

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
January 19, 2023 Session

FILED 04/19/2023 Clerk of the Appellate Courts
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RICHARD HAMPTON v. HAWKER POWERSOURCE, INC., ET AL.

Appeal from the Circuit Court for Hamilton County
No. 21C392 **Kyle E. Hedrick, Judge**

No. E2022-00258-COA-R3-CV

In this action for breach of an employment contract filed by a plaintiff/employee against the defendant company/employer and two individual defendants, the trial court entered an order granting a motion to dismiss filed by the individual defendants. Upon a subsequent motion filed by the defendant company, the trial court entered an order granting summary judgment in favor of the company and dismissing the plaintiff’s complaint with prejudice. The plaintiff has appealed, raising an issue regarding the dismissal of the individual defendants from the case. Discerning no reversible error, we affirm.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court
Affirmed; Case Remanded

THOMAS R. FRIERSON, II, J., delivered the opinion of the court, in which D. MICHAEL SWINEY, C.J., and JOHN W. MCCLARTY, J., joined.

Richard Hampton, Chattanooga, Tennessee, Pro Se.

Russell W. Gray and Derek W. Mullins, Chattanooga, Tennessee, for the appellees, Hawker Powersource, Inc.; Trey Shoemaker; and Troy Baxter.

OPINION

I. Factual and Procedural Background

The plaintiff, Richard Hampton, acting without benefit of counsel, filed a complaint in the Hamilton County Circuit Court (“trial court”) on April 19, 2021, initially naming as defendants his former employer, Hawker Powersource, Inc. (“Hawker”), and two members of Hawker’s executive management, Bob Aaron as Executive Vice President and Dave Colwell as Plant Manager. On appeal, Hawker describes itself as “a

corporation specializing in the manufacture of batteries,” that at the time of this lawsuit’s initiation operated a plant in Ooltewah, Tennessee.¹

Mr. Hampton, who averred in his complaint that he had been employed by Hawker as a formation operator from 2013 until his employment termination in January 2021, alleged “a breach of contract in direct violation [of an] employee/employer agreement that an employee shall only be fired for cause.”² He further alleged that his employment termination had been in “retaliation for raising health concerns about employee treatment during the Covid 19 virus epidemic” and that his termination had been in violation of Hawker’s “progressive disciplinary policy.” Mr. Hampton sought compensatory damages “for loss of earnings and emotional distress, both in the past and for the future” and punitive damages.

On May 13, 2021, Mr. Hampton filed an amended complaint, removing Mr. Aaron and Mr. Colwell from the lawsuit and adding as defendants Trey Shoemaker as Hawker’s Director of Human Resources and Troy Baxter as Hawker’s Ooltewah Plant Manager. Mr. Hampton’s breach of contract claim and requested compensation and damages remained the same.

In his amended complaint, Mr. Hampton alleged that his employment had been terminated “without reason or explanation” and without documentation. Regarding the factual background leading to his termination, he averred the following:

Prior to termination [Mr. Hampton] informed management that his uncle had cont[r]acted the Corona Virus in mid-2020 and subsequently died of the disease during that same period. As a result [Mr. Hampton] took time off from work to assist with funeral and burial arrangements of his deceased uncle.

¹ Hawker has asked this Court to take judicial notice of the fact that Hawker permanently closed its Ooltewah plant effective August 28, 2022. In support of its request, Hawker has provided a link to a State of Tennessee Department of Labor and Workforce Development online memorandum noting that Hawker had officially notified the agency of the August 2022 closure. Because this fact is capable of accurate and ready determination by resort to a state government source, we take judicial notice that the Hawker Ooltewah plant was scheduled to be permanently closed during the pendency of this appeal. *See* Tenn. R. Evid. 201(b) (“A judicially noticed fact must be one not subject to reasonable dispute, in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.”); Tenn. R. App. P. 13(c) (providing that state appellate courts “may consider those facts established by the evidence in the trial court and set forth in the record and any additional facts that may be judicially noticed or are considered pursuant to Rule 14 [regarding post-judgment facts].”).

