



Jordan v. Cincinnati

2024-Ohio-1044 (2024) | Cited 0 times | Ohio Court of Appeals | March 22, 2024

IN THE COURT OF APPEALS FIRST APPELLATE DISTRICT OF OHIO HAMILTON COUNTY,
OHIO

TERRELL D. JORDAN,

Plaintiff-Appellant,

vs.

CITY OF CINCINNATI,

Defendant-Appellee. :

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: APPEAL NO. C-230430 TRIAL NO. A-2302985

O P I N I O N.

Civil Appeal From: Hamilton County Court of Common Pleas

Judgment Appealed From Is: Affirmed

Date of Judgment Entry on Appeal: March 22, 2024

Terrell D. Jordan, pro se,

Emily Smart Woerner, City Solicitor, Katherine C. Baron, Assistant City Solicitor, and Kevin T. Tidd,
Senior Assistant City Solicitor, for Defendant-Appellee. BOCK, Presiding Judge.

{¶1} Plaintiff-appellant Terrell D. Jordan appeals the dismissing complaint against



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defendant-appellee the city of Cincinnati and denying -judgment motion. He asserts that the trial court

erroneously dismissed his complaint without holding oral argument or allowing him to present evidence. Because Civ.R. 12(B)(6) motions require a trial court to consider only the allegations contained in the complaint, Jordan was not entitled to present evidence in opposition to the motion to dismiss. Moreover, the City timely defended against , precluding a default judgment. Therefore, we overrule judgment.

I. Facts and Procedure

{¶2} Jordan sued the City, asserting that the City was criminally negligent for

failing to address harassment complaints against citizens complaints against Hamilton County judges and magistrates.

{¶3} The City timely moved to dismiss the complaint under Civ.R. 12(B)(6),

arguing that the complaint failed to state a claim upon which relief could be granted.

Jordan then filed a default-judgment motion.

{¶4} The trial , dismissed Jord ,

a default judgment. This appeal followed.

II. Law and Analysis

A. The trial court did not err in dismissing the complaint

{¶5} Jordan argues that he is unable to raise assignments of error because

. We construe first assignment of error as asserting that motion to dismiss because the trial court did not hold oral arguments and did not allow



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Jordan to present evidence in opposition to the motion to dismiss.

{¶6} We review a trial court's ruling on a Civ.R. 12(B)(6) motion to dismiss

de novo. Frank v. Univ. of Cincinnati Med. Ctr., 2023-Ohio-1255, 218 N.E.3d 171, ¶ 8

(1st Dist.), citing Plush v. City of Cincinnati, 2020-Ohio-6713, 164 N.E.3d 1056, ¶ 12

(1st Dist.).

of the claim showing that the party is entitled to relief, and (2) a demand for judgment

for the relief to which the party claims to be entitled. Civ.R. (8)(A). When ruling on a

motion to dismiss, the trial court is confined to the allegations in the complaint. Frank

at ¶ 8. inferences in favor of the nonmoving party. Id. For a court to dismiss a complaint

it must appear beyond a doubt from the complaint that the

plaintiff can prove no set of facts entitling him to recovery. Id., quoting O'Brien v.

Univ. Community Tenants Union, Inc., 42 Ohio St.2d 242, 327 N.E.2d 753 (1975),

syllabus.

{¶7} T without

allowing Jordan to present evidence outside of the allegations contained in his

complaint because a motion to dismiss is confined solely to the allegations in the

complaint. Therefore, the trial court could not have considered evidence in ruling on

Moreover, Jordan was not entitled to oral argument on

his motion because he never made a written request for oral argument. Loc.R. 14(C)

of the Court of Common Pleas of Hamilton County provides that no motion will be set

for oral argument in a civil case unless a party makes a written request for oral



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argument or the trial court otherwise directs the assignment commissioner to set the case for oral argument. Absent a written request for oral argument, the decision to

{¶8} Jordan also argues that the trial judge violated Jud.Cond.R. 2.6 by

dismissing his complaint without argument. But a direct appeal is not the proper

avenue to allege a violation of the Ohio Code of Judicial Conduct. See Crenshaw v.

Howard, 2022-Ohio-3914, 200 N.E.3d 335, ¶ 42 (8th Dist.), quoting State v. Murrill,

12th Dist. Butler No. CA2020-08-081, 2021-Ohio-1449, ¶ 10; see also State v. Stumph,

1st Dist. Hamilton No. C-190318, 2021-Ohio- when a party believes that a trial court is biased is to file an affidavit of bias and

argument.

{¶9} Finally dismissed the complaint because it contained no set of facts entitling him to recovery.

We overrule first assignment of error.

B. The trial court correctly denied the default-judgment motion

{¶10} We construe of error to argue that the trial

court erroneously denied his motion for a default judgment. We review a trial court's

decision to grant or deny a default judgment for an abuse of discretion. Mueller v.

Hammann, 1st Dist. Hamilton Nos. C-120799 and C-130231, 2013-Ohio-5098, ¶ 7.

State v. Hatton, 169

Ohio St.3d 446, 2022-Ohio-3991, 205 N.E.3d 513, ¶ 29, citing Blakemore v.

Blakemore, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983). {¶11} A trial court may grant a

whom a judgment for affirmative relief is sought has failed to plead or otherwise

defend as provided by Civ.R. 55(A). 55, a default judgment is appropriate only where a party has failed



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to plead or

Watts v. Fledderman, 1st Dist. Hamilton No. C-170255, 2018-

Ohio-2732, ¶ 37. When a party files a Civ.R. 12 motion to dismiss in lieu of answering

the complaint, that motion constitutes defending the action and precludes a default

judgment. Moore v. Mason, 8th Dist. Cuyahoga No. 84821, 2005-Ohio-1188, ¶ 7.

{¶12} The City timely filing its motion to dismiss precluded a default

judgment. assignment of error.

III. Conclusion

{¶13}

Judgment affirmed.

BERGERON and WINKLER, JJ., concur.

Please note:

The court has recorded its entry on the date of the release of this opinion.

