IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
Assigned on Briefs November 19, 2013

DANIEL SCOTT BOWMAN v. BANK OF AMERICA, s/b/m TO COUNTRYWIDE HOME LOANS, INC., ET AL.

Direct Appeal from the Chancery Court for Robertson County
No. CH-11-CV-10464 Laurence M. McMillan, Jr., Chancellor

No. M2013-00424-COA-R3-CV - Filed March 5, 2014

After foreclosure proceedings were instituted against Plaintiff, Plaintiff asserted numerous claims against Defendants. All claims were dismissed in the trial court. We affirm.

Tenn. R. App. P. 3; Appeal as of Right; Judgment of the Chancery Court Affirmed

ALAN E. HIGHERS, P.J., W.S., delivered the opinion of the Court, in which DAVID R. FARMER, J., and HOLLY M. KIRBY, J., joined.

Daniel Scott Bowman, Greenbrier, Tennessee, *pro se*

Brian C. Neal, Paul Allen England, Nashville, Tennessee, for the appellees, Bank of America, s/b/m To Countrywide Home Loans, Inc., et al

OPINION

I. FACTS & PROCEDURAL HISTORY

On September 8, 2006, Daniel Scott Bowman ("Plaintiff") obtained a loan from Countrywide Home Loans, Inc. ("Countrywide") in the principal amount of $202,825.00 to fund the purchase of a residence located at 2005 Graceland Way, Greenbrier, Tennessee. Plaintiff executed an Adjustable Rate Note ("Note") in favor of Countrywide for the $202,825.00 sum and he signed a Deed of Trust ("DOT") related to the property naming Mortgage Electronic Registration Systems, Inc. ("MERS") as beneficiary.

It appears that a foreclosure action was instituted against Plaintiff by Rubin Lublin Suarez Serrano, LLC ("RLSS"), as successor trustee, on behalf of the current owners of Plaintiff's debt: "The Bank of New York Mellon f/k/a The Bank of New York [("New York Mellon")], as Trustee for the Certifica[t]eholders CWABS, Inc., Asset-Backed Certificates, Series 2006-18" ("CWABS"). On June 20, 2011, Plaintiff filed a "Verified Complaint for Temporary Restraining Order and Temporary Injunction" ("Complaint") in the Robertson County Chancery Court against Countrywide, MERS, NY Mellon (collectively, "Defendants") and RLLS[1] seeking to enjoin and to void the foreclosure action.[2]

In his Complaint, Plaintiff described a "fraudulent scheme" related to the ownership of his mortgage and an appraisal of the property prior to his purchase. He asserted ten causes of action: (1) violation of the Tennessee Consumer Protection Act ("TCPA"), Tennessee Code Annotated section 47-18-104; (2) fraudulent misrepresentation; (3) breach of fiduciary duty; (4) unjust enrichment; (5) civil conspiracy; (6) civil RICO; (7) violation of the TCPA

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[1]Formally, the Complaint named as defendants: "BANK OF AMERICA s/b/m TO COUNTRYWIDE HOME LOANS, INC BAC HOME LOANS SERVICING, LP; MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.; THE BANK OF NEW YORK MELLON f/k/a THE BANK OF NEW YORK, AS TRUSTEE FOR THE CERTIFICATEHOLDERS CWABS, INC. ASSET-BACKED CERTIFICATES, SERIES 2006-18; RUBIN LUBLIN SUAREZ SERRANO TN LLC AS TRUSTEE FOR THE BANK OF NEW YORK MELLON AND DOES 1-10[.]" However, according to Bank of America, Countrywide, and New York Mellon, "Bank of America s/b/m to Countrywide Home Loans, Inc." and "BAC Home Loans Servicing, LP" are non-existent entities. The Defendants maintain that "Countrywide Home Loans, Inc. still exists as a separate and distinct entity" and "on July 1, 2011, BAC Home Loans Servicing, LP merged with and into [Bank of America, N.A.,] BANA."

On July 14, 2011, RLLS filed an Answer By Special Appearance raising numerous defenses to the claims against it, including failure of service of process. RLLS was dismissed with prejudice pursuant to an Order of July 30, 2012 and it is not a party to this appeal.

[2]Plaintiff filed his Complaint with the assistance of counsel.

(again); (8) quiet title; (9) usury and fraud; and (10) slander of title.

