

IN THE COURT OF APPEALS FOR CLARK COUNTY, OHIO

TERRY L. THOMPSON	:	
Plaintiff-Appellant	:	C.A. CASE NO. 2009 CA 86
v.	:	T.C. NO. 09 CV 0725
STEALTH INVESTIGATIONS, INC.	:	(Civil appeal from Common Pleas Court)
Defendant-Appellee	:	

OPINION

Rendered on the 18th day of June, 2010.

TERRY L. THOMPSON, 1026 Mavor Street, Springfield, Ohio 45505
Plaintiff-Appellant

DAVID W. DOERNER, Atty. Reg. No. 0003962, 405 Madison Avenue, Suite 700, Toledo, Ohio 43604
Attorney for Defendant-Appellee

DONOVAN, P.J.

{¶ 1} This matter is before the Court on the pro se Notice of Appeal of Terry L. Thompson, filed September 17, 2009. On June 2, 2009, Thompson filed a Complaint against Stealth Investigations, Inc. (“Stealth”), and he appeals from the trial court’s dismissal of his complaint pursuant to Civ.R. 12(B)(6), for failure to state a claim upon which relief

can be granted. Thompson failed to respond to Stealth's motion to dismiss. After a thorough review of the record, we affirm the judgment of the trial court.

{¶ 2} We initially note, Thompson's brief does not set forth assigned errors or otherwise comply with App.R. 16.

{¶ 3} Civ.R.8 provides for notice pleading and requires only "(1) a short and plain statement of the claim showing that the party is entitled to relief, and (2) a demand for judgment for the relief to which the party claims to be entitled." "Thus, to survive a motion to dismiss for failure to state a claim upon which relief can be granted, a pleader is ordinarily not required to allege in the complaint every fact he or she intends to prove; such facts may not be available until after discovery." *State ex rel. Hanson v. Guernsey County Board of Commissioners* (1992), 65 Ohio St.3d 545, 549.

{¶ 4} "The standard of review on a Civ.R. 12(B)(6) motion to dismiss, which raises questions of law, is de novo. (Citation omitted)." *Stanfield v. Amvets Post No. 88*, Miami App. No. 06CA35, 2007-Ohio-1896, ¶ 9. "The function of a Civ.R. 12(B)(6) motion to dismiss for failure to state a claim on which relief can be granted is to test the legal sufficiency of a statement of a claim for relief. (Citation omitted). In determining whether or not to grant a motion to dismiss pursuant to Civ.R. 12(B)(6), the court may not rely on evidence outside the complaint. (Citation omitted). * * *

{¶ 5} "In order for a court to dismiss a complaint for failure to state a claim upon which relief can be granted (Civ.R. 12(B)(6), it must appear beyond doubt from the complaint that the plaintiff can prove no set of facts entitling him to recovery.' (Citation omitted). 'A court must construe all material allegations in the complaint and all inferences

that may be reasonably drawn therefrom in favor of the nonmoving party.’ (Citation omitted).

{¶ 6} “When determining whether an action should be dismissed pursuant to Civ.R. 12(B)(6) for failure to state a claim on which relief can be granted, ‘a trial court must examine the complaint to determine if all the allegations provide for relief on any possible theory.’” (Citation omitted). *Stutes v. Harris*, Greene App. No. 21753, 2007-Ohio-5163, ¶ 10-13.

{¶ 7} Thompson’s complaint alleges that Stealth conducted video surveillance of him on January 20, 27, 28; February 3, 5, 10; March 10, 11; April 11,12,14,15, 2006, and that the tapes were edited, and certain portions of the tapes were omitted before they were “submitted to attorney’s[,], doctor’s[,], workers compensation[,], and the courts.” Thompson also asserts that Stealth videotaped his neighbor and also induced Thompson to play his guitar in a band under false pretenses. A list of claims that appear to form the basis of Thompson’s complaint include defamation, libel, slander, wrongful termination, duress, negligence and damages for pain and suffering. Thompson also pled the defense of entrapment .

{¶ 8} ““Defamation is a false publication causing injury to a person’s reputation, or exposing the person to public hatred, contempt, ridicule, shame or disgrace or affecting him adversely in his trade or business.’ (Citation omitted). Defamation can be in the form of either slander or libel. Slander generally refers to spoken defamatory words while libel refers to written or printed defamatory words. (Citation omitted). The essential elements of a defamation action, whether slander or libel, are that the defendant made a false

statement of fact, that the false statement was defamatory, that the false defamatory statement was published, that the plaintiff was injured and that the defendant acted with the required degree of fault.” *Hiddens v. Liebold*, Montgomery App. No. 06-CA-41, 2007-Ohio-6688, ¶ 43.

{¶ 9} Thompson has not alleged that Stealth made false statements against him, only that Stealth videotaped him and his neighbor and edited the tapes. Thompson’s complaint fails to set forth facts that comply with the requirements for defamation. Further, although it is not clear when Thompson’s alleged cause of action for defamation accrued, the statute of limitations for such a claim is one year, and the surveillance occurred in 2006, over three years before Thompson filed his complaint. R.C. 2305.11(A).

{¶ 10} Thompson and Stealth do not have an employer-employee relationship, and wrongful termination is not a claim upon which the trial court could grant relief between these parties.

{¶ 11} The elements of duress are: “(1) that one side involuntarily accepted the terms of another; (2) that circumstances permitted no other alternative; and (3) that said circumstances were the result of coercive acts of the opposite party. * * * .” *Gregory v. Gregory*, Miami App. No. 2006 CA 15, 2007-Ohio-1033, ¶ 12. Thompson has failed to assert facts that comply with the above requirements in order to assert a valid claim for duress.

{¶ 12} To state a cause of action for negligence, Thompson “had to set forth four elements: 1) duty; 2) breach of that duty; 3) proximate cause; and 4) injury.” *Holbrook v. Brandenburg*, Clark App. No. 2007 CA 106, ¶ 15. Again, Thompson has failed to assert

the necessary facts to comply with the above requirements to state a claim for negligence.

{¶ 13} “Entrapment is an affirmative defense, which is established where ‘the criminal design originates with the officials of the government, and they implant in the mind of an innocent person the disposition to commit the alleged offense and induce its commission in order to prosecute.’ ” *State v. Bowshier*, Clark App. No. 2008 CA 101, 2009-Ohio-6387, ¶ 25 (citation omitted). Thompson was not charged with a criminal offense and this defense has no application to him.

{¶ 14} Finally, Thompson is not entitled to damages for pain and suffering, having stated no cause of action from which such damages could flow. The judgment of the trial court is affirmed.

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BROGAN, J. and GRADY, J., concur.

Copies mailed to:

Terry L. Thompson
David W. Doerner
Hon. Douglas M. Rastatter