[Cite as *Copeland v. Summit Cty. Probate Court*, 2009-Ohio-4860.]

STATE OF OHIO))ss: COUNTY OF SUMMIT)	IN THE COURT OF APPEALS NINTH JUDICIAL DISTRICT
CHARLES COPELAND, et al. Appellants v. SUMMIT COUNTY PROBATE COURT, et al. Appellees	C. A. No. 24648 APPEAL FROM JUDGMENT ENTERED IN THE COURT OF COMMON PLEAS COUNTY OF SUMMIT, OHIO CASE No. CV 2008-07-5312

DECISION AND JOURNAL ENTRY

Dated: September 16, 2009

WHITMORE, Judge.

{¶1} Plaintiffs-Appellants, Charles and David Copeland (collectively "the Copelands"), appeal from the judgment of the Summit County Court of Common Pleas, dismissing their complaint. This Court affirms.

I

{¶2} On July 28, 2008, the Copelands filed a complaint in the Summit County Court of Common Pleas against the "State of Ohio probate court," Naomi Smith, her attorney Michael Ciccolini, Steward Smith, Steven Smith, and their attorney Ernest Stein (collectively "Defendants"). The cover page of the complaint indicated that the Copelands were requesting a jury trial for "intentional interferance (sic) with expectancy of inheritence (sic)[,] conspiracy[,] denial of ones (sic) constitutional rights[,] tampering with records[,] theift (sic)[,] fraud[, and] obstruction." The complaint did not contain any counts or indicate which of the alleged claims listed on the cover page applied to which Defendants. On the whole, the complaint discussed an

ongoing probate court case in which the Copelands were involved (revolving around their deceased aunt's estate) and accused Defendants of various wrongdoings in their handling of that case. Random filings from the probate court were interspersed throughout the Copelands' complaint.

{¶3} On August 15, 2008, the Summit County Prosecutor filed a Civ.R. 12(B)(6) motion to dismiss the Copelands' complaint on behalf of the Summit County Probate Court. Subsequently, the remaining Defendants filed their own Civ.R. 12(B)(6) motion to dismiss. The Copelands filed a response to Defendants' respective motions on September 11, 2008. The Copelands also filed a "motion to strike pleadings of prosecutor[']s office motion for default" on October 6, 2008. The Copelands attached various items to their response and motion to strike, including newspaper articles about judges and attorneys under investigation for theft and corruption. On February 18, 2009, the trial court granted Defendants' respective motions to dismiss.

{¶4} The Copelands now appeal from the trial court's dismissal of their complaint and raise ten assignments of error for our review. For ease of analysis, we consolidate the assignments of error.

II

Assignment of Error Number One

> "PLAINTIFFS FILED A COMPLAINT AS REQUIRED UNDER CIV R 8 (PLAINTIFF IS REQUIRED TO GIVE NOTICE OF THE COMPLAINT NOT THE DETAILS OR PROOF OF CLAIM UNTIL THERE IS A RESPONSIVE FILING SAID COURT ABUSED AND COMMITED ERROR TO REQUIRE PLAINTIFFS TO DO SOMETHING THAT THEY ARE NOT REQUIRED TO DO AS STATED BY THE JUDGE (THATS WHAT YOU GET FOR FILING PRO-SE) PROPER RESPONCE WAS DEFAULT POARK VS RYDELL C 06199 0 SEE EXHIBIT ARGUMENT OF LAW #! PAGE[.]" (Sic.)

Assignment of Error Number Two

"DEFENDANTS FILED MOTION TO DISMISS AND MOTION FOR SUMMARY JUDGEMENT WHICH IS NOT A RESPONSIVE FILING, UNDER RULES OF PROCEDURE, DEFENDANTS THEN GAVE SOME OF THE DISPUTED ITEMS TO THE PLAINTIFFS, CLEARLY SHOWING OUR CLAIMS FOR ESTATE WAS TRUE AND THE COURT DISMISSED OUR CLAIM ANYWAY (WHEN IN A WORKERS COMPENSATION ACTION THE PLAINTIFFS TESTIMONEY AS TO INJURY IS CONTRADICTED BY THE DEFENDANTS VIDEO TAPE, A NEW TRIAL IS GRANTED ON THE GROUNDS OF MISCONDUCT OF THE PREVAILING PARTY UNDER CIVIL RULE 50 (A) (2) NOT WITHSTANDING THE FACT THAT THE PLAINTIFF WAS NOT CONVICTED OF PERJURY AND REGARDLESS OF THE RELEVANCY OF THE CONTRADICTORY TESTIMONY ARNOLD VS OWENS-ILLINOIS LIBBEY GLASS DIVISION NO CV85-1399 6TH DISTRICT COURT OF APP LUCUS 3-20-87 SEE ARGUMENTS IN LAW PAGE[.]" (Sic.)

