an opinion vacating the order on appeal, and remanding the matter for discovery and a jury trial.

We must first note that Appellant's written argument does not comply with Kentucky Rules of Civil Procedure (CR) 76.12(4)(c)(iv) requiring a "Statement of the Case" containing ample references to the specific pages of the record supporting each of the statements narrated in the summary. Further, the written argument fails to state at the beginning of the "Argument" section whether Appellant's argument was preserved for appellate review and, if so, in what manner. CR 76.12(4)(c)(v). Compliance with rules governing appellate briefs is mandatory. *Smothers v. Baptist Hospital East*, 468 S.W.3d 878, 881 (Ky. App. 2015).

When a party fails to abide by CR 76.12, an appellate court may elect: "(1) to ignore the deficiency and proceed with the review; (2) to strike the brief or its offending portions; or (3) to review the issues raised in the brief for manifest injustice only[.] *Hallis v. Hallis*, 328 S.W.3d 694, 696 (Ky. App. 2010) (citations omitted). We have chosen the less severe alternative of reviewing the proceeding below for manifest injustice rather than summarily affirming the decision of the trial court. "Manifest injustice is found if the error seriously affected the fairness, integrity, or public reputation of the proceeding." *Kingrey v. Commonwealth*, 396 S.W.3d 824, 831 (Ky. 2013) (footnote omitted). A review for manifest injustice is

limited in scope. *Mullins v. Ashland Oil, Inc.*, 389 S.W.3d 149, 154 (Ky. App. 2012).

The sole issue on appeal is Appellant's argument that the Jefferson Circuit Court applied an incorrect standard of review in granting Appellees' motion to dismiss. Appellant does not directly address the underlying claims of conspiracy, alleged deprivation of constitutional rights, violation of the Whistleblower's statute, etc. As such, we will only consider whether the order of the Jefferson Circuit Court seriously affected the fairness, integrity, or public reputation of the proceeding.

CR 12.02(f) sets forth the standard for dismissing a complaint for failure to state a claim.

The 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. In making this decision, the circuit court is not required to make any factual determination; rather, the question is purely a matter of law. Stated another way, the court must ask if the facts alleged in the complaint can be proved, would the plaintiff be entitled to relief?

*James v. Wilson*, 95 S.W.3d 875, 883-84 (Ky. App. 2002) (internal quotation marks and footnotes omitted). *See also Pari-Mutuel Clerks' Union of Kentucky, Local 541, SEIU, AFL-CIO v. Kentucky Jockey Club*, 551 S.W.2d 801, 803 (Ky. 1977).

In considering Appellees' motion to dismiss, the Jefferson Circuit Court stated that,

The court should grant a motion to dismiss only when "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 v. Kentucky Jockey Club*, 551 S.W.2d 801, 803 (Ky. 1977).

The Jefferson Circuit Court applied the correct standard of review in considering Appellees' motion to dismiss. It did not, as Appellant asserts, employ an alleged higher standard of review as set out in the federal rules and case law, and did not improperly abandon notice pleading. "In regard to pleadings, Kentucky has always followed the notice pleading theory which only requires a short and plain statement of claim demonstrating that relief is warranted and necessary." *Equitania Ins. Co. v. Slone & Garrett, P.S.C.*, 191 S.W.3d 552, 556 (Ky. 2006) (citation omitted). In addressing each of Appellant's substantive arguments, the Jefferson Circuit Court found that Appellant's claims could not be proven under any set of the alleged facts. On Appellant's claim of intentional infliction of emotional distress, for example, the circuit court found that Appellant's allegations, even when viewed as true for purposes of Appellees' motion, did not rise to the level of outrageous conduct necessary to support the claim. Similarly, the court determined that the conspiracy theory asserted by Appellant could not prevail at trial, as there was no allegation that two or more

persons engaged in an overt act necessary to prove conspiracy. *James*, 95 S.W.3d at 897. The circuit court examined each of Appellant’s causes of action, and found that Appellant would not be entitled to relief under any set of facts which could be proved in support of her claim. *Pari-Mutuel Clerks’ Union, supra*.

### **Conclusion**

The Jefferson Circuit Court applied the correct standard of review to Appellees’ motion to dismiss, and did not abandon the notice pleading theory as Appellant so argues. As such, we do not conclude that the circuit court committed error seriously affecting “the fairness, integrity, or public reputation of the proceeding.” *Kingrey*, 396 S.W.3d at 831 (citation omitted). Accordingly, we AFFIRM the opinion and order of the Jefferson Circuit Court granting Appellees’ motion to dismiss.

ALL CONCUR.

BRIEFS FOR APPELLANT:

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Louisville, Kentucky

BRIEF FOR APPELLEES:

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