² Hawker subsequently presented personnel records indicating that Mr. Hampton had been hired by Hawker in April 2014.

During this period [Mr. Hampton] was harassed and humiliated by the company nurse constantly calling his phone each day requesting his uncle's confidential medical records which were not available to [Mr. Hampton] under [the Health Insurance and Portability Accountability Act] and other laws protecting medical records.

Upon information and belief the same company nurse engaged in a campaign of harassment against [Mr. Hampton] and other employees under the misconceived idea that anyone working at defendant Hawker Powersource, Inc, who had concerns or incidents involving the Corona Virus were somehow trying to take advantage of defendant Hawker by gaming the system.

When [Mr. Hampton] filed an anonymous letter expressing his concerns about the harsh and humiliating treatment of employees by the company nurse, [Mr. Hampton] was placed on leave pending an investigation.

Upon the completion of the investigation [Mr. Hampton] was asked to return to work. Weeks later, without incident, [Mr. Hampton] was subsequently terminated by management officials without just cause and in violation of the progressive disciplinary policy.

Hawker, Mr. Shoemaker, and Mr. Baxter (collectively, "Defendants") filed an answer to the amended complaint on June 3, 2021, denying all substantive allegations. Defendants raised multiple affirmative defenses, including, as pertinent on appeal, that (1) Mr. Hampton had failed to state a claim upon which relief could be granted, (2) Mr. Hampton had been an at-will employee and could therefore have his employment lawfully terminated with or without cause,³ and (3) neither Hawker nor either of the individual defendants had been party to a contract with Mr. Hampton.

³ As our Supreme Court has explained regarding the employment-at-will doctrine:

[T]he employment-at-will doctrine has been an integral part of the common law of Tennessee for more than a century. This doctrine applies in the absence of a contract of employment, and it means that an employment relationship generally can be terminated by either the employer or the employee with or without cause. *See Bennett v. Steiner-Liff Iron and Metal Co.*, 826 S.W.2d 119, 121 (Tenn. 1992). Therefore, in Tennessee, unless there is a contract of employment for a definite term, a discharged employee may not recover against an employer because there is no right to continued employment. *See Forrester v. Stockstill*, 869 S.W.2d 328, 330 (Tenn. 1994).

Cantrell v. Knox Cnty. Bd. of Educ., 53 S.W.3d 659, 662 (Tenn. 2001).

On June 16, 2021, Mr. Shoemaker and Mr. Baxter (collectively, “Individual Defendants”) filed a motion to dismiss Mr. Hampton’s claims against them, pursuant to Tennessee Rule of Civil Procedure 12.02(6), for failure to state a claim upon which relief could be granted. Individual Defendants contended that Mr. Hampton had failed to allege any contractual relationship with either of them and that no such relationship existed upon which a breach of contract action could be based. Mr. Hampton filed a response, questioning some factual denials contained in Defendants’ answer but failing to respond to Individual Defendants’ argument that neither of them had entered into a contract with Mr. Hampton. Mr. Hampton attached to his response a printout of Hawker’s filing information with the State of Tennessee and an unsigned “Corrective Action Report” indicating that Mr. Hampton had been issued a warning by a Hawker supervisor, Jeff Blackwell, on January 6, 2021, concerning Mr. Hampton’s behavior in placing a note under the company nurse’s door. Following a hearing, the trial court entered an order on July 28, 2021, granting Individual Defendants’ motion to dismiss with prejudice upon finding the motion to be “well taken.”

