

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio, :
 :
 Plaintiff-Appellee, :
 :
 v. : No. 12AP-822
 : (C.P.C. No. 12CVH-05-5975)
 Terrance Lynn Botts, :
 : (ACCELERATED CALENDAR)
 Defendant-Appellant. :

D E C I S I O N

Rendered on September 19, 2013

Michael DeWine, Attorney General, and *Stacy Hannan*, for appellee.

Terrance Lynn Botts, pro se.

APPEAL from the Franklin County Court of Common Pleas

CONNOR, J.

{¶ 1} Plaintiff-appellant, Terrance Lynn Botts ("appellant"), appeals from a judgment of the Franklin County Court of Common Pleas granting the Civ.R. 12(B)(6) motion of defendant-appellee, the State of Ohio ("the State"). Because appellant's filing in the trial court failed to state a claim upon which relief could be granted, we affirm.

I. FACTS AND PROCEDURAL HISTORY

{¶ 2} On May 9, 2012, appellant filed a document in the trial court entitled "Notice to the Court." The document stated that it served as "notification of the forthcoming filing strictly as a professional courtesy and as such this Private Party has maintained his obligations as to FULL DISCLOSURE of all matters pertaining to [his] formal request to the CLERK OF MY 'SPECIAL VISITATION' into the Public Venue for

these matters." (Notice to the Court, 1.) Appellant appears to have served the notice to the court on the Ohio Department of Rehabilitation and Correction's ("ODRC") director, regional administrator, parole service coordinator supervisor, and parole service coordinator.

{¶ 3} Attached to the notice to the court was a document entitled "NOTICE OF PETITION TO DISMISS FOR LACK OF PERSONAL JURISDICTION AND SUBJECT MATTER JURISDICTION OF THE STATE OF OHIO OVER A FOREIGN STATE AND A STATE CITIZEN DOMICILED IN A FOREIGN STATE AND THE STATE OF OHIO TO HAVE JURISDICTION OVER A STATE CITIZEN OF A FOREIGN STATE WITH NO NEXUS WITH THE STATE OF OHIO." (Notice to Dismiss, 1.) The notice to dismiss stated its purpose was to "Petition the Court to dismiss the lack [of] standing of the STATE OF OHIO, a corporation of the State of Ohio, to bring suit against a State Citizen outside the jurisdiction of the STATE OF OHIO in the above matter." (Notice to Dismiss, 2.)

{¶ 4} In the notice to dismiss, appellant discussed personal and subject matter jurisdiction and concluded that, as a "man domiciled in Franklin County," he was "not subject to the jurisdiction of the STATE OF OHIO." (Notice to Dismiss, 4.) Appellant explained that all of the "courts and judges of the courts for the STATE OF OHIO are operating under a Foreign Sovereign Immunity Agreement, and therefore are FOREIGN AGENTS operating outside the jurisdiction of the United States." (Notice to Dismiss, 5.) Appellant asserted that, since Ohio state courts "are not Article III Constitutional courts, and they are not Article I territorial courts," they are "outlaw courts—courts which do not exist by laws of the United States promulgated by Congress." (Notice to Dismiss, 9.) The notice to dismiss concluded by stating that the "folks appointed under Article IV § 1 of the Constitution to preside in lawful courts of the state of Ohio, but without constitutional or statutory authority elected to set up a system of private court systems which operate under the territorial illusion." (Notice to Dismiss, 11.)

{¶ 5} On May 29, 2012, the State filed a Civ.R. 12(B)(6) motion to dismiss the notice to dismiss, which the State construed as a complaint. The State noted that the notice to dismiss asked the court to dismiss the action for lack of jurisdiction. The State explained its assumption that the notice to dismiss was related to appellant's status as a

convicted sex offender on post-release control, although such information was not contained in the notice to dismiss. The State asked the court to dismiss the notice to dismiss, as it failed to state any claim for which relief could be granted.

{¶ 6} On June 11, 2012, appellant filed a response to the State's motion to dismiss, explaining that the notice to dismiss was filed to challenge ODRC's jurisdiction. Appellant asserted that the court could not "further proceed in matters involving Terrence-Lynn: Botts© as the question of jurisdiction has NOT been settled," and claimed that "[f]or the above entitled court to take another step in these matters shall be construed as acts of treason against Terrence-Lynn: Botts©." (Response to Motion to Dismiss, 6.) Appellant asked the court to "render a Judgment by Default for failure to prove jurisdiction over the State Citizen of a Foreign State with no nexus with the State of Ohio." (Response to Motion to Dismiss, 7.)

{¶ 7} On August 31, 2012, the trial court issued a decision and entry granting the State's motion to dismiss. The court noted that appellant filed the notice to dismiss "apparently to notify this Court that [appellant] does not believe this Court or any other existing Ohio Court has jurisdiction over him." (Decision and Entry, 1.) The court held that appellant had not filed a complaint pursuant to Civ.R. 3(A), and thus had not commenced a civil action. The court found that the notice to dismiss failed to ask for relief of any kind, and did not seek a declaration regarding the accuracy of the legal theories asserted therein. The court concluded that "[t]o the extent that Mr. Botts may be believed to have commenced an action in this Court, that action is dismissed for failure to state a claim." (Decision and Entry, 2.) Appellant timely filed his notice of appeal.

