

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

CHARLES D. COPELAND	:	JUDGES:
	:	
	:	Hon. John W. Wise, P.J.
Plaintiff-Appellant	:	Hon. Julie A. Edwards, J.
	:	Hon. Patricia A. Delaney, J.
-vs-	:	
	:	Case No. 2009CA00047
DAWN MYER, et al.	:	
	:	
	:	
Defendants-Appellees	:	<u>OPINION</u>

CHARACTER OF PROCEEDING: Appeal from the Stark County Court of
Common Pleas Case No. 2008CV05172

JUDGMENT: AFFIRMED

DATE OF JUDGMENT ENTRY: June 22, 2009

APPEARANCES:

For Plaintiff-Appellant:

CHARLES D. COPELAND, PRO SE
1233 Oxford Ave.
Canton, OH 44703

For:

Stark Metropolitan Housing Authority
JOHN B. WIRTZ
220 Market Ave. S.
Suite 600
Canton, OH 44702

Delaney, J.

{¶1} Plaintiff-Appellant, Charles D. Copeland, appeals the February 17, 2009 judgment of the Stark County Court of Common Pleas to grant the Motion to Dismiss of Defendant-Appellee, Stark Metropolitan Housing Authority. For the reasons that follow, we affirm.

STATEMENT OF THE FACTS AND THE CASE

{¶2} On December 4, 2008, Appellant filed a complaint with the Stark County Court of Common Pleas, naming Dawn Myer and the Stark Metropolitan Housing Authority as defendants. As best as can be discerned from Appellant's pro se complaint, Appellant alleged against the defendants a violation of a rental agreement, coercion and intentional interference with contract.

{¶3} Appellant alleges that he and Ms. Myer worked together to repair his rental property so that it could be approved as Section 8 housing. Appellant then states that he assisted Ms. Myer with her application for Section 8 housing benefits with the understanding that she would rent his property.

{¶4} It is not clear whether Appellant's rental property was approved as Section 8 housing, but Ms. Myer chose to rent another Section 8 approved premises. These actions precipitated Appellant's complaint.

{¶5} On February 10, 2009, the Stark Metropolitan Housing Authority filed a Motion to Dismiss Appellant's complaint for failure to state a claim. Appellant responded to the motion.

{¶6} The trial court granted the motion to dismiss on February 17, 2009. It is from this decision Appellant now appeals.

{¶7} Appellant raises six Assignments of Error:

{¶8} “I. COURT ERRORED [SIC] IN GRANTING JUDGMENT TO THE DEFENDANTS WHO FAILED TO FILE A REQUIRED RESPONSIVE PLEADING.

{¶9} “II. THE COURT ERRORED [SIC] IN NOT HOLDING A HEARING AS REQUIRED UNDER CIV. RULE 7.

{¶10} “III. DEFENDANT WERE [SIC] IN DEFAULT FOR THEIR FAILURE TO FILE A RESPONSE TO THE COMPLAINT.

{¶11} “IV. MOTION TO DISMISS AND MOTION FOR SUMMARY JUDGMENT IS NOT A RESPONSIVE PLEADING.

{¶12} “V. PLAINTIFF IS REQUIRED TO GIVE NOTICE OF ISSUES UNDER CIV.R. 8 IN WHICH DEFENDANT MUST FILE A RESPONSIVE PLEADING BEFORE ONE COULD GRANT ANY REQUEST TO AVOID DEFAULT IN THE TIME PRESCRIBED [SIC] BY CIV [SIC] RULE [SIC] OF PROCEDURE.

{¶13} “VI. PLAINTIFF REQUESTED A TRIAL BY JURY IN WHICH PLAINTIFF WAS DENIED.”

I, III, IV, V

{¶14} Appellant argues in his first, third, fourth, and fifth Assignments of Error the trial court erred in granting the motion to dismiss of the Stark Metropolitan Housing Authority because the Stark Metropolitan Housing Authority failed to file a responsive pleading to Appellant’s complaint. We disagree.

{¶15} The Stark Metropolitan Housing Authority’s motion to dismiss was brought under Civ.R. 12(B)(6). Civ.R. 12(B) states in pertinent part:

{¶16} “Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: (1) lack of jurisdiction over the subject matter, (2) lack of jurisdiction over the person, (3) improper venue, (4) insufficiency of process, (5) insufficiency of service of process, (6) failure to state a claim upon which relief can be granted, (7) failure to join a party under Rule 19 or Rule 19.1. A motion making any of these defenses shall be made before pleading if a further pleading is permitted. * * *.”

{¶17} Civ.R. 12(B) allows for the filing of a motion to dismiss in lieu of filing a responsive pleading. *Boyle v. Atlas Auto Crushers, Inc.*, Trumbull County App. No. 2008-T-0054, 2009-Ohio-1717, ¶ 27.

{¶18} Accordingly, Appellant’s first, third, fourth, and fifth Assignments of Error are overruled.

II

{¶19} Appellant argues in his second Assignment of Error that the trial court erred in failing to hold a hearing pursuant to Civ.R. 7. The only matter before the trial court was a motion to dismiss pursuant to Civ.R. 12(B)(6). When a party files a motion to dismiss for failure to state a claim, all the factual allegations of the complaint must be taken as true and all reasonable inferences must be drawn in favor of the nonmoving party. *Mitchell v. Lawson Milk Co.* (1988), 40 Ohio St.3d 190, 192, 532 N.E.2d 753. In order for the trial court to grant a motion to dismiss for failure to state a claim under Civ.R. 12(B)(6), it must appear “beyond doubt that the plaintiff can prove no set of facts

in support of his claim which would entitle him to relief.” *O'Brien v. University Community Tenants Union* (1975), 42 Ohio St.2d 242, 245, 327 N.E.2d 753, citing *Conley v. Gibson* (1957), 335 U.S. 41, 45-56.

{¶20} Because the trial court is confined to the allegations in the pleading, a trial court does not abuse its discretion in failing to conduct an evidentiary hearing as factual findings are not required to determine the merits of a Civ.R. 12(B)(6) motion. *Savage v. Godfrey*, (Sept. 28, 2001), Franklin App. No. 01AP-388.

{¶21} Appellant’s second Assignment of Error is overruled.

VI

{¶22} In Appellant’s final Assignment of Error, he argues the trial court denied his right to jury trial. As stated above, the only matter pending before the trial court was a motion to dismiss pursuant to Civ.R. 12(B)(6). The trial court is not required to hold an evidentiary hearing, nor a jury trial, on a motion to dismiss.

{¶23} Appellant’s sixth Assignment of Error is overruled.

{¶24} The judgment of the Stark County Court of Common Pleas is affirmed.

By: Delaney, J.

Wise, P.J. and

Edwards, J. concur.

HON. PATRICIA A. DELANEY

HON. JOHN W. WISE

HON. JULIE A. EDWARDS

PAD:kgb

IN THE COURT OF APPEALS FOR STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

CHARLES D. COPELAND	:	
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Plaintiff-Appellant	:	
	:	
-vs-	:	JUDGMENT ENTRY
	:	
DAWN MYER, et al.	:	
	:	
	:	Case No. 2009CA00047
Defendants-Appellees	:	

For the reasons stated in our accompanying Memorandum-Opinion on file, the judgment of the Stark County Court of Common Pleas is affirmed. Costs assessed to appellant.

HON. PATRICIA A. DELANEY

HON. JOHN W. WISE

HON. JULIE A. EDWARDS