Hawker filed a motion for summary judgment on October 25, 2021, again arguing that Hawker “had no contract for a definite term with [Mr. Hampton] that could be breached” and that Mr. Hampton had been employed as an at-will employee. Hawker thereby contended that no genuine issue of material fact precluded a grant of summary judgment in its favor pursuant to Tennessee Rule of Civil Procedure 56.02. Hawker attached an affidavit executed by Mr. Shoemaker, who had assumed the role of Hawker’s human resources manager on January 4, 2021, when the former human resources manager retired. Mr. Shoemaker explained in part that at the time Mr. Hampton had been hired, Mr. Hampton had signed an agreement with Enersys Delaware, Inc., an affiliate of Hawker, acknowledging that he was an “at will” employee.

Regarding the events that had led to Mr. Hampton’s employment termination, Mr. Shoemaker stated in his affidavit:

Based on my review of Mr. Hampton’s personnel file and documents associated with an investigation into a complaint of workplace harassment made against Mr. Hampton by Hawker’s Plant Nurse, Lydia Scoggins, I am aware of the following events. On Monday, December 22, 2020, Ms. Scoggins, came into work and found a handwritten note under the door to her nursing office. The handwritten note stated, “I don’t like you B[---]!!” It was signed “A[---] H[---]”. A copy of a photograph taken by Ms. Scoggins of the note on the floor of her office is attached as Exhibit 9 to this Affidavit.

Based on my review of the investigation notes taken relating to interviews of relevant witnesses, I am personally aware of the following events described in witness statements. Ms. Scoggins took the note to Hawker's Production Manager, Darren Cammann. Mr. Cammann asked Ms. Scoggins to take the note to Brenda Lawrence, the former HR [Human Resources] Manager at the Hawker facility.

Hawker's local managers initially investigated the situation relating to the note left under Ms. Scoggins' door. This investigation included reviewing video footage captured around the time the note would have been left under Ms. Scoggins' door. The video footage clearly revealed that around 4:02 p.m. on December 21, 2020, Mr. Hampton walked towards Ms. Scoggins' office carrying the note in his hand to place under Ms. Scoggins' office door. Close up footage reveals Mr. Hampton's name tag with his first name "Richard" affixed to his shirt. Still images saved from the relevant video footage is attached to this Affidavit as Exhibit 10.

I was not involved in the initial investigation into Ms. Scoggins' harassment complaint. However, notes from the initial investigation included in Mr. Hampton's personnel records, and which the company considers to be business records, indicate that Mr. Hampton admitted to leaving the note under Ms. Scoggins door.

Following additional information received from Ms. Scoggins regarding the situation, Hawker's corporate affiliate initiated a subsequent investigation into the situation. I participated in the subsequent inquiry into Ms. Scoggins' complaint regarding Mr. Hampton's conduct.

I also participated in the decision-making process regarding the decision to terminate Mr. Hampton's employment for violation of Hawker's harassment and workplace violence policies.

Hawker terminated Mr. Hampton's employment around the end of January 2021. Mr. Kelly Hogan, the Hawker Plant Manager,^[4] and I both met with Mr. Hampton and informed him that the Company had decided to terminate him for violation of the Company's harassment policy.

⁴ We note that in his amended complaint, Mr. Hampton named Mr. Baxter as the "Plant Manager" for Hawker. On appeal, Hawker refers to both Mr. Shoemaker and Mr. Baxter as "agents" of Hawker in their official capacities. The reason for the discrepancy in the title of "Plant Manager" is not clear from the record and does not affect our analysis.

(Paragraph numbering omitted.)