Assignment of Error Number Three

"COURT ERRORED IN NOT FINDING PARTIES IN DEFAULT ESPICIALLY WHEN THEIR ACTIONS DISPUTED THEIR CLAIMS UNDER THEIR NON RESPONSIVE PLEADING THE COURT ERRORED IN NOT CONTROLLING SAID SAID ATTORNEY IN SAID CASE IN THE PERFORMANCE OF THEIR DUTY NAMELY THE PROSECUTOR WHO REFUSED TO DO HER JOB CONCERNING THE ESTATE AND ITEMS IN THE HOUSE, FURTHER ABUSE WAS TO ALLOW THIS PROSECUTOR TO ACT ON BEHALF OF ALL THE DEFENDANTS PUTTING THE CITY OF AKRON AND THE STATE OF OHIO IN CONFLICT WITH MY PROPERTY RIGHTS[.]" (Sic.)

Assignment of Error Number Four

"COURT ALSO ERRORED IN NOT REQUIRING THE DEFENDANTS TO DISCLOSE INFORMATION THAT THEY WERE REQUIRED TO DO AS FEDUCIARIES, THIS COURT CLAIMED I,M NOT ENTITLED TO KNOW ANYTHING ABOUT THE ESTATE I,M ENTITLED TO HAVE AND ALLOWED THE CONCEALEMENT OF MONEY ASSETS ACT THAT I AS NEXT OF KIN HAVE A LEGAL CONSTITUTIONAL RIGHT TO HAVE SEE ARGUMENTS AND LAW[.]" (Sic.)

Assignment of Error Number Five

"ABUSE OF PROCESS IS WHEN THE COURT REQUIRED US TO REPLEAD ISSUES FROM PROBATE COURT TO ESTABLISH A CLAIM AGAIN IN THOMAS VS WING (1994) 70 OHIO ST 3D 176 183 637 N.E. 2D 917 923 THE PROBLEM IS ALL ISSUES HAD NOT BEEN RESOLVED NOR

THE FUNDS DISPURSED, SAID PROBATE COURT COULD NOT RESOLVE ALL ISSUES OF COMPLAINT DUE TO LACK OF JURISDICTION AND THE FACT THEY THEMSELVES WERE FOUND TO BE A PARTY TO THE CLAIMS OF MISCONDUCT, BY CHEATING PEOPLE IN A PREVIOUS CASE SEE ARGUMENT PAGE[.]" (Sic.)

Assignment of Error Number Six

"PLAINTIFFS WERE INTITLED TO DEFAULT GOVERNMENT VIOLATED DUE PROCESS RIGHTS OF PLAINTIFFS PLAINTIFFS ARE ENTITLED TO AN AWARD BY WRIT OF MANDAMUS SEE ARGUMENT PAGE[.]" (Sic.)

Assignment of Error Number Seven

"VIOLATION OF ONES RIGHTS IS A LEGAL INJURY DENIAL OF TRIAL WHEN THE DEFENDANTS OWN ACTION DISPUTES THEIR FILING CLEARLY SHOWS PLAINTIFFS WERE ENTITLED TO SAID RELIEF REQUESTED STATE OF OHIO BY WAY OF PROSECUTOR GOT INVOLVED BY WAY OF MISCONDUCT AND NEGLIGENCE TO HER DUTIES HAS DRAGED THE STATE INTO THIS CASE WHICH WAS PARTIALLY CONCLUDED PLAINTIFFS ARE ENTITLED TO A DECISION AGAINST THE STATE FOR THEIR INVOLVEMENT, AS WELL AS THE CITY OFFICIALS ALREADY LISTED AS DEFENDANTS[.]" (Sic.)

