

Commonwealth of Kentucky

Court of Appeals

NO. 2014-CA-000426-MR

EDWARD H. FLINT

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE CHARLES L. CUNNINGHAM, JR., JUDGE
ACTION NO. 13-CI-005916

WESLEY JACKSON;
NEIL BUDDE; AND
JEAN M. PORTER

APPELLEES

OPINION
AFFIRMING

** ** * ** * ** *

BEFORE: CLAYTON, MAZE, AND TAYLOR, JUDGES.

TAYLOR, JUDGE: Edward H. Flint brings this *pro se* appeal from a March 4, 2014, Opinion and Order of the Jefferson Circuit Court dismissing Flint's complaint under Kentucky Rules of Civil Procedure (CR) 12.02. We affirm.

Flint filed a complaint in the Jefferson Circuit Court against Wesley Jackson as President of the Courier-Journal, Neil Budde, as Executive Editor of the Courier-Journal, and Jean M. Porter, as Managing Editor of the Courier-Journal. In the complaint, Flint stated that he was a shareholder of Gannett Company, Inc., who owns the Courier-Journal. In particular, Flint claimed:

6 – [Flint] alleges that one or more [appellees] have conspired with each other and or with others in the newspaper publishing business to harm to the stock holders of Gannett which owns the Courier Journal, [Flint] and Kentucky citizens by making sure that any stories concerning [Flint], was not printed in any newspaper or by any other entity in the news publishing business.

7 – [Flint] alleges that one or more [appellees] had a Fiduciary Responsib[ility] to the stock holders of Gannett which owns the Courier Journal and to the public and to [Flint], to publish and inform the public regarding petitions for impeachment filed against seventeen (17) corrupt judges and or Steve Beshear Governor of Kentucky, which [Flint] filed with the Kentucky General Assembly.

8 – [Flint] alleges that one or more of the [appellees] have discriminated against him as a stock holder of Gannett which owns the Courier Journal, as an individual and as a citizen of Kentucky by refusing to print in the Courier Journal, true stories that would have inform[ed] the public that petitions for impeachment against corrupt seventeen (17) Kentucky judges, and or one (1) against Steve Beshear the Governor of Kentucky for being corrupt and not performing [sic] his duty as stated in the Kentucky Constitution, was filed with the Kentucky General Assembly by [Flint].

9 – [Flint] alleges that one or more of the [appellees] have discriminated against him as a stock holders [sic] of Gannett which owns the Courier Journal, as an individual

and as a citizen of Kentucky, by refusing to print in the Courier Journal, stories that would have inform[ed] the public that petitions for impeachment against corrupt judges and Kentucky's Governor, was filed with the Kentucky General Assembly by [Flint]. The Kentucky citizens need to know about their elected official[s].

10 – [Flint] alleges that one or more of the [appellees] was promised by a person(s) connected with the Kentucky General Assembly and or with a person(s) connected with the Kentucky Judicial System, or both, money or other favors of value, not to publish stories by [Flint] that would have inform[ed] the public about petitions for impeachment against Steve Beshear the Governor of Kentucky for being corrupt and not performing [sic] his duty as stated in the Kentucky Constitution, that was filed with the Kentucky General Assembly, by [Flint]. The citizens need to know about their elected officials.

11 – [Flint] alleges that one or more of the [appellees] was promised by a person(s) connected with the Kentucky General Assembly and or with a person(s) connected with the Kentucky Judicial System, or both, money or other favors, not to publish stories by [Flint] that would have inform[ed] the public about petitions for impeachment against corrupt Kentucky judges that was filed with the Kentucky General Assembly, by [Flint].

12 – [Flint] alleges that one or more of the [appellees] conspired with a person(s) connected with the Kentucky General Assembly and or with a person(s) connected with the Kentucky Judicial System or both, not to publish stories about a petition for impeachment against the Governor of Kentucky for being corrupt and not performing his duty as stated in the Kentucky Constitution, that was filed with the Kentucky General Assembly by [Flint].

13 – [Flint] alleges that one or more of the [appellees] conspired with a person(s) connected with the Kentucky General Assembly and or with a person(s) connected with the Kentucky Judicial System or both, not to publish stories about petitions for impeachment against the corrupt

Kentucky judges, which was filed with the Kentucky General Assembly by [Flint].