As exhibits to Mr. Shoemaker's affidavit, Hawker attached, *inter alia*, (1) a 2014 memorandum offering employment to Mr. Hampton that included the statement that he would be an "at will" employee at Hawker whose employment could be terminated at any time by either employer or employee; (2) the "Agreement" with EnerSys referenced by Mr. Shoemaker and signed by Mr. Hampton; (3) excerpts from the EnerSys Employee Handbook, including "Employment at Will," "Unlawful Harassment," and "Liability for Harassment" provisions; (4) Mr. Hampton's 2014 signed acknowledgment that he had received and read the Hawker Employee Handbook (listed as Hawker rather than EnerSys); (5) Mr. Hampton's 2014 signed acknowledgments that he had received, read, and understood the EnerSys non-discrimination and harassment policy and policy against workplace violence; (6) a photograph of the note described in Mr. Shoemaker's affidavit; and (7) still shots from video footage as described in Mr. Shoemaker's affidavit. The EnerSys Agreement signed by Mr. Hampton includes the following provision:

Nothing in this Agreement shall be construed to constitute an agreement or commitment of employment by the Company for any particular period of time or to limit in any way the right of the Company or myself to terminate my employment at will.

The trial court conducted a hearing on Hawker's summary judgment motion on February 7, 2022. Although Mr. Hampton appeared for the hearing, he had not filed any response to Hawker's motion. Subsequently, apparently responding to the trial court's oral announcement granting summary judgment in favor of Hawker, Mr. Hampton filed a premature notice of appeal on March 2, 2022. Hawker filed a proposed summary judgment order with notice to Mr. Hampton on March 22, 2022.

Mr. Hampton then filed a "[Declaration] of Richard Hampton [Pursuant] to TRCP 72" on March 23, 2022.⁵ In his declaration, Mr. Hampton repeated facts as he had set them forth in his amended complaint. He included a copy of interrogatories he had sent to Hawker and stated that on November 8, 2021, he had filed a motion for continuance with the trial court because he had not received a response to his interrogatories. Mr. Hampton asserted: "Rather than submit answers to the interrogatories Defendant filed a motion for summary judgment."

Hawker filed a response to Mr. Hampton's declaration, arguing overall that the trial court should disregard the declaration as unresponsive to any pleading or proposed order. In its response, Hawker stated that the trial court had entered an agreed order on

⁵ Tennessee Rule of Civil Procedure 72 sets forth the procedure for filing an affidavit.

December 21, 2021, “decree[ing] Hawker would respond to Mr. Hampton’s outstanding discovery requests by December 15, 2021, and that Mr. Hampton would provide his formal response to Hawker’s Motion for Summary Judgment within 21 days of receiving Hawker’s responses to his discovery or January 5, 2022.”⁶ Hawker averred that it had served its responses to Mr. Hampton’s interrogatories on December 15, 2021, but that Mr. Hampton had failed to respond to the summary judgment motion by his deadline under the agreed order. Hawker attached a copy of a December 15, 2021 cover letter sent to Mr. Hampton, purportedly with the discovery responses.

On April 5, 2022, the trial court entered an order granting summary judgment in favor of Hawker and dismissing Mr. Hampton’s breach of contract claim with prejudice. The court made detailed findings of fact, noting that because Mr. Hampton had not responded, the findings were based on Hawker’s statement of undisputed material facts filed in support of its summary judgment motion. The court concluded that in failing to respond, Mr. Hampton had “failed to demonstrate a genuine issue of material fact exists regarding whether Hawker breached a contract of employment with him.” The court stated the following specific findings of fact and conclusions of law in pertinent part:

The undisputed facts in this case are that Hawker employed [Mr. Hampton] at-will. [Mr. Hampton] had no employment contract with Hawker.

The undisputed facts show that Hawker made the decision to terminate [Mr. Hampton’s] employment as it was entitled to do under its at-will employment policies. [Mr. Hampton] did not have a contract for a definite term that Hawker breached in terminating [Mr. Hampton’s] employment.

[Mr. Hampton] has provided no admissible evidence disputing these facts, and in accordance with Tenn. R. Civ. P. 56.06, Hawker’s facts remain undisputed.

For these reasons, the Court concludes that [Mr. Hampton’s] claim should be dismissed in its entirety with prejudice.

(Paragraph numbering omitted.)

Mr. Hampton then timely appealed. He subsequently filed a notice that no transcript or statement of the evidence would be filed.