In his Complaint, Plaintiff essentially alleged that he was misled regarding the true source of funding for his mortgage, that the foreclosing entity lacked standing to foreclose, and that a fraudulent appraisal of his property was obtained prior to its purchase. Specifically, Plaintiff claimed that although Countrywide was listed as the payee on the Note, it was not the true source of funding for Plaintiff's mortgage because it sold the loan to a third party. Thus, according to Plaintiff, "[i]nsofar as Countrywide . . . was not the beneficial 'lender', it did not need to comply with any underwriting standards, rules and regulations governing banking and other financial institutions that perform the function of a 'lender[]'" leaving Plaintiff without a lender who would "perform due diligence and evaluation pursuant to national standards for underwriting and evaluating risk of loaning money in a residential loan closing."

Plaintiff also claimed, "it was the Certificate Investors of the CWABS, Inc., Asset-Backed Certificates, Series 2006-18 into which Plaintiff's loan was allegedly placed that were the actual lenders with beneficial interest in the Plaintiff's mortgage loan." However, Plaintiff maintained that CWABS lacked standing to foreclose because "the Plaintiff's Note and [DOT] were never properly transferred to the CWABS, Inc. Asset-Backed Certificates, Series 2006-18 Trust[.]"

Regarding the alleged fraudulent appraisal, Plaintiff claimed that Countrywide "intentionally and knowingly" obtained an inflated appraisal of his home, which "added an undisclosed cost to the loan[.]" Plaintiff maintained that he relied upon this appraisal based "upon Countrywide's . . . misrepresentation that it was the mortgage lender, leading him to believe that Countrywide had an interest in the success of the transaction[.]"

Also on June 20, 2011, Plaintiff filed an "Application for Temporary Restraining Order" to halt the foreclosure action. Apparently, the temporary restraining order was granted subject to Plaintiff's payment of a $17,000 bond. Plaintiff did not pay the bond, and instead he filed for bankruptcy on or about June 29, 2011. However, Plaintiff's bankruptcy petition was dismissed for non-compliance on February 8, 2012.

In March 2012, Plaintiff's counsel was allowed to withdraw from the matter, and Plaintiff was given thirty days to secure new counsel. Although the time in which to secure counsel was extended at Plaintiff's request, Plaintiff apparently did not secure new counsel in this matter.

On March 22, 2012, Defendants filed a motion to dismiss Plaintiff's Complaint pursuant to Tennessee Rule of Civil Procedure 12.02(6) for failure to state a claim upon which relief could be granted.

On April 20, 2012, Plaintiff, acting *pro se*, filed a "Motion to Amend Complaint," which was granted by the trial court. Plaintiff's "Amended Complaint," which was filed on April 20, 2012, "adopt[ed] and incorporat[ed] by reference . . . all claims in his Original Complaint" and it sought to "include the following additional claims:" (11) malicious fraud; (12) common fraud; (13) fraudulent concealment; (14) theft by deceit; (15) financial damages and losses, (16) fraudulent credit reporting; (17) damages and losses of his legal rights; (18) harassment; (19) intimidation; (20) slander; (21) fraudulent billing; (22) excessive billing; (23) intentional/malicious misrepresentation for the purpose of inducement to cause Plaintiff to disclose sensitive, personal and confidential information under false pretenses; (24) mail fraud; (25) fraudulent demands for the payment of false indebtedness; (26) intentional/malicious infliction of serious emotional distress; (27) deceptive business practices; (28) breach of contract; (29) fraudulent/false claims to ownership of real property under the false pretenses and for the purposes of theft by deceit.[3] In his Amended Complaint, Plaintiff complained of being forced to purchase more-expensive homeowners insurance, his non-payment of which, according to Plaintiff, caused his mortgage account to appear in default, leading to foreclosure. He also complained of Defendants "sabotag[ing]" his efforts to refinance his mortgage.

A hearing was held on Defendants' Motion to Dismiss on May14, 2012. According to Defendants' brief, "[a]t the hearing on the Motion to Dismiss, [Defendants] also requested that the trial court dismiss certain claims in the [Amended Complaint] that suffered from the same defects as found in the Original Complaint[.]" On June 4, 2012, the trial court dismissed with prejudice all claims asserted in Plaintiff's Complaint and the following claims asserted in his Amended Complaint: (11) malicious fraud; (12) common fraud; (13) fraudulent concealment; (16) fraudulent credit reporting; (20) slander; (22) excessive billing; (23) intentional/malicious representation for the purpose of inducement to cause Mr. Bowman to disclose sensitive, personal and confidential information under false pretenses; (24) mail fraud; (25) fraudulent demands for payment of false indebtedness; (27) deceptive business practices; (29) fraudulent/false claims to ownership of real property under false pretenses and for the purposes of theft by deceit of said real property. Thus, eight claims remained.