14 – [Flint] alleges that one or more of the [appellees] was blackmailed by a person(s) connected with the Kentucky General Assembly and or with a person(s) connected with the Kentucky Judicial System not to publish any stories by [Flint] about any legal subject, including against corrupt judges and the Kentucky Governor.

15 – [Flint] alleges that one or more of the [appellees] told untruths to their superior about why they wouldn't publish the petitions for impeachment of corrupt judges, and a corrupt Governor and other court documents regarding court happenings that he was given copies of.

16 – [Flint] alleges that, one or more of the [appellees] gave as a reason(s) for not publishing the petitions for impeachment that had no bearing on not publishing the petitions and reason for the petitions.

17 – [Flint] alleges that one or more of the [appellees] used unreasonable criteria's for not publishing the petitions for impeachment against elected official[s].

18 – [Flint] alleges that one or more of the [appellees] had personal reason(s) for keeping the public from knowing about corrupt judges or other legal subjects and a corrupt Governor, which involved [Flint] in any form.

19 – [Flint] alleges the one or more of the [appellees] had no justified reason for the actions they took regarding not publishing the petitions against corrupt judges and Governor.

20 – [Flint] alleges that one or more of the [appellees] wanted to control, what the citizens should know, about happening in the courts and about the politics of the subject of the Governor of Kentucky.

21 – [Flint] alleges that one or more of the [appellees] has hurt Kentucky citizens, which [Flint] is one of, by not publishing facts that is harmful to the citizens. Such actions

are not in the best interest of Kentucky's citizen's way of life.

22 – [Flint] alleges that one or more of the [appellees] wanted to control what the public should know about happening in the courts and about the politics of the subject of the Governor of Kentucky, based on their personal feelings and belief and or to help other persons in their beliefs or to help others cover up corruption, by judges and or by the Governor of Kentucky.

23 – [Flint] alleges that one or more of the [appellees] refusal to publish stories about corruption, by judges and or Governor, to help the Kentucky Judicial System cover up corruption in the Kentucky Courts and in the state of Kentucky by its Governor.

24 – [Flint] alleges that one or more of the [appellees] refused to publish stories about corruption by a Governor to helped [sic] cover up corruption by the Governor of Kentucky.

25 – [Flint] alleges that one or more of the [appellees] refusal to publish stories about corruption by judges and or Governor, harmed honest judges in Kentucky.

26 – [Flint] alleges that one or more of the [appellees] refusal to publish stories about corruption, by judges and or Governor, harmed honest state legislators.

27 – [Flint] alleges that one or more of the [appellees] refusal to publish stories about corruption by judges, and or Governor, harmed every person in Kentucky that had their long term insurance policy premiums raised by MetLife Insurance Company.

28 – [Flint] alleges that one or more of the [appellees] refusal to publish stories about corruption by judges and or Governor, harmed every person who buys newspapers from the Courier Journal.

29 – [Flint] alleges that one or more of the [appellees] refused to publish stories about corruption by judges and

or Governor, after they was given facts of the corruptions.

30 – [Flint] alleges that one or more of the [appellees] helped members of the General Assembly of Kentucky not to have to confront the issue of impeachment of corrupt judges and or a corrupt Governor, in order to keep the citizens of Kentucky from knowing the truth about their corrupt elected officials and corrupt elected judges.

31 – [Flint] alleges that one or more of the [appellees] refused to publish [Flint]'s petitions for impeachment against corrupt judges and against the corrupt Governor of Kentucky, because they were being vindictive against [Flint], because [Flint] for four years sent letters and court documents to officials at the C-J pointing out corruption by judges and the Kentucky Governor and the paper didn't want to publish any stories about the corruption and was mad at [Flint] for sending the facts. The newspaper didn't want to know about the corruption, because they didn't want to have to inform the citizens of Kentucky about the corruption. However they published less meaning news stories about the courts, instead.

32 – [Flint] alleges that one or more of the [appellees] actions or lack of actions harmed him, both physical and mental as an individual and as a citizen of Kentucky.

In response to Flint’s complaint, appellees filed a motion to dismiss the complaint under CR 12.02(f). The circuit court granted the motion, thus precipitating this appeal.

