

DA 21-0398

IN THE SUPREME COURT OF THE STATE OF MONTANA

2022 MT 21N

ZACHARY RUSK,

Petitioner and Appellant,

v.

THOMAS ROSEEN, CINDY ROSEEN, and SHAWN ROSEEN,

Respondents and Appellees.

APPEAL FROM: District Court of the Eighteenth Judicial District,
In and For the County of Gallatin, Cause No. DV-21-432B
Honorable Rienne H. McElyea, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Zachary Rusk, Self-Represented, Bozeman, Montana


For Appellees:

Jason Armstrong, Cromwell Law, PLLC, Bozeman, Montana

Submitted on Briefs: January 5, 2022

Decided: January 25, 2022

Filed:


Clerk

Justice Laurie McKinnon delivered the Opinion of the Court.

¶1 Pursuant to Section I, Paragraph 3(c), Montana Supreme Court Internal Operating Rules, this case is decided by memorandum opinion and shall not be cited and does not serve as precedent. Its case title, cause number, and disposition shall be included in this Court's quarterly list of noncitable cases published in the Pacific Reporter and Montana Reports.

¶2 Appellant Zachary Rusk (Rusk), appearing pro se, appeals the Order Granting Motion to Dismiss with Prejudice entered on July 30, 2021, in the Eighteenth Judicial District Court, Gallatin County. Rusk sought injunctive and declaratory relief against Appellees Thomas Roseen, Cindy Roseen, and Shawn Roseen (Roseens) claiming he had been slandered, libeled, harassed, extorted, and blackmailed. The District Court dismissed Rusk's Petition with prejudice after concluding Rusk failed to set forth any factual allegations of the Roseens' wrongdoing. The District Court declined the Roseens' request to have Rusk declared a vexatious litigant. We affirm.

¶3 On April 28, 2021, Rusk filed a Petition for Injunctive and Declaratory Relief against the Roseens, which the District Court characterized as "largely incomprehensible." Rusk asked that the Roseens be ordered to: (1) cease and desist their defamation, slander, and libel; (2) correct past defamation, slander, and libel; (3) provide proof of attempts to correct past wrongdoing; and (4) get drug tested and report the results to their employers. Rusk also asked the District Court to review Cindy Roseen's low-income housing qualification. The next day, however, Rusk filed a motion to withdraw his case and the court thereafter dismissed his case without prejudice. A month later, on June 3, 2021, Rusk

filed a motion to reinstate his case. The Roseens objected and asked the court to declare Rusk a vexatious litigant. The District Court reinstated Rusk’s case and allowed him to respond to the Roseens’ request that he be declared a vexatious litigant. However, on July 13, 2021, Rusk again asked to withdraw his case, although he continued to file documents with large attachments. The Roseens then filed a Motion to Dismiss for Failure to State a Claim. Because it appeared that Rusk wanted to proceed on his Petition despite having asked to withdraw his case, the District Court considered the Roseens’ Motion to Dismiss and their request to have Rusk declared a vexatious litigant.

¶4 This Court considers de novo a district court’s ruling on a motion to dismiss made pursuant to M. R. Civ. P. 12(b)(6). *Plouffe v. State*, 2003 MT 62, ¶ 8, 314 Mont. 413, 66 P.3d 316. A motion to dismiss under Rule 12(b)(6) “has the effect of admitting all well-pleaded allegations in the complaint.” “In considering the motion, the complaint is construed in the light most favorable to the plaintiff, and all allegations of fact contained therein are taken as true.” *Wilson v. Taylor*, 194 Mont. 123, 126-27, 634 P.2d 1180, 1182 (1981). “A claim is subject to dismissal under Rule 12(b)(6) if it either fails to state a cognizable legal theory for relief or states an otherwise valid legal claim but fails to state sufficient facts that, if true, would entitle the claimant to relief under the claim.” *In re Estate of Swanberg*, 2020 MT 153, ¶ 6, 400 Mont. 247, 465 P.3d 1165.

¶5 The District Court determined that the Petition—together with attachments containing quotes of numerous text messages, cease and desist letters, invoices from a process server, and copies of emails—failed to set forth any facts or allegations of wrongdoing to support a legal cause of action against the Roseens. The District Court

concluded that the Petition failed to set forth a short and plain statement of Rusk’s claim, as required by M. R. Civ. P. 8(a)(1), and that Rusk failed to state a claim for which he was entitled to relief under M. R. Civ. P. 12(b)(6).

¶6 This Court agrees. Rusk’s Petition filed in the District Court fails to set forth any factual allegations of wrongdoing by the Roseens. The Petition is a request for relief without setting forth the facts or basis upon which any relief may be granted. Here, no facts have been pleaded which may be taken as true and considered in a light most favorable to Rusk. We conclude that Rusk did not meet the pleading standards required by law, and the District Court was correct when it dismissed Rusk’s Petition.

¶7 Rusk’s Petition, in addition to stating no facts, sought to have the District Court order the Roseens to “get drug tested for illicit drug use and notify/report results to each of their employers, including Montana State University/Sidewall Pizza (Shawn); Go Fast Campers/Sidewall Pizza (Cindy); and Gallatin Valley Botanical/Farm (Thomas)[.]” It also requested proof that past defamation, slander, and libel had been “corrected.” When we consider Rusk’s Petition; the number of pleadings he filed; Rusk’s failure to set forth any facts in support of his Petition; that Rusk twice sought to withdraw and then reinstate his case; and that the District Court declined to declare Rusk a vexatious litigant, we conclude the District Court correctly dismissed Rusk’s Petition with prejudice.

¶8 The District Court’s decision not to declare Rusk a vexatious litigant is not an issue on appeal.

¶9 We have determined to decide this case pursuant to Section I, Paragraph 3(c) of our Internal Operating Rules, which provides for memorandum opinions. In the opinion of the

Court, the case presents a question controlled by settled law or by the clear application of applicable standards of review.

¶10 Affirmed.

/S/ LAURIE McKINNON

We concur:

/S/ JAMES JEREMIAH SHEA

/S/ BETH BAKER

/S/ INGRID GUSTAFSON

/S/ JIM RICE