⁶ Neither Mr. Hampton’s motion for continuance nor the agreed order is in the record on appeal.

II. Issue Presented

Mr. Hampton presents one issue on appeal, which we set forth verbatim as follows:

Whether the Trial Court committed error when it failed to consider whether the defendants, intentionally and without justification procured the discharge of the employee in question prior to granting Trey Shoemaker's and Troy Baxter's Motion to Dismiss.

III. Standard of Review

Although the final judgment in this case was a grant of summary judgment in favor of Hawker, the sole issue raised by Mr. Hampton on appeal involves the trial court's prior order granting Individual Defendants' motion to dismiss pursuant to Tennessee Rule of Civil Procedure 12.02(6). Regarding the review of a dismissal pursuant to Rule 12.02(6), our Supreme Court has elucidated:

A Rule 12.02(6) motion challenges only the legal sufficiency of the complaint, not the strength of the plaintiff's proof or evidence. The resolution of a 12.02(6) motion to dismiss is determined by an examination of the pleadings alone. A defendant who files a motion to dismiss "admits the truth of all of the relevant and material allegations contained in the complaint, but . . . asserts that the allegations fail to establish a cause of action." *Brown v. Tenn. Title Loans, Inc.*, 328 S.W.3d 850, 854 (Tenn. 2010) (quoting *Freeman Indus., LLC v. Eastman Chem. Co.*, 172 S.W.3d 512, 516 (Tenn. 2005)).

In considering a motion to dismiss, courts "must construe the complaint liberally, presuming all factual allegations to be true and giving the plaintiff the benefit of all reasonable inferences." *Tigg v. Pirelli Tire Corp.*, 232 S.W.3d 28, 31-32 (Tenn. 2007) (quoting *Trau-Med [of Am., Inc. v. Allstate Ins. Co.]*, 71 S.W.3d [691,] 696 [(Tenn. 2002)]). A trial court should grant a motion to dismiss "only when it appears that the plaintiff can prove no set of facts in support of the claim that would entitle the plaintiff to relief." *Crews v. Buckman Labs. Int'l, Inc.*, 78 S.W.3d 852, 857 (Tenn. 2002). We review the trial court's legal conclusions regarding the adequacy of the complaint de novo.

Webb v. Nashville Area Habitat for Humanity, Inc., 346 S.W.3d 422, 426 (Tenn. 2011) (other internal citations omitted).

We respect Mr. Hampton's decision to proceed without benefit of counsel. We note that in reviewing pleadings, we "must give effect to the substance, rather than the form or terminology of a pleading." *Stewart v. Schofield*, 368 S.W.3d 457, 463 (Tenn. 2012) (citing *Abshure v. Methodist Healthcare-Memphis Hosp.*, 325 S.W.3d 98, 104 (Tenn. 2010)). We note also that pleadings "prepared by pro se litigants untrained in the law should be measured by less stringent standards than those applied to pleadings prepared by lawyers." *Stewart*, 368 S.W.3d at 462 (citing *Carter v. Bell*, 279 S.W.3d 560, 568 (Tenn. 2009); *Hessmer v. Hessmer*, 138 S.W.3d 901, 903 (Tenn. Ct. App. 2003); *Young v. Barrow*, 130 S.W.3d 59, 63 (Tenn. Ct. App. 2003)). Parties proceeding without benefit of counsel are "entitled to fair and equal treatment by the courts," but we "must not excuse pro se litigants from complying with the same substantive and procedural rules that represented parties are expected to observe." *Hessmer v. Hessmer*, 138 S.W.3d 901, 903 (Tenn. Ct. App. 2003).