Flint alleges that the circuit court erred by dismissing his complaint pursuant to CR 12.02(f). Flint argues that he filed a civil action and not a “derivative action” as concluded by the circuit court. Flint also maintains that

appellees violated “his liberty and property [rights] under the Fourteenth [A]mendment, [S]ection 1, to the United States Constitution, by hiding and covering up corruption that harmed the appellant.” Flint’s Brief at 3. Flint believes that appellees possess a legal duty “to investigate and report, to inform the public about corruption and corrupt officials.” Flint’s Brief at 4. Flint asserts that he is entitled to a trial by jury under the Fourteenth Amendment to the United States Constitution.

Under CR 12.02(f), a complaint may be dismissed for failure to state a claim upon which relief could be granted. When considering a CR 12.02(f) motion, the facts set forth in the complaint must be viewed as true, and the motion will only be granted if the plaintiff would not be entitled to relief under any set of facts which could be proved in support of the claim. *Pike v. George*, 434 S.W.2d 626 (Ky. 1968); *Pari-Mutuel Clerks' Union of Kentucky, Local 541, SEIU, AFL-CIO v. Kentucky Jockey Club*, 551 S.W.2d 801 (Ky. 1977).

Upon review of Flint’s complaint, we agree with the circuit court’s decision to dismiss the complaint under CR 12.02(f) and adopt the court’s reasoning herein:

Under CR 12.02(f), a motion to dismiss for failure to state a claim upon which relief can be granted must be denied unless the plaintiff “appears not to be entitled to relief under any set of facts which could be proven to support his claim.” *Morgan v. Bird*, 289 S.W.3d 222, 226 (Ky. App. 2009). When analyzing a motion to dismiss, the “pleadings are to be construed in the light most reasonable to the plaintiff and all allegations stated in the complaint should be taken as true.” *Ewell v.*

Central City, 340 S.W.2d 479, 480 (Ky. 1960). The Court “is not required to make any factual determination; rather, the question is purely a matter of law.” *James v. Wilson*, 95 S.W.3d 875, 883-4 (Ky. App. 2002). The question the Court must answer in the affirmative for the case to proceed is “if the facts alleged in the complaint can be proved, would the plaintiff be entitled to relief?” *Id.*

Here, Mr. Flint has failed to state a claim either in the form of a derivative suit or in his personal capacity that is recognized by Kentucky law. Under [Kentucky Revised Statutes] KRS 271B.7-400, a plaintiff has standing to maintain a derivative action on behalf of the corporate entity if, 1) the plaintiff was a shareholder at the time of the transaction complained of, 2) the plaintiff fairly and adequately represents the interests of similarly situated shareholders in enforcing the rights of the corporation, and 3) the plaintiff pled with particularity the demand made upon the corporation’s board of directors to obtain action, or, if no demand was made, why such demand was not made.

While the Court accepts that Mr. Flint is a shareholder of the company owning the Courier-Journal, he has failed to meet the second and third requirement to obtain standing to bring a derivative action.

Regarding the claims that Mr. Flint has been personally aggrieved, again the Court must dismiss the claims. The Freedom of Press is one of our most sacred American institutions and is not encroached upon lightly. In *Miami Herald Pub. Co. v. Tornillo*, 418 U.S. 241, 256, 94 S. Ct. 2831-39, 41 L. Ed. 2d 730 (1974), the Supreme Court of the United States dealt with whether a Florida newspaper was required to publish a political candidate’s editorial response when his character was attacked by previously publications. . . .

. . . .

The Court believes the First Amendment protects the defendants’ decisions regarding what to publish in their

newspaper. The Court can find no precedent, either statutory or common law, which would grant it or a jury the authority to order publication of information against the paper's editorial discretion. The Court has previously given Mr. Flint ample opportunity to present his arguments, but for the above stated reasons cannot grant him the relief he seeks.

Simply stated, Flint failed to set forth any legal basis or claim for relief in his complaint. We, thus, hold that the circuit court properly dismissed Flint's complaint pursuant to CR 12.02(f).

For the foregoing reasons, the Opinion and Order of the Jefferson Circuit Court is affirmed.

CLAYTON, JUDGE, CONCURS.

MAZE, JUDGE, CONCURS AND FILES SEPARATE OPINION.

MAZE, JUDGE, CONCURRING: I concur with my colleagues regarding the necessary result in this case. However, I am compelled to go farther to address Mr. Flint's history of frivolous claims like the one the trial court properly dismissed in this case.

