

[Cite as *Billman v. Canton*, 2006-Ohio-3923.]

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

ARTHUR LEE BILLMAN, JR.

Plaintiff-Appellant

-vs-

CITY OF CANTON, OHIO, ET AL.

Defendants-Appellees

JUDGES:

Hon. W. Scott Gwin, P.J.

Hon. William B. Hoffman, J.

Hon. John F. Boggins, J.

Case No. 2006CA00014

OPINION

CHARACTER OF PROCEEDING:

Appeal from the Stark County Court of
Common Pleas, Case No. 2005CV03039

JUDGMENT:

Dismissed

DATE OF JUDGMENT ENTRY:

July 31, 2006

APPEARANCES:

For Plaintiff-Appellant

For Defendants-Appellees

ARTHUR LEE BILLMAN, JR.

Pro Se

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Hoffman, J.

{¶1} Plaintiff-appellant Arthur Lee Billman, Jr. appeals the December 5, 2005 Judgment Entry entered by the Stark County Court of Common Pleas, which granted defendants-appellees City of Canton, Ohio, et al's. Civ. R. 12(B) Motion to Dismiss.

STATEMENT OF THE CASE

{¶2} On September 9, 2005, appellant filed a Motion for Class Action and Civil Suit, pro-se, naming appellees as defendants. Appellant asserted numerous claims, including the filing of false investigation reports and affidavits by the police as well as invasion of privacy, defamation, and false arrest based upon the police accepting information from confidential informants. The allegations upon which appellant based his complaint, arose out of his arrest on September 24, 2003, for violation of federal firearms provisions.

{¶3} On September 30, 2005, appellees filed a Motion to Dismiss pursuant to Civ. R. 12(B)(1) and (6). Appellant filed a Motion Not to Dismiss and Amendment to Said Suit.

{¶4} Via Judgment Entry filed December 5, 2005, the trial court granted appellee's motion to dismiss.

{¶5} It is from this judgment entry appellant appeals.

{¶6} Appellant has filed a pro-se brief in this Court. We note appellant has failed to comply with App.R. 16 and Local Rule 9.

{¶7} App.R. 16(A) provides:

{¶8} "The appellant shall include in its brief, under the headings and in the order indicated, all of the following:

{¶19} “(1) A table of contents, with page references.

{¶10} “(2) A table of cases alphabetically arranged, statutes, and other authorities cited, with references to the pages of the brief where cited.

{¶11} “(3) A statement of the assignments of error presented for review, with reference to the place in the record where each error is reflected.

{¶12} “(4) A statement of the issues presented for review, with references to the assignments of error to which each issue relates.

{¶13} “(5) A statement of the case briefly describing the nature of the case, the course of proceedings, and the disposition in the court below.

{¶14} “(6) A statement of facts relevant to the assignments of error presented for review, with appropriate references to the record in accordance with division (D) of this rule.

{¶15} “(7) An argument containing the contentions of the appellant with respect to each assignment of error presented for review and the reasons in support of the contentions, with citations to the authorities, statutes, and parts of the record on which appellant relies. The argument may be preceded by a summary.

{¶16} “(8) A conclusion briefly stating the precise relief sought.”

{¶17} App.R. 16(E) requires a party to reproduce any provisions of constitutions, statutes, ordinances, rules, or regulations necessary for the determination of the assignments of error presented. Local R. 9(A)(1) requires an appellant to submit a copy of the judgment entry from which the appeal is taken. Appellant's brief does not satisfy any of the aforementioned requirements; therefore, is noncompliant.

{¶18} Because appellant's brief fails to comply with the rules, such deficiencies are tantamount to the failure to file a brief. See, *State v. Balderson* (Sept. 27, 1999), Stark App. No.1999CA00110, unreported; *State v. Mattingly* (Nov. 25, 1998), Ashland App. No. 98COA01245, unreported. Pursuant to App.R. 18(C), this Court dismisses appellant's appeal for want of prosecution.

By: Hoffman, J.

Boggins, J. concur;

Gwin, P.J., concurs separately

HON. WILLIAM B. HOFFMAN

HON. W. SCOTT GWIN

HON. JOHN F. BOGGINS

Gwin, P.J., concurring opinion.

{¶19} I concur in the analysis and the conclusion of the majority. However I write separately to add that the result of the case would not be altered if we were to address the merits of appellant's appeal.

{¶20} To the extent that appellant's complaint could be characterized as alleging false arrest, false imprisonment and malicious prosecution, the claims are barred by the one year statute of limitations contained in R.C. 2305.11. The same statute of limitations would apply to the allegation of invasion of privacy. *Dye v. Columbus Retail Merchants Delivery, Inc.* (Nov. 4, 1975), 10th Dist. No. 75AP-252. As it is evident from the appellant's complaint that the actions alleged to constitute the violations occurred in September - December 2003, and the complaint was not filed until September 2005 it was not necessary for the trial court to conduct a hearing before dismissing appellant's complaint pursuant to Civ. R. 12 (B)(6).

{¶21} To the extend appellant's complaint alleges defamation, the complaint does not set forth the substance of the allegedly defamatory statement, See *Hedrick v. Center for Comprehensive Alcoholism Treatment* (1982), 7 Ohio App.3d 211; *Quamme v. Lancaster-Fairfield Com. Hosp.*(Feb. 27, 1995), 5th Dist. No. 94-CA-37. The complaint further failed to allege publication of the statement to an identifiable third party, *Beim v. Jemo Associates, Inc* (1989), 61 Ohio App.3d 380. Appellant failed to elaborate upon these claims, or move to amend his complaint in response to appellees' motion to dismiss.

{¶22} Finally, appellant has failed to meet the requirements of Civ.R.23 to certify the case as a class action.

{¶23} Accordingly, I would overrule appellant's assignments of error.

JUDGE W. SCOTT GWIN