IV. Grant of Individual Defendants' Motion to Dismiss

On appeal, Mr. Hampton has raised the sole issue of whether the trial court erred by granting Individual Defendants' motion to dismiss without first considering whether Individual Defendants "intentionally and without justification procured the discharge" of Mr. Hampton from Hawker. Mr. Hampton essentially argues that the trial court erred in declining to conduct an evidentiary hearing on the merits of his allegations prior to granting Individual Defendants' motion to dismiss. Hawker contends that the trial court properly granted the motion to dismiss because having alleged a sole claim of breach of contract in his amended complaint, Mr. Hampton failed to allege any contractual relationship with either Mr. Shoemaker or Mr. Baxter upon which a breach of contract action could be based. Upon careful review of the record and applicable authorities, we conclude that the trial court did not err in granting Individual Defendants' motion to dismiss pursuant to Tennessee Rule of Civil Procedure 12.02(6).

"In a breach of contract action, claimants must prove the existence of a valid and enforceable contract, a deficiency in the performance amounting to a breach, and damages caused by the breach." *A & P Excavating & Materials, LLC v. Geiger*, 622 S.W.3d 237, 248 (Tenn. Ct. App. 2020) (quoting *Fed. Ins. Co. v. Winters*, 354 S.W.3d 287, 291 (Tenn. 2011)). However, "[a] breach of contract claim cannot be asserted against a non-contracting party who has no obligation to perform." *Le-Jo Enters., Inc. v. Cracker Barrel Old Country Store, Inc.*, No. M2013-01014-COA-R3-CV, 2013 WL 6155622, at *5 (Tenn. Ct. App. Nov. 20, 2013); see *Bonham Grp. Inc. v. City of Memphis*, No. 02A01-9709-CH-00238, 1999 WL 219782, at *7 (Tenn. Ct. App. Apr. 16,

1999) (“To attempt to hold someone liable on a contract to which it is not a party is contrary to common reason.”).

We emphasize that “the purpose of a Tennessee Rule of Civil Procedure 12.02(6) motion to dismiss is to determine whether the pleadings state a claim upon which relief can be granted.” *Le-Jo Enters.*, 2013 WL 6155622, at *5. For this reason, we must construe Mr. Hampton’s amended complaint “liberally, presuming all factual allegations to be true and giving the plaintiff the benefit of all reasonable inferences.” *See Webb*, 346 S.W.3d at 426 (quoting *Tigg v. Pirelli Tire Corp.*, 232 S.W.3d 28, 31-32 (Tenn. 2007)).

In his amended complaint, Mr. Hampton named Mr. Shoemaker as a defendant in his role as Director of Human Resources at Hawker and Mr. Baxter as a defendant in his role as Plant Manager of the Ooltewah location of Hawker. Mr. Hampton averred that when he “filed an anonymous letter expressing his concerns about the harsh and humiliating treatment of employees by the company nurse, [he] was placed on leave pending an investigation.” Mr. Hampton further averred that following the investigation, he was “asked to return to work” but that “[w]eeks later,” his employment was “terminated by management officials without just cause and in violation of the progressive disciplinary policy.” Mr. Hampton asserted that “[t]hese acts and omissions [were] a breach of contract in direct violation [of an] employee/employer agreement that an employee shall only be fired for cause.” As such, Mr. Hampton stated his sole claim as one for breach of contract. However, his amended complaint contained no allegation that either Mr. Shoemaker or Mr. Baxter was a party to a contract with Mr. Hampton.

In its order granting Individual Defendants’ motion to dismiss Mr. Hampton’s claims against them, the trial court stated that upon hearing the parties’ arguments and reviewing Individual Defendants’ motion, it found the motion to be “well taken.” Although the trial court did not explain its conclusion in any further detail in the order, we note that the motion to dismiss rested on one legal argument: Mr. Hampton had failed to state a claim upon which relief could be granted against Individual Defendants because he was alleging breach of contract against individuals who were not parties to a contract with Mr. Hampton. We can thereby glean that the trial court determined that Mr. Hampton’s claim against Individual Defendants could not succeed because Individual Defendants were not parties to a contract at issue.⁷ Mr. Hampton alleged no facts in his amended complaint that would contravene this determination.

