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IN THE COURT OF APPEALS OF NORTH CAROLINA

2021-NCCOA-709

No. COA21-259

Filed 21 December 2021

Cumberland County, No. 20 CVS 5892

GLENN HENDERSON, Plaintiff,

v.

TARGET, 7 DOES, BRIAN CORNELL, SEDGWICK DAVE NORTH, JAYLYNN CRAWFORD, Defendants.

Appeal by plaintiff from order entered 23 February 2021 by Judge Mary Ann Tally in Cumberland County Superior Court. Heard in the Court of Appeals 1 December 2021.

Glenn Henderson pro se.

Cranfill Sumner LLP, by Steven A. Bader and Stephanie Gaston Poley, for the Defendants.

TYSON, Judge.

¶ 1 Glenn Henderson (“Plaintiff”) appeals from the trial court’s granting Defendants’ motion to dismiss his complaint. We affirm.

I. Background

¶ 2 Plaintiff’s claims stem from an incident, which allegedly occurred outside a Target store in Fayetteville on 25 October 2019. Several people reported to store

HENDERSON V. TARGET

2021-NCCOA-709

Opinion of the Court

security personnel that Plaintiff's actions had made them feel uncomfortable. Store security personnel told Plaintiff he would need to leave the store if they received further complaints. Plaintiff intended to "drop it," but he later learned from Target's third-party risk administrator that the complainants had reported he had made "bad" faces outside of the store.

¶ 3 Plaintiff filed suit against "Target, 7 Does, Brian Cornell, Sedgwick, Dave North, and Jaylynn Crawford" ("Defendants") for "Defamation, Harassment, Threat, Civil Rights Issue, Fraud."

¶ 4 On 24 November 2020, Plaintiff issued civil summonses to:

Name and Address of Defendant 1
Target, Brian Cornell, 7 Does
2056 Skibo Rd
Fayetteville, NC 28314

Name and Address of Defendant 2
Sedgwick, Dave North, Jaylynn Crawford
8125 Sedgwick Way
Memphis, TN 28187-1865

¶ 5 On 5 February 2021, Defendants filed motions to dismiss Plaintiff's complaint for lack of personal jurisdiction, improper venue, insufficiency of process, insufficiency of service of process and failure to state a claim upon which relief can be granted pursuant to N.C. Gen. Stat. § 1A-1, Rule 12(b)(2), (3), (4), (5) and (6) (2019). Plaintiff did not appear for hearing on Defendants' motions to dismiss. The trial court

HENDERSON V. TARGET

2021-NCCOA-709

Opinion of the Court

dismissed the complaint pursuant to Rules of Civil Procedure 12(b)(2),(3),(4),(5) and (6).

II. Jurisdiction

¶ 6 Plaintiff's appeal is properly before this Court pursuant to N.C. Gen. Stat. § 7A-27(b)(1) (2019).

III. Issues

¶ 7 Plaintiff raises five issues on appeal, which will be consolidated into two issues. First, whether the trial court had personal jurisdiction over Defendants named in the *pro se* lawsuit filed by Plaintiff when the summons is: (1) defective on its face, (2) was not served in the manner required by the Rules of Civil Procedure, and (3) does not allege, or imply, Defendants are subject to personal jurisdiction in North Carolina. Second, whether Plaintiff stated a claim upon which relief can be granted for “defamation, harassment, threat, civil rights issue, and fraud.” We do not reach the second issue because the first is determinative of all claims.

IV. Insufficient Summons

A. Standard of Review

¶ 8 Appellate review of “an order of the trial court denying or allowing a Rule 12(b)(1) motion is *de novo*.” *A.H. Beck Found. Co. v. Jones Bros. Inc.*, 166 N.C. App. 672, 678, 603 S.E.2d 819, 823 (2004) (citation omitted).

B. Analysis

HENDERSON V. TARGET

2021-NCCOA-709

Opinion of the Court

¶ 9 The summons is “the means of obtaining jurisdiction over the defendant[.]” *Latham v. Cherry*, 111 N.C. App. 871, 873, 433 S.E.2d 478, 480 (1993) (citation omitted). “[D]efects in the summons receive careful scrutiny and can prove fatal to the action.” *Id.*

¶ 10 North Carolina Rule of Civil Procedure 4(b) dictates that a summons “shall be directed to the defendant or defendants.” N.C. Gen. Stat. § 1A-1, Rule 4(b) (2019). This rule is violated if a summons does not identify defendant by its correct legal name. *See Franklin v. Winn Dixie Raleigh, Inc.*, 117 N.C. App. 28, 34–35, 450 S.E.2d 24, 28 (1994) (affirming dismissal for insufficiency of process when plaintiff misnamed the defendant corporate entity).

¶ 11 Here, no summons was issued to any of the Defendants within five days of filing of the complaint, as is required by Rule 4(a). Further, a summons was not directed to each of these separate Defendants, but rather addresses them together as one defendant residing at the address of the Fayetteville Target store. The label of “Defendant 2” as “Sedgwick, Dave North, and Jaylynn Crawford” is not directed to each of these separate Defendants. There is no legal entity named “Sedgwick” that can be summoned at 8125 Sedgwick Way, Memphis, Tennessee. Dave North and Jaylynn Crawford, identified in the complaint as the chief executive officer and an employee of Target, respectively were individually summoned at the same address. These defects in the summons support dismissal of the lawsuit for insufficiency of

HENDERSON V. TARGET

2021-NCCOA-709

Opinion of the Court

process. *See* N.C. Gen. Stat. § 1A-1, Rule 12(b)(2).

V. Personal Jurisdiction

¶ 12 Plaintiff carries the burden of alleging a *prima facie* case of personal jurisdiction over a nonresident defendant. *Eaker v. Gower*, 189 N.C. App. 770, 774, 659 S.E.2d 29, 32 (2008). “The failure to plead the particulars of personal jurisdiction is not necessarily fatal, so long as the facts alleged permit the reasonable inference that jurisdiction may be acquired.” *Id.* (citation omitted).

¶ 13 Here, Cornell, North and Crawford are not natural persons domiciled within North Carolina. Plaintiff has not pleaded, with specificity, that any one of the Defendants is subject to personal jurisdiction in North Carolina apart from the Target store where the alleged conflict occurred being located within the state.

VI. Conclusion

¶ 14 Plaintiff’s complaint and summons fail for insufficiency of service of process and lack of personal jurisdiction. This is sufficient to affirm the trial court’s granting of Defendants’ motion to dismiss without addressing Plaintiff’s remaining issues. We affirm the trial court’s granting Defendants’ motion to dismiss. *It is so ordered.*

AFFIRMED.

Judges ARROWOOD and GRIFFIN concur.

Report per Rule 30(e).