Assignment of Error Number Eight

"PLAINTIFFS DISPUTE HAVING TO PAY THESE PEOPLE FOR THEIR ACTIONS IN STEALING NAOMI LISTED HERSELF AS THE ONLY NEXT OF KIN AT THE GRAVE YARD WHY? HER ATTORNEY WENT INTO THE HOUSE AND TOOK THINGS OF VALUE MONEY ECT AND PUT IT IN HIS SAFE AND REFUSED TO TELL ANYONE WHAT HE TOOK, THE COURT DID NOTHING AS THIS MAN STOOD THERE IN PROBATE COURT AND SAID THIS, WE DID NOT HIRE THESE PEOPLE THE OTHER DEFENDANTS DID, WE ARE NOT RESPONSIBLE FOR YOUR LEGAL BILLS TRYING TO CAUSE US HARM AND FIGHTING US IN COURT , PROBATE DUTIES WAS TO SEEK OUT INFORMATION AND LET US KNOW WHAT YOU FOUND INSTEAD WE REFUSE TO TELL WHAT WE KNOW AND WE HIDE RECORDS AND VALUABLES, IN THE FIRST LIST OF ASSETS THERE WAS NO MENTION OF GAS WELLS/ OIL WELLS. WE STILL DON,T KNOW ALL THE INFORMATION, THIS CASE LASTED 3 YEARS, THE ESTATE COLLECTED ON THESE WELLS EVERY YEAR[.]" (Sic.)

Assignment of Error Number Nine

"STRESS FOR THE PAST 3 YEARS WAS NOTHING COMPARED TO WATCHING OUR MOTHER GET CHEATED OUR OF HER RIGHTS WHEN

> HER PARENTS DIED, CHEATED BY NOT ONLY HER FAMILY BUT BY THE COURT, THE SAME ADMINISTRATIVE BODY WHO,S DUTY IS TO PROTECT THE WEAK AND THE POOR NOT ROB PEOPLE OUR MOTHER LAYED IN BED, A NURSING HOME, WHILE THIS GROUP OF DEFENDANTS CHEATED HER OUT OF HER INHERITENCE THE JUDGE NAMED IN THIS SAT IN ON THIS CASE KNOWING THE ALLIGATIONS MADE AGAINST HIM REFUSED TO RECLUSE HIMSELF INSTEAD HE INVESTIGATED HIMSELF AND FOUND HE DID NOTHING WRONG WE HAVE AN ATTORNEY WHO ADMITTED TAKING STUFF IN A HOUSE AND PLACED IT IN HIS SAFE, THIS IS THE SAME MAN WHO WANTS US TO PAY HIM FOR STEALING FROM THE ESTATE HIS CRIMINAL FEE,S WE KNEW NOTHING OF A WELL UNTILL STEWARD SMITH DIED THEN ALL OF A SUDDEN UP SPRINGS WELLS THAT THEY COLLECTED FOR 3 YEAR ON BUT JUST FORGOT TO MENTION IT AS THEIR DUTIES AS FEDUCIARIES WE SUBMIT FRADULENT RECORDS WITHHOLD INFORMATION AND HAVE THE NERVE TO WANT TO GET PAID WE HAVE A PROSECUTOR WHO OBJECTED TO ME DOING HER JOB IN THE FILING OF A COMPLAINT DEALING WITH SAID HOUSE AND ITEMS T TAKEN AND INSTEAD WENT ON TO THE ATTACK OF A CLAIM ALREADY ESTABLISHED IN PROBATE COURT WITH ALL THIS INACCOUNT THE COURT ERRORED AND RULED AGAINST US SEE STRESS ARGUMENT PAGE[.]" (Sic.)

Assignment of Error Number Ten

> "IRREPRIABLE HARM HOW COULD WE FIGURE WHAT IT WORHT WORTH THE ESTATE THE RECORDS HAVE NEVER COME FORWARD THE TRUTH THE CLOSE AS WE COULD GET IS 6 MILLION FOR THE ESTATE ALONE[.]" (Sic.)