[3]In his Amended Complaint, Plaintiff also sought to add a jury demand, which the trial court ultimately granted.

On June 11, 2012, Defendants filed an "Answer and Affirmative Defenses to Plaintiff's Amended Complaint." They also filed a "Motion for Judgment on the Pleadings" with regard to the remaining eights claims asserted in the Amended Complaint. In a "Memorandum in Support of their Motion for Judgment on the Pleadings," Defendants argued, among other things, that, with regard to the remaining claims, Plaintiff's Amended Complaint contained contradictory factual assertions, it failed to allege facts to support Plaintiff's claims, and it failed to plead certain elements of the claims.

On July 3, 2012, Plaintiff filed a "Motion for Disqualification and Recusal of Judge Laurence M. McMillan" claiming the existence of "excessive bias and prejudice against him[.]" That same day, Plaintiff also filed a "Motion to Set Aside, Alter and/or Amend" the June 4, 2012 order, which had dismissed most of his claims. Shortly thereafter, on July 26, 2012, Plaintiff filed a "Motion to Strike Defendants' Motion for Judgment on the Pleadings" on the ground that Defendants' motion allegedly contained "redundant, scandalous, impertinent, [and] immaterial content[.]"

On August 13, 2012, a hearing was held on the outstanding motions. Thereafter, the trial court entered an order, on August 27, 2012, denying Plaintiff's Motion for Disqualification and Recusal, denying Plaintiff's Motion to Strike Defendant's Motion for Judgment on the Pleadings, and granting Defendant's Motion for Judgment on the Pleadings. Specifically, the trial court found that "Plaintiff has failed to state a claim on which relief can be granted as to any of the claims in the Amended Complaint that were not previously dismissed with prejudice by the June 4, 2012 Order." Thus, following the August 27 order, all claims against Defendants had been dismissed with prejudice.[4]

Following dismissal of Plaintiff's claims, numerous pleadings were filed in the trial court. For example, on September 24, 2012, Plaintiff filed a "Supplement to Plaintiff's Amended Complaint," a second "Motion for Disqualification and Recusal" of the trial judge, and a "Motion to Set Aside, Alter or Amend the Order Entered on August 27, 2012." However, after setting these motions for hearing, Plaintiff postponed the hearing indefinitely in October 2012. Then, in December 2012, Defendants moved to strike Plaintiff's "Supplement to Plaintiff's Amended Complaint," they moved for sanctions against Plaintiff pursuant to Tennessee Rule of Civil Procedure 11, and they requested that the trial court require future filings by Plaintiff be certified as non-frivolous by a licensed attorney, a Clerk, or a Special Master.

[4]The Order stated that it "constitutes a final judgment with regard to all claims asserted by Plaintiff against all parties in this lawsuit."

A hearing was held on the various motions on December 17, 2012. On January 7, 2013, the trial court entered an order denying Plaintiff's second Motion for Disqualification and Recusal and his Motion to Set Aside, Alter or Amend. In the order, the trial court also denied Defendants' Motion for Sanctions and it "denied as moot" Defendants' Motion to Strike the Supplement to Plaintiff's Amend Complaint, determining that it "lack[ed] jurisdiction to consider any supplement to Plaintiff's Amended Complaint.

On February 1, 2013, Plaintiff filed a "Motion for Stay During Pendency of Appeal, which the trial court later denied. Also on February 1, 2013, Plaintiff filed a "Notice of Appeal" to this Court. He later filed a notice indicating that no transcript would be filed.

II. ISSUES PRESENTED

Plaintiff presents the following issues for review:

1. Whether the trial court erred in granting Defendants' Motion to Dismiss;

2. Whether the trial court erred in granting Defendants' Motion for Judgment on the Pleadings;

3. Whether the trial court erred in granting Defendants' Motion for Summary Judgment;

4. Whether the trial court erred in denying Plaintiff's Motion for Recusal and/or Disqualification;
   (a) Whether the trial court judge erred in failing to comply with Rule 2.11(D) of the Code of Judicial Conduct; and

5. Whether the trial court judge exhibited bias and/or prejudice against the Plaintiff.

For the following reasons, we affirm the decision of the chancery court.