"The right of every individual in society to access a system of justice to redress wrongs is basic and fundamental to our common law heritage," protected under Kentucky's Constitution. *O'Bryan v. O'Bryan*, 892 S.W.2d 571, 578 (Ky. 1995). This is rightfully so. However, since 2009, Flint has filed nineteen appeals with this Court, ten of which remain active, and at least eight of which concern the same defendant.¹ In the course of these appeals, Flint has made repeated,

¹ It is worth noting that in just the few days it took to draft this opinion, these numbers increased, and may very well be obsolete again by the time the opinion is rendered.

unauthorized contact with the Court requesting guidance on how to proceed and he has filed baseless motions seeking the recusal of at least seven of this Court's fourteen members. More importantly, for every baseless action and motion Flint has filed, others have had to expend time and money in response. It is evident that from the action brought in the present case that Edward Flint has become an abusive litigant.

“[E]very paper filed in court exhausts some of the court's resources. Thus, to best utilize its resources, where a *pro se* litigant files repetitious and frivolous claims, a court may bar prospective filings to prevent the deleterious effect of such filings on scarce judicial resources.” *Cardwell v. Commonwealth*, 354 S.W.3d 582, 585 (Ky. App. 2011) (*citing to In re McDonald*, 489 U.S. 180, 184, 109 S. Ct. 993, 103 L.Ed.2d 158 (1989)). In service to this principle, our trial courts should know what steps they can take to address abusive litigants like Flint while achieving a balance between the right of access to the legal system and the limited resources of that system.

CR 11 is an appropriate remedy for courts to consider. Courts often, and with good reason, grant *pro se* litigants greater leeway in the prosecution of their claims. However, *pro se* litigants must still comply with the Rules of Civil Procedure. *See Givens v. Commonwealth*, 359 S.W.3d 454, 463 (Ky. App. 2011) (*citing Watkins v. Fannin*, 278 S.W.3d 637, 643 (Ky. 2009)). While I recognize that CR 11 motions and sanctions are, and should be, sought with great reluctance, there is a time for them.

CR 11, by its very language, applies to attorney and *pro se* litigant alike, and when either becomes abusive of our system's liberal provision of access and redress, it should be applied accordingly. When an argument strays so far from any legal basis that it resembles nothing but a vindictive attempt to obtain something to which a plaintiff is clearly not legally entitled, invocation of CR 11 is appropriate. Indeed, an attorney could not sign his name to such a pleading without a genuine fear of legal sanction or ethical reprisal. Why should an unrepresented party fear that fate any less?

Additionally, Indiana's Supreme Court has very recently held that,

[a]fter due consideration of a litigant's history of abuse, a court may be justified in imposing restrictions such as the following:

- Require the litigant to accompany future pleadings with an affidavit certifying under penalty of perjury that the allegations are true to the best of the litigant's knowledge, information, and belief.
- Direct the litigant to attach to future complaints a list of all cases previously filed involving the same, similar, or related cause of action.
- Direct that future pleadings will be stricken if they do not meet the requirements that a pleading must contain "a short and plain statement of the claim showing that the pleader is entitled to relief" and that "[e]ach averment of a pleading shall be simple, concise, and direct."
- Require the litigant to state clearly and concisely at the beginning of a motion the relief requested.
- Require the litigant to provide specific page citations to documents alleged by the litigant to support an argument or position.

- Limit the litigant's ability to request reconsideration and to file repetitive motions.
- Limit the number of pages or words of pleadings, motions, and other filings.
- Limit the length of the title that may be used for a filing.
- Limit the amount or length of exhibits or attachments that may accompany a filing.
- Instruct the clerk to reject without return for correction future filings that do not strictly comply with applicable rules of procedure and conditions ordered by the court.

Zavodnik v. Harper, 17 N.E.3d 259, 268-69 (Ind. 2014) (citation omitted). For what it is worth, I believe these to be reasonable requirements to place upon an abusive litigant.

While Mr. Flint apparently has an immeasurable pool of time and resources, the Kentucky Court of Justice does not. It is my hope that the members of the Court of Justice, at both the trial and appellate levels, will take reasonable steps in the future to ensure that an inordinate amount of these extremely limited resources are not exhausted on a single unappeasable plaintiff.

BRIEFS FOR APPELLANT:

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