{¶5} The Copelands appear to argue in their brief that the trial court should have entered default judgment in their favor because Defendants failed to file proper responsive pleadings. The Copelands also seem to argue that the trial court should have held a hearing on the issue of default and that they are entitled to a writ of mandamus to compel the trial court to hold a default hearing and/or issue a default judgment in their favor. We disagree.

{¶6} Initially, we note that the Copelands appeared pro se before the trial court and also appear pro se on appeal. With respect to pro se litigants, this Court has held as follows:

> "[P]ro se litigants should be granted reasonable leeway such that their motions and pleadings should be liberally construed so as to decide the issues on the

> merits, as opposed to technicalities. However, a pro se litigant is presumed to have knowledge of the law and correct legal procedures so that he remains subject to the same rules and procedures to which represented litigants are bound. He is not given greater rights than represented parties, and must bear the consequences of his mistakes. This Court, therefore, must hold [pro se appellants] to the same standard as any represented party." (Internal citations omitted.) *Sherlock v. Myers*, 9th Dist. No. 22071, 2004-Ohio-5178, at ¶3.

The Copelands' arguments on appeal are difficult to discern. Thus, we limit our review to the trial court's action in dismissing their complaint and what we perceive to be their two main concerns: that they were not granted a default hearing and/or default and a writ of mandamus.

{¶7} The Copelands appear to argue that they were entitled to default judgment because Defendants never filed an answer in response to their complaint. Yet, "a default judgment is proper when, and only when, a defendant has not contested the plaintiff's allegations by pleading or 'otherwise defending' such that no issues are present in the case." (Alteration omitted.) *Eminent Vision Const. Co. v. Gannet* (Dec. 9, 1998), 9th Dist. No. 97CA006979, at *4, quoting *Reese v. Proppe* (1981), 3 Ohio App.3d 103, 105. When a defendant files a Civ.R. 12(B)(6) motion to dismiss in response to a complaint, he "otherwise defend[s]" and makes an appearance in the action. See Civ.R. 12(A)(2) (providing for the service of a motion "permitted under this rule" as a response to a complaint). Here, Defendants filed Civ.R. 12(B)(6) motions to dismiss in lieu of filing their answer(s). Accordingly, the Copelands were not entitled to default judgment, or a hearing for default, on the basis that Defendants never filed an answer. Similarly, the Copelands were not entitled to a writ of mandamus because the record reflects that they never filed for a writ of mandamus. The only remaining issue is whether the trial court erred by granting Defendants' respective motions to dismiss.

{¶8} This court reviews de novo a trial court's decision to grant a motion to dismiss. *Niepsuj v. Summa Health System*, 9th Dist. Nos. 21557 & 21559, 2004-Ohio-115, at ¶5. A trial

court may grant a motion to dismiss for failure to state a claim upon which relief can be granted pursuant to Civ.R. 12(B)(6) only if it appears beyond a doubt that the petitioner can prove no set of facts that would entitle him to relief. *Garvey v. Clevidence*, 9th Dist. No. 22143, 2004-Ohio-6536, at ¶11. In considering a Civ.R. 12(B)(6) motion to dismiss, the trial court must review only the complaint, accepting all factual allegations as true and making every reasonable inference in favor of the nonmoving party. Id.

{¶9} As previously noted, the Copelands' complaint is not organized into counts and does not specify which of the alleged claims listed on the cover page apply to which Defendants. A closer reading of the Copelands' complaint reveals that it is comprised of an unconnected series of rants towards the probate court, the judge who presides over their aunt's estate's ongoing probate case,[1] the executors chosen to handle their aunt's estate, and the attorneys representing the executors. The complaint accuses Defendants of somehow cheating the Copelands and their deceased mother out of their inheritance and includes statements such as those that follow:

> "Communication with the court this is the same court who locked the Copeland out of the Court room and behind closed doors cheated the Copeland's out of inheritance That they were entitled to especially when their own sister our mother laid In a bed in a nursing home and these criminal cheated her with their little corporation The f**k you corporation they used to cheat family members with the aid of this probate Court[.]"
>
> "***

[1] On appeal, the Copelands have continued the trend of disparaging the judge presiding over the suit in which they are involved. Throughout their appellate filings, the Copelands repeatedly refer to the judge who dismissed their complaint in this matter as having a "prejudicial attitude" and making "smart ass comments" and "stupid comment[s]" about their being pro-se litigants. The record is devoid of any inappropriate comments or behavior on the part of the trial court. It appears the trial court only noted the Copelands' pro se status to express its difficulty in identifying the arguments set forth in their complaint and to explain why it could not afford the Copelands greater rights than represented parties.