III. DISCUSSION

A. Grant of Motion to Dismiss

As stated above, the trial court granted Defendants' Motion to Dismiss with regard to all claims asserted in Plaintiff's Complaint and certain other claims asserted in his Amended Complaint. Specifically, the following claims were dismissed: (1) violation of the Tennessee Consumer Protection Act ("TCPA"), Tennessee Code Annotated section 47-18-104; (2) fraudulent misrepresentation; (3) breach of fiduciary duty; (4) unjust enrichment;

(5) civil conspiracy; (6) civil RICO; (7) violation of the TCPA (again); (8) quiet title; (9) usury and fraud; (10) slander of title. (11) malicious fraud; (12) common fraud; (13) fraudulent concealment; (16) fraudulent credit reporting; (20) slander; (22) excessive billing; (23) intentional/malicious representation for the purpose of inducement to cause Mr. Bowman to disclose sensitive, personal and confidential information under false pretenses; (24) mail fraud; (25) fraudulent demands for payment of false indebtedness; (27) deceptive business practices; (29) fraudulent/false claims to ownership of real property under false pretenses and for the purposes of theft by deceit of said real property.

On appeal, Plaintiff does not address, individually, the twenty-one claims dismissed.[5] Instead, he simply argues, in two and one-half pages of argument, that because the trial court dismissed his claims, it obviously did not construe his complaints liberally and/or it did not presume the factual allegations therein to be true as required under Tennessee law. Additionally, he contends, without citation to authority, that his "claims do not fail to establish a cause of action as many of the same/identical causes of action against these same Defendants have been established as a matter of law and pursuant to the federal orders directing and requiring these same Defendants to cease and desist their fraudulent acts by court orders which superseded the trial court."

In his brief, with regard to the grant of Defendants' Motion to Dismiss, Plaintiff cites authority only in relation to the standard of review for motions to dismiss. He cites no authority concerning the specific causes of action dismissed, and, in fact, he does not mention the specific causes of action at all. Additionally, within his argument section related to the motion to dismiss, he makes no citations to the record.

"Courts have routinely held that the failure to make appropriate references to the record and to cite relevant authority in the argument section of the brief as required by Rule 27(a)(7) constitutes a waiver of the issue." ***Bean v. Bean***, 40 S.W.3d 52, 55 (Tenn. Ct. App. 2000) (citing *State v. Schaller*, 975 S.W.2d 313, 318 (Tenn. Crim. App. 1997); *Rampy v. ICI Acrylics, Inc.*, 898 S.W.2d 196, 210 (Tenn. Ct. App. 1994); *State v. Dickerson*, 885 S.W.2d 90, 93 (Tenn. Crim. App. 1993)). "Moreover, an issue is waived where it is simply raised without any argument regarding its merits." ***Id.*** at 56 (citing *Blair v. Badenhope*, 940 S.W.2d 565, 576-77 (Tenn. Ct. App. 1996); *Bank of Crockett v. Cullipher*, 752 S.W.2d 84, 86 (Tenn. Ct. App. 1988)).

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[5] We note that Plaintiff's appellate brief contains 105 pages, including a 42-page "Statement of Case," a 41-page "Statement of Facts" and a 15-page "Law and Argument" section. At best, Plaintiff's brief is difficult to discern. Although arguments are, perhaps, included within other sections, we address the arguments made in the "Law and Argument" section. ***See, e.g.,*** **Tenn. R. App. P. 27(I)** (requiring that, except by order otherwise, the argument section of a principal brief not exceed 50 pages).

Because of the woeful inadequacy of Plaintiff's argument related to the motion to dismiss–particularly its complete failure to address any of the claims dismissed–we decline to consider the propriety of the dismissal of these claims. "As noted in *England v. Burns Stone Company, Inc.*, 874 S.W.2d 32, 35 (Tenn. Ct. App. 1993), parties cannot expect this court to do its work for them." ***Id.*** This issue is waived.[6]

B. Grant of Motion for Judgment on the Pleadings

As explained above, the trial court granted Defendants' Motion for Judgment on the Pleadings with respect to the remaining eight claims: (14) theft by deceit; (15) financial damages and losses, (17) damages and losses of his legal rights; (18) harassment; (19) intimidation; (21) fraudulent billing; (26) intentional/malicious infliction of serious emotional distress; and (28) