

FILED

09/20/2017

Clerk of the
Appellate Courts

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs July 3, 2017

MARDOCHE OLIVIER v. CITY OF CLARKSVILLE, ET AL.

**Appeal from the Circuit Court for Montgomery County
No. 63CC1-2016-CV-2035 Ross H. Hicks, Judge**

No. M2017-00054-COA-R3-CV

The trial court dismissed this action as a matter of law for failure to state a claim upon which relief can be granted pursuant to Rule 12.02(6) of the Tennessee Rules of Civil Procedure. We affirm.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court
Affirmed; Case Remanded**

JOHN W. MCCLARTY, J., delivered the opinion of the Court, in which FRANK G. CLEMENT, JR., P.J., M.S., and BRANDON O. GIBSON, J., joined.

Mardoche Olivier, Clarksville, Tennessee, Pro Se.

D. Mark Nolan and Kathryn W. Olita, Clarksville, Tennessee, for the appellee, City of Clarksville.

Gregory D. Smith, Clarksville, Tennessee, for the appellee, Maxx'd Out Towing.

MEMORANDUM OPINION¹

This case arises from the towing of Mardoche Olivier's ("Plaintiff") 2004 BMW parked in front of his property in Clarksville, Tennessee. Plaintiff filed suit against the City of Clarksville ("the City"); the City's officers and employees; and the private entity

¹ Rule 10 of the Rules of the Court of Appeals of Tennessee provides as follows:

This Court, with the concurrence of all judges participating in the case, may affirm, reverse or modify the actions of the trial court by memorandum opinion when a formal opinion would have no precedential value. When a case is decided by memorandum opinion it shall be designated "MEMORANDUM OPINION," shall not be published, and shall not be cited or relied on for any reason in any unrelated case.

that towed the vehicle, Maxx'd Out Towing ("the towing company"). Plaintiff asserted a myriad of claims in support of his complaint, including a claim for conversion. The complaint spans 22 pages and is, at times, incomprehensible in nature. The court dismissed, sua sponte, all claims relating to the City's officers and employees and the towing company for failure to state a claim upon which relief can be granted pursuant to Rule 12.02 (6) of the Tennessee Rules of Civil Procedure.² However, the court allowed the action to proceed against the City, finding that the complaint did contain a potentially viable cause of action for conversion.

The City responded to the complaint with a motion to dismiss, asserting that it was also entitled to dismissal pursuant to Rule 12.02(6). The City claimed that it was entitled to immunity and alternatively asserted that Plaintiff failed to allege a viable cause of action for conversion. The City explained that Plaintiff failed to establish (1) that Plaintiff owned the vehicle at issue; (2) that the vehicle was appropriated for the City's benefit; or (3) that the vehicle was not made reasonably available for return through the payment of a fee or other routine requirements.

Thereafter, Plaintiff filed a motion to amend his complaint. The City objected. The court denied the motion, finding that the motion was futile because it did not bring any additional claims or causes of action against the City.

Plaintiff never filed a written response to the motion to dismiss. Instead, he orally responded at the hearing on the motion. No transcript or statement of the evidence was filed. Following the hearing, the court dismissed the action, finding as follows:

1. First, [Plaintiff] failed to comply with [the] Tennessee Rules of Civil Procedure 8.01, which provides [that the complaint] shall contain a short and plain statement of the claim showing [Plaintiff] is entitled to relief.
2. Second, [Plaintiff] failed to allege essential elements of his conversion claim. Specifically, [Plaintiff] failed to allege facts showing [the City] converted [Plaintiff's] property to its own use and benefit.

Plaintiff filed a timely appeal.³

² When "no claim for relief is stated by a party, a court may properly dismiss the action, either on motion or sua sponte." *Donaldson v. Donaldson*, 557 S.W.2d 60, 62 (Tenn. 1977) (citations omitted).

³ The towing company responded because Plaintiff's filings included a reference to it. The towing company asks this court to affirm the dismissal of the complaint by memorandum opinion.

The trial court dismissed the complaint pursuant to Rule 12.02(6). A Rule 12.02(6) motion tests only the legal sufficiency of the complaint, not the strength of the proof. The resolution of the motion is determined by an examination of the pleadings alone. *Cook ex rel. Uithoven v. Spinnaker's of Rivergate, Inc.*, 878 S.W.2d 934, 938 (Tenn. 1994). In considering a motion to dismiss, courts must construe the assertions in the complaint liberally; the motion cannot be sustained unless it appears that there are no facts warranting relief. *Id.* The grant of a motion to dismiss is subject to a de novo review with no presumption of correctness because we are reviewing the trial court's legal conclusion. *Blackburn v. Blackburn*, 270 S.W.3d 42, 47 (Tenn. 2008); *Union Carbide Corp. v. Huddleston*, 854 S.W.2d 87, 91 (Tenn. 1993).

Plaintiff filed a brief raising numerous issues (in a rambling, incoherent fashion) and drafted his argument in a similar fashion. No transcript or statement of evidence from the hearing was filed, and there are no citations to the record or any *relevant* legal authority in the argument section of his brief. This court is “under no duty to blindly search the record to find . . . evidence,” nor can Plaintiff shift this burden to us. *See Pearman v. Pearman*, 781 S.W.2d 585, 588 (Tenn. Ct. App. 1989). Failure to comply with the Rules of Appellate Procedure and the Rules of the Tennessee Court of Appeals constitutes a waiver of the issues raised. *See Wright v. Wright*, No. E2009-01932-COA-R3-CV, 2011 WL 2569758, at *2-3 (Tenn. Ct. App. June 30, 2011).

Moreover, the record before us simply does not establish a basis to grant Plaintiff any relief when a review of the complaint reveals that he failed to allege sufficient facts in support of his claims. Conversion is “the appropriation of the thing to the party's own use and benefit, by the exercise of dominion over it, in defiance of plaintiff's right.” *See Paehler v. Union Planters Nat'l Bank*, 971 S.W.2d 393, 398 (Tenn. Ct. App. 1997) (quotation omitted). Here, Plaintiff submitted an incoherent complaint, alleging various wrongs committed by numerous defendants relating to the towing of his vehicle. However, Plaintiff acknowledged that the towing was initiated based upon an alleged violation of the City's municipal code. While Plaintiff claimed that the towing was “illegal”, he failed to allege sufficient facts to establish that the appropriation of the vehicle was performed for the City's own use and benefit and not performed in light of Plaintiff's alleged violation of certain municipal codes requiring towing of the vehicle.

With the above considerations in mind, we affirm the dismissal of Plaintiff's complaint. The case is remanded to the trial court for such further proceedings as may be necessary. Costs of the appeal are taxed to the appellant, Mardoche Olivier.

JOHN W. McCLARTY, JUDGE