⁷ We note that although pursuant to the Tennessee Rules of Civil Procedure, “[f]indings of fact and conclusions of law are unnecessary on decisions of motions under Rule 12,” *see* Tenn. R. Civ. P. 52.01, “a trial court’s failure to provide any legal basis for its dismissal of a Rule 12.02 motion to dismiss can hamper this Court’s ability to review the dismissal on appeal,” *see Elvis Presley Enters., Inc. v. City of Memphis*, No. W2019-00299-COA-R3-CV, 2022 WL 854860, at *6 (Tenn. Ct. App. Mar. 23, 2022)

In support of his position on appeal, Mr. Hampton provides a quotation from our Supreme Court’s decision in *Forrester v. Stockstill*, 869 S.W.2d 328 (Tenn. 1994), wherein the Court summarized with approval its prior decision in *Ladd v. Roane Hosiery, Inc.*, 556 S.W.2d 758 (Tenn. 1977). In *Ladd*, the High Court determined that a discharged at-will employee had stated a viable tort claim against her supervisor when she “alleged that her supervisor induced her employer to discharge her.” *Forrester*, 869 S.W.2d at 330 (citing *Ladd*, 556 S.W.2d at 760). As the *Ladd* Court explained:

An individual has a property interest in his labor, and the right to work without unjustified interference. *Large v. Dick*, 207 Tenn. 664, 343 S.W.2d 693 (1960). One who intentionally interferes with this right, causing the employee to be discharged, is liable in tort for the resulting damages. *Dukes v. Brotherhood of Painters*, 191 Tenn. 495, 235 S.W.2d 7 (1950). The essential allegations of such a claim are that the defendant intentionally and without justification procured the discharge of the employee in question. *Dukes v. Brotherhood of Painters, supra* ; 57 C.J.S. Master & Servants 630.

Ladd, 556 S.W.2d at 760 (emphasis added). In *Forrester*, as in *Ladd*, tort claims, not contract claims, were at issue, specifically, as relevant here, the tort of intentional interference with employment. See *Forrester*, 869 S.W.2d at 328. Emphasizing that such a claim could only be successful if the defendants’ conduct was not in furtherance of the employer’s interests, the *Forrester* Court reversed a jury verdict against the defendants, who had been respectively a board member and medical director of the employer. *Id.* at 335. The Court concluded that although the defendants had “intentionally interfered with [the plaintiff’s] employment,” “the record [was] void of material evidence that [the defendants] were not acting in furtherance of their view of [the employer’s] interest.” *Id.*

In contrast, Mr. Hampton did not allege the tort of intentional interference with employment or any tort claim in his amended complaint. He alleged solely breach of contract. On appeal, Hawker relies on this Court’s decision affirming the dismissal of a breach of contract claim against a defendant in *Le-Jo Enters.*, 2013 WL 6155622, as instructive to the instant issue. We agree. In *Le-Jo Enters.*, the plaintiff alleged, *inter alia*, breach of an express contract against a defendant corporation that was a third-party beneficiary to the contract at issue rather than a party to the contract. *Le-Jo Enters.*, 2013 WL 6155622, at *5. The *Le-Jo Enters.* Court determined that the plaintiff had failed to allege “the most basic element of a breach of an express contract claim: that an express

(quoting *Crenshaw v. Kado*, No. E2020-00282-COA-R3-CV, 2021 WL 2473820, at *6 (Tenn. Ct. App. June 17, 2021)).

contract between [the plaintiff] and [the defendant] exists.” *Id.* Likewise, in this case, Mr. Hampton failed to allege that a contract existed between Individual Defendants and himself. The trial court did not err in dismissing Mr. Hampton’s claim against Individual Defendants for failure to state a claim upon which relief could be granted.