II. MOTION TO DISMISS PROPERLY GRANTED

{¶ 8} Appellant has filed a pro se appellate brief which does not present any assignments of error for this court to review. App.R. 16 requires that an appellant shall include in its brief "[a] statement of the assignments of error presented for review, with reference to the place in the record where each error is reflected" and "[a] statement of the issues presented for review, with references to the assignments of error to which each issue relates." App.R. 16(A)(3) and (4).

{¶ 9} Pursuant to App.R. 12(A)(1)(b), appellate courts must "[d]etermine [an] appeal on its merits on the assignments of error set forth in the briefs under App. R. 16."

"Thus, this court rules on assignments of error only, and will not address mere arguments." *Ellinger v. Ho*, 10th Dist. No. 08AP-1079, 2010-Ohio-553, ¶ 70. Because appellant has failed to set forth any assignments of error for this court's review, it is not necessary for this court to address appellant's arguments in order to affirm the trial court's judgment. Nevertheless, in the interest of justice, we will address the assertions appellant makes in his brief, to the extent possible.

{¶ 10} Appellant asserts that the purpose of his notice to dismiss was "to DEMAND the STATE OF OHIO and its AGENCIES/AGENTS to **PROVE JURISDICTION** over Terrence-Lynn: Botts©, Sui Juris." (Appellant's brief, 4.) Appellant asserts that the court and attorney general are attempting to "commit fraud upon the court by ignoring the jurisdictional challenge." (Appellant's brief, 7.) Appellant finally asserts that he possesses "an implied right to pursue his preemptive claim for the damages of wrongful arrest and incarceration, as well as, the unlawful forcing of contractual obligation upon this Private Citizen." (Appellant's brief, 8.)

{¶ 11} When reviewing a judgment on a Civ.R. 12(B)(6) motion to dismiss for failure to state a claim upon which relief can be granted, an appellate court's standard of review is de novo. *Perrysburg Twp. v. Rossford*, 103 Ohio St.3d 79, 2004-Ohio-4362, ¶ 5. A Civ.R. 12(B)(6) motion to dismiss for failure to state a claim upon which relief can be granted is procedural and tests the sufficiency of the complaint. *State ex rel. Hanson v. Guernsey Cty. Bd. of Commrs.*, 65 Ohio St.3d 545, 548 (1992), citing *Assn. for Defense of Washington Loc. School Dist. v. Kiger*, 42 Ohio St.3d 116, 117 (1989). A trial court must presume all factual allegations contained in the complaint to be true and must make all reasonable inferences in favor of the non-moving party. *Garofalo v. Chicago Title Ins. Co.*, 104 Ohio App.3d 95, 104 (8th Dist.1995). "[A]s long as there is a set of facts, consistent with the plaintiff's complaint, which would allow the plaintiff to recover, the court may not grant a defendant's motion to dismiss." *York v. Ohio State Hwy. Patrol*, 60 Ohio St.3d 143, 145 (1991).

{¶ 12} Whether a Civ.R. 12(B)(6) motion should be granted must be made with reference to the general rules for pleadings in the civil rules. *Hutcheson v. Ohio Auto. Dealers Assn.*, 8th Dist. No. 97394, 2012-Ohio-3685, ¶ 18. Civ.R. 3(A) provides that "[a] civil action is commenced by filing a complaint with the court." Civ.R. 8(A) provides

that a complaint asserting a claim for relief need only "contain (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."

{¶ 13} Reviewing the notice to dismiss de novo, we conclude the trial court did not err in granting the State's Civ.R. 12(B)(6) motion to dismiss. The notice to dismiss sought simply to inform the court of appellant's perceived jurisdictional defect. The notice to dismiss informed the court that it is a fraudulent body, as it was not created under the United States Constitution, and that neither the court nor any state agency could exercise jurisdiction over appellant, a private citizen who is not subject to the laws of Ohio. Accordingly, the notice to dismiss failed to set forth a legal theory that might entitle appellant to relief under law. Even if we construe appellant's factual allegations as true, the notice to dismiss does not present any facts which would entitle appellant to recover under any cognizable cause of action. The notice to dismiss thus failed to comply with Civ.R. 8(A), as it failed to include information which would entitle appellant to relief, and failed to contain a demand for judgment.

{¶ 14} From appellant's appellate brief we garner that, potentially, appellant filed the notice to dismiss seeking a declaratory judgment that ODRC could not exercise authority over appellant. However, the notice to dismiss did not request such a declaration. Appellant's brief also indicates that appellant has the right to pursue a claim for false imprisonment. The notice to dismiss, however, did not assert a claim for damages resulting from false imprisonment. As the notice to dismiss did not ask the court to do anything besides take notice of an alleged jurisdiction defect, it did not state a claim for which relief could be granted, and the trial court properly granted the State's Civ.R. 12(B)(6) motion to dismiss.

III. DISPOSITION

{¶ 15} Based on the foregoing, the judgment of the Franklin County Court of Common Pleas is affirmed.

Judgment affirmed.

BROWN and DORRIAN, JJ., concur.