> "The court failed in their obligation to assign a person to be executor or to make this a constructive will witch would protect the assets of the estate for the beneficiaries But again the court failed in their obligation to protect the public from corruption this court would rather participate in said corruption[.]
>
> "***
>
> "[I]ts as if the whole estate just disappeared into someone,s private account and we the beneficiaries the true owners of these assets have been denied baced upon the corupt [Judge] and the obvious corrupt attorneys involved in this case[.] [F]rom the judge on down their actions were and still are criminal acts and all should be dealt with properly by a jury trial instead of this ignoring attitude and hide the truth mentality of the court system I ask for a jury trial so one could have some sence of justice instead of this sneak crap that is going on[.]
>
> "***
>
> "ATTORNEY STEIN in the hearing exclaimed that Charles Copeland is like [the deceased] when it come to legal issues exc SO you already have a personal dislike of [her] because she didn,'t buy your bulls**t either and so now we have a prejudicial judge because of the actions of [the deceased] and the coverup you have to do behind the prior estates you handled se I didn,t know of the hatred between you and [the deceased] ***, so i,m here to say I,m not like [the deceased] SHE WAS REALLY NICE COMPARED TO ME[.]" (Sic.)

The remainder of the Copelands' complaint is similarly disjointed, laced with profanities,[2] and interspersed with various probate filings and correspondence that apparently relate to the ongoing probate case.

{¶10} Civ.R. 8(A) provides, in relevant part, that "[a] pleading that sets forth a claim for relief *** shall contain *** a short and plain statement of the claim showing that the party is entitled to relief[.]" "Even under 'notice' pleading, a complaint must be more than 'bare

[2] Civ.R. 11 provides that if a party inserts "scandalous or indecent matter" into a pleading, motion, or other document, a court may sua sponte subject the party "to appropriate action, including an award to the opposing party of expenses and reasonable attorney fees incurred in bringing any motion under this rule." Although the trial court did not impose Civ.R. 11 sanctions in this proceeding, the Copelands would be well cautioned to abstain from the inclusion of profanity or similar "scandalous or indecent matter" in any court filings in the future.

assertions of legal conclusions.' At the very least, facts as to when and where the allegations took place are essential to provide the fair notice anticipated by the Civil Rules." (Internal citation omitted.) *Bratton v. Adkins* (Aug. 6, 1997), 9th Dist. No. 18136, at *1. The Copelands' complaint is insufficient to satisfy even the notice pleading requirements. The complaint randomly refers to an ongoing probate case and contains no reference to dates or descriptions as to the identity of the individuals it discusses. Rather, it broadly accuses people of cheating the Copelands out of their alleged inheritance. In response to Defendants' respective motions to dismiss, the Copelands filed a meritless motion for default judgment and a lengthy "response" to which they attached more random probate filings and newspaper articles about judges and attorneys being convicted of bribery and theft. Nothing in the Copelands' "response" addresses the defects in their complaint.

{¶11} Based on our review of the Copelands' complaint, Defendants' respective motions to dismiss, and the Copelands' response, we must conclude that the trial court did not err in granting Defendants' motions and dismissing the complaint. Because we discern no error on the part of the trial court, the Copelands' assignments of error are overruled.

III

{¶12} The Copelands' ten assignments of error are overruled. The judgment of the Summit County Court of Common Pleas is affirmed.

Judgment affirmed.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Summit, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellants.

BETH WHITMORE
FOR THE COURT

MOORE, P. J.
DICKINSON, J.
CONCUR

APPEARANCES:

CHARLES D. COPELAND, and DAVID A. COPELAND, pro se, Appellants.

SHERRI BEVAN WALSH, Prosecuting Attorney, and CORINA STAEHLE GAFFNEY, Assistant Prosecuting Attorney, for Appellee.

MICHAEL E. CICCOLINI, Attorney at Law, for Appellees.

ERNEST STEIN, Attorney at Law, for Appellees.