

RENDERED: MARCH 1, 2013; 10:00 A.M.  
NOT TO BE PUBLISHED

# Commonwealth of Kentucky

## Court of Appeals

NO. 2012-CA-000400-MR

WILLIAM A. CARDWELL

APPELLANT

v. APPEAL FROM BELL CIRCUIT COURT  
HONORABLE ROBERT COSTANZO, JUDGE  
ACTION NO. 11-CI-00488

REX MILLER; BRANDON BANKS;  
PAUL HUNLEY; AND BERT ZEHNER

APPELLEES

OPINION  
REVERSING AND  
REMANDING

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BEFORE: CAPERTON, DIXON, AND TAYLOR, JUDGES.

DIXON, JUDGE: William A. Cardwell appeals an order of the Bell Circuit Court denying his motion for leave to file an amended complaint and dismissing his civil action. After careful review, we find that dismissal was premature; accordingly, we reverse and remand this matter for further proceedings in the trial court.

On November 15, 2011, Cardwell filed a *pro se* complaint in Bell Circuit Court against the Bell County Detention Center and Rex Miller. Cardwell alleged that he suffered a medical emergency while incarcerated at the Bell County Detention Center on November 19, 2010. Cardwell's complaint set forth a claim that the detention center's employees negligently failed to provide a safe business premises and that the employees denied Cardwell's request for medical treatment. According to Cardwell, he suffered a seizure and fell out of the top bunk in his cell, causing head, neck, and back injuries. Cardwell further alleged in his complaint that, "Defendant [*sic*] breached duty of due care by failing to recognize the need for preventative medical treatment." Cardwell asserted that he suffered permanent injuries due to the negligence of the jail's employees and that he was entitled to judgment in his favor. The last page of Cardwell's complaint stated, "Also to be Noted as Defendants" and listed Brandon Banks, Paul Hunley, and Bert Zehner, with the address of the Bell County Detention Center. The record reflects that Miller, Banks, Hunley, and Zehner were each served with a civil summons on November 15, 2011.

On December 6, 2011, Bell County Detention Center<sup>1</sup> and the individual defendants ("Appellees") filed a motion to dismiss and answer. In their motion to dismiss, Appellees alleged that Cardwell's complaint failed to set forth a claim upon which relief could be granted and failed to identify conduct by the individual Appellees sufficient to put them on notice. Thereafter, Cardwell

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<sup>1</sup> The detention center was subsequently dismissed as a defendant by agreement of the parties.

retained an attorney and moved the court for leave to file an amended complaint. Cardwell also filed a responsive pleading opposing Appellees' request for dismissal. The trial court held a hearing on January 23, 2012, to address the pending motions. The court rendered an order granting Appellees' motion to dismiss, concluding that Cardwell failed to set forth a statement of his claims sufficient to provide notice to Appellees. The court also found that Cardwell was not entitled to amend his complaint because it was outside the statute of limitations. Cardwell now seeks review of the court's dismissal of his complaint.

In deciding whether to grant a motion to dismiss, the trial court must consider the pleadings in a light most favorable to the plaintiff and view the allegations set forth in the complaint as true. *Gall v. Scroggy*, 725 S.W.2d 867, 869 (Ky. App. 1987). The court should grant a motion to dismiss only when "it appears the pleading party would not be entitled to relief under any set of facts which could be proved in support of his claim." *Pari-Mutuel Clerks' Union v. Kentucky Jockey Club*, 551 S.W.2d 801, 803 (Ky. 1977). Granting a motion to dismiss involves questions of law and does not require the court to make factual determinations. *James v. Wilson*, 95 S.W.3d 875, 884 (Ky. App. 2002). Accordingly, appellate review is *de novo*, without deference to the conclusions reached by the trial court. *Blevins v. Moran*, 12 S.W.3d 698, 700 (Ky. App. 2000).

Pursuant to CR 8.01(1), the complaint must contain, "a short and plain statement of the claim showing that the pleader is entitled to relief and . . . a demand for judgment for the relief to which he deems himself entitled." It is well-

settled that technical precision “is not necessary to state a cause of action[.]” *Cincinnati, Newport & Covington Transp. Co. v. Fischer*, 357 S.W.2d 870, 872 (Ky. 1962). “The true objective of a pleading stating a claim is to give the opposing party fair notice of its essential nature.” *Id.* In *McCollum v. Garrett*, 880 S.W.2d 530, 533 (Ky. 1994), the Kentucky Supreme Court advocated a “commonsense” application of the Rules of Civil Procedure:

CR 8.06 requires that ‘All pleadings shall be so construed as to do substantial justice.’ This rule, sometimes called a ‘liberal construction’ rule, requires that a pleading be judged according to its substance rather than its label or form.

A negligence action requires a movant to “establish a duty on the defendant, a breach of the duty, and a causal connection between the breach of the duty and an injury suffered by the plaintiff.” *Lewis v. B & R Corp.*, 56 S.W.3d 432, 436-37 (Ky. App. 2001). In the case at bar, Cardwell’s *pro se* complaint was not artfully drafted, but it plainly alleged that he was injured when the employees of the jail breached the duty of care owed to him by failing to provide medical treatment. Although Cardwell did not set forth the names of the individual Appellees in the body of the complaint, he identified them at the conclusion of his pleading, and each defendant was served with notice of the lawsuit. Indeed, as the Appellees had actual notice of the pending litigation, they timely filed an answer and a motion to dismiss.

In *Steadman v. Gentry*, 314 S.W.3d 760, 762 (Ky. App. 2010), this Court explained:

Commencement of an action requires the filing of a complaint and the good faith issuance of a summons . . . based on the allegations contained in the complaint. The statute of limitations runs until a summons is actually issued.

*Id.* at 762 (internal citations and quotation marks omitted).

We are mindful that Cardwell initiated this action as a *pro se* litigant. Cardwell filed his complaint and summonses were issued in good faith, which tolled the statute of limitations. *Id.* Pursuant to CR 15.01, leave to file an amended complaint “shall be freely given when justice so requires.” Based upon the circumstances of this case, we are simply not persuaded that the Appellees would have been misled or prejudiced if the court had allowed Cardwell to file an amended complaint after he retained counsel. It is well-settled that the civil rules “should be applied to provide for a just determination on the merits, rather than to use a technicality to work a forfeiture.” *West v. Goldstein*, 830 S.W.2d 379, 384 (Ky. 1992). We conclude the trial court erred by dismissing Cardwell’s cause of action; consequently, we reverse and remand this matter for further proceedings consistent with this opinion.

For the reasons stated herein, the order of the Bell Circuit Court is reversed and remanded.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEES:

Jason E. Williams  
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