

Commonwealth of Kentucky

Court of Appeals

NO. 2015-CA-001699-MR

EDWARD H. FLINT

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE CHARLES L. CUNNINGHAM JR, JUDGE
ACTION NO. 15-CI-003304

NATIONWIDE INSURANCE COMPANY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: ACREE, CLAYTON, AND COMBS, JUDGES.

COMBS, JUDGE: Edward H. Flint, *pro se*, appeals from an order of the Jefferson Circuit Court dismissing his action against Nationwide Insurance Company. Flint contends that the circuit judge erred by failing to order a jury trial. After our review, we affirm.

On July 7, 2015, Flint filed a complaint against Nationwide Insurance Company in Jefferson Circuit Court. He alleged that Nationwide wrongfully failed to pay for property damage to his condominium allegedly caused by Coach House, Inc., Nationwide's insured. Before an answer was filed, Flint filed an affidavit with the circuit clerk indicating that a regular judge of the court would not afford him a fair and impartial trial. The affidavit was forwarded to the clerk of the Supreme Court of Kentucky.

In its answer, Nationwide contended that Flint's complaint failed to state a claim for which relief could be granted. Subsequently, Nationwide filed a motion to dismiss the action.

In its motion to dismiss, Nationwide argued that under the circumstances, Flint could not -- as a matter of law -- maintain a "direct action" against it, a third-party liability insurer. Nationwide observed that a final judgment had been entered on March 19, 2012, in favor of its insured, Coach House, in a separate lawsuit that Flint had filed involving the same set of operative facts underlying Flint's current claims against Nationwide.¹ Therefore, Nationwide asked that Flint's action be dismissed.

By order entered September 10, 2015, the Supreme Court of Kentucky denied Flint's motion to disqualify Jefferson Circuit Court Judge Charles

¹By order entered May 27, 2015, Flint had been permanently enjoined by the Jefferson Circuit Court from filing any legal action against Coach House, Inc.; its present and past officers and directors; its present and past employees; its present and past attorneys; its present and past managing agents; the present and past employees of managing agents; and any present or past condominium unit owner without first obtaining leave of court.

Cunningham from presiding over Flint's action against Nationwide. The Deputy Chief Justice noted that Flint had failed to demonstrate any disqualifying circumstance that would warrant or require the appointment of a special judge under the provisions of KRS² 26A.020.

Nationwide's motion to dismiss the action was granted by the Jefferson Circuit Court on November 4, 2015. The court agreed that Flint's complaint failed to state a claim upon which relief could be granted. This appeal followed.

On appeal, Flint contends that the trial court erred by dismissing the action against Nationwide because he asked for a jury trial. He also states that the previous judgment in favor of Nationwide's insured could be retried. He believes that the trial court's failure to order a jury trial under these circumstances has deprived him of his civil rights. The majority of Flint's appellate brief is devoted to unsubstantiated, defamatory, and derogatory accusations regarding generalized corruption within the judiciary and the bar. These accusations do not pertain to Judge Charles Cunningham, who presided over the proceedings now before us on appeal.

Flint's civil rights were not violated when his complaint was dismissed pursuant to the provisions of our rules of civil procedure. Consistent with the civil rules of every other state and federal jurisdiction, the Kentucky Rules of Civil Procedure (CR) require the dismissal of a complaint that fails to state a

² Kentucky Revised Statutes.

claim upon which relief can be granted. *See* CR 12.02. Even where litigants seek a jury trial, a trial court is required to dismiss an action if the complaint fails to state a legally cognizable claim.

Since it has been determined previously -- as a matter of law -- that **Nationwide's insured was not responsible** for the damage to Flint's condominium, **Nationwide cannot be held liable to Flint** for the damage. Any arguable liability on the part of Nationwide would be contingent upon and derivative of the liability of its insured. Therefore, since its insured was absolved of liability, Nationwide is not subject to any claim whatsoever. *See Pryor v. Colony Ins.*, 414 S.W.3d 424 (Ky.App. 2013). Moreover, the summary judgment entered in favor of Nationwide's insured in 2012 is no longer subject to appeal because it was affirmed by this Court in 2013; nor is it eligible for retrial as Flint contends.

Previously, this Court observed that Flint's "bluster, seeking only to vilify, discredit or agitate other participants, fails to address the substantive issues and provides no support" for his position. *Flint v. Coach House Inc.*, No. 2012-CA-001056-MR, 2014 WL 354650, at *4 (Ky. App. Jan. 31, 2014), *reh'g denied* (July 25, 2014). "It is . . . unnecessary, ineffective and offensive." *Id.* Those observations are equally applicable in the case before us.

The order of the Jefferson Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

Kellie Marie Collins
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