Finally, we note that Mr. Hampton has attached copies of three documents as “exhibits” to his appellate brief: (1) a signed copy of the January 2021 “Corrective Action Report” that he had attached to his response to the motion to dismiss; (2) Mr. Shoemaker’s affidavit that had been attached to Hawker’s motion for summary judgment; and (3) an April 2021 approval of an unemployment claim submitted by Mr. Hampton to the Tennessee Department of Labor and Workforce and Development.⁸ The only one of these documents that was before the trial court at the time of the court’s grant of Individual Defendants’ motion to dismiss was an unsigned copy of the Corrective Action Report attached to Mr. Hampton’s response. “Generally, ‘[i]f matters outside the pleadings are presented in conjunction with either a Rule 12.02(6) motion or a Rule 12.03 motion and the trial court does not exclude those matters, the court must treat such motions as motions for summary judgment and dispose of them as provided in Rule 56.’” *Burns v. State*, 601 S.W.3d 601, 606 (Tenn. Ct. App. 2019) (quoting *Patton v. Estate of Upchurch*, 242 S.W.3d 781, 786 (Tenn. Ct. App. 2007)). However, because Individual Defendants did not present the Corrective Action Report with their motion and because we find no indication in the court’s corresponding order that it considered the document, we determine that the trial court properly analyzed Individual Defendants’ motion as a Rule 12.02(6) motion to dismiss.

As Hawker notes, Mr. Hampton’s inclusion of and citations to Mr. Shoemaker’s affidavit, which was not before the trial court until Hawker filed its motion for summary judgment, poses some question of whether Mr. Hampton intended to challenge the summary judgment order on appeal. However, the issue raised by Mr. Hampton clearly indicates a challenge solely to the order granting Individual Defendants’ motion to dismiss. Inasmuch as Mr. Hampton has not raised an issue in his statement of the issues regarding the trial court’s grant of summary judgment to Hawker, we deem any issue regarding the summary judgment order to have been waived. As our Supreme Court has explained:

Appellate review is generally limited to the issues that have been presented for review. Tenn. R. App. P. 13(b); *State v. Bledsoe*, 226 S.W.3d

⁸ The unemployment claim attached to Mr. Hampton’s brief was not in the appellate record and therefore will not be considered by this Court on appeal. *See Kinard v. Kinard*, 986 S.W.2d 220, 227 (Tenn. Ct. App. 1998) (“[W]e do not customarily consider evidence that has neither been presented to nor considered by the trial judge unless it has been made part of the record in accordance with Tenn. R. App. P. 14.”).

349, 353 (Tenn. 2007). Accordingly, the Advisory Commission on the Rules of Practice and Procedure has emphasized that briefs should “be oriented toward a statement of the issues presented in a case and the arguments in support thereof.” Tenn. R. App. P. 27, advisory comm’n cmt.

Hodge v. Craig, 382 S.W.3d 325, 334 (Tenn. 2012); *see also Forbess v. Forbess*, 370 S.W.3d 347, 356 (Tenn. Ct. App. 2011) (“We may consider an issue waived where it is argued in the brief but not designated as an issue.”). In doing so, we recognize that pleadings “prepared by pro se litigants untrained in the law should be measured by less stringent standards than those applied to pleadings prepared by lawyers.” *See Stewart*, 368 S.W.3d at 462. However, we further recognize that we “must not excuse pro se litigants from complying with the same substantive and procedural rules that represented parties are expected to observe.” *See Hessmer*, 138 S.W.3d at 903.

V. Conclusion

For the foregoing reasons, we affirm the trial court’s order granting Individual Defendants’ motion to dismiss. Furthermore, having determined that Mr. Hampton has waived any additional issue regarding the trial court’s grant of summary judgment to Hawker, we affirm the trial court’s judgment dismissing this action with prejudice in its entirety. We remand this case for collection of costs below. Costs on appeal are taxed to the appellant, Richard Hampton.

s/ Thomas R. Frierson, II
THOMAS R. FRIERSON, II, JUDGE