

STATE OF MICHIGAN
COURT OF APPEALS

DANIEL W. RUDD,

Plaintiff-Appellant,

v

JAMES A. MAREK

Defendant-Appellee.

UNPUBLISHED
February 18, 2020

No. 348144
Muskegon Circuit Court
LC No. 17-004158-CZ

Before: SAWYER, P.J., and MARKEY and STEPHENS, JJ.

PER CURIAM.

Plaintiff appeals from an order of the circuit court striking plaintiff's complaint pursuant to MCR 2.115(B) and dismissing the action. We affirm.

Plaintiff filed this action against defendant, an attorney representing plaintiff's ex-wife in an on-going domestic relations dispute in Muskegon Circuit Court. Because of defendant's status as an attorney who appears before the Muskegon courts, the entire circuit bench recused themselves and the matter was assigned to Judge Bakker in Allegan County.

Plaintiff filed an extensive complaint, prompting a motion to strike by defendant. The trial court found the complaint to be defective, but instead of striking the complaint and dismissing the action, the court gave plaintiff an opportunity to file an amended, conforming complaint. Plaintiff filed an amended complaint. Defendant again moved to strike, with the trial court this time granting the motion and dismissing the action. The court thereafter denied plaintiff's motion for reconsideration and this appeal followed.

Plaintiff's amended complaint is 20 pages long and consists of 115 numbered paragraphs. It is not until page 14 that plaintiff states the first count, one for abuse of process. (Complaint, §§ 85 to 89.) The gist of plaintiff's allegations is that defendant brought legal proceedings on behalf of his client against plaintiff that lacked legal merit and done for improper purposes. Count 2 alleged defamation of character. (Complaint, §§ 90 to 100.) Plaintiff references statements made by defendant in legal filings and an email to his children's grandparents. Count 3 alleged stalking, based largely on defendant continuing to communicate with plaintiff regarding the on-going litigation after plaintiff requested that defendant limit his communications. (Complaint, §§ 101 to

110.) Finally, Count 4 alleged intentional infliction of emotional distress. (Complaint, §§ 111 to 115.) This count alleged that plaintiff suffered stress, economic loss, and other harm as a result of defendant's action in representing his client.

MCR 2.115(B) provides as follows:

On motion by a party or on the court's own initiative, the court may strike from a pleading redundant, immaterial, impertinent, scandalous, or indecent matter, or may strike all or part of a pleading not drawn in conformity with these rules.

The trial court looked to this Court's opinion in *McLaughlin v Consumers Power Co*, 52 Mich App 663; 218 NW2d 122 (1974). In *McLaughlin, id.* at 668, this Court stated:

Plaintiff next alleges that the lower court erred in striking two counts from his complaint which sought to hold defendant liable on counts of strict liability and breach of warranty. We find no error. Plaintiff, in these two counts, did not set forth facts sufficient to reasonably apprise the defendant of the nature of the cause he was called upon to defend. GCR 1963, 111.1. Since plaintiff merely pleaded legal conclusions, the trial court's action in this case of striking the last two counts was proper. See *Pursell v Wolverine Pentronix, Inc*, 44 Mich App 416; 205 NW2d 504 (1973). Furthermore, it appears from our review of the record that the facts of this case, when judged by the law of this state, do not establish plaintiff's right to relief under the theories urged. Accordingly, for both of the foregoing reasons, we affirm the action of the trial judge in striking the last two counts from plaintiff's complaint.

Despite having given plaintiff ample opportunity to correct the problems with plaintiff's complaint, the trial court concluded that those problems were not corrected in the first amended complaint. The trial court analyzed the complaint in detail. In the general allegations, the trial court noted that the complaint contained "impertinent, scandalous, and irrelevant information." (Opinion, p 2.) And, as with the entire pleading, it contained details related to the domestic matter but without identifying defendant's involvement in a "concise, direct manner." The trial court also noted that many of the allegations related to plaintiff's perception of defendant's efficiency in representing plaintiff's ex-wife, as well as allegations that were legal conclusions.

The trial court also discussed that the complaint contained much information relevant to the underlying domestic matter, but not to this action. That is, many of the allegations simply did not relate to any of the claims in the complaint. The trial court also summarized many of the allegations as simply representing defendant "advocating on behalf of a client" and that any impropriety in that advocacy "shall be judged by the proper authority."¹ The trial court characterized parts of the complaint as plaintiff using it as "a forum to vent displeasure with events and filings that occurred during the domestic matter and relationships allegedly harmed as a

¹ We presume that the trial court was referring to either sanctions by the trial court in the domestic relations case or by the Attorney Grievance Commission.

result.” (Opinion, p 3.) The trial court also noted that whether defendant’s claims in the domestic matter lacked merit, as alleged by plaintiff, is an issue for the court in the domestic matter to decide.

The trial court summarized its conclusions as follows:

Overall, Rudd holds responsibility for presenting to Marek and this Court clear, concise allegations in a well-pleaded complaint. This court provided Rudd an opportunity to amend Rudd’s initial complaint to conform to this standard set forth in the Michigan Rules of Court. Instead, Rudd presented a second lengthy, repetitive complaint that articulates dissatisfaction with a prior domestic matter. Such a complaint prevents Marek from adequately answering and this Court from moving forward.

After carefully reviewing the trial court’s opinion and plaintiff’s first amended complaint, we are not persuaded that the trial court abused its discretion in striking the complaint and dismissing the action.

Affirmed. Defendant may tax costs.

/s/ David H. Sawyer
/s/ Jane E. Markey
/s/ Cynthia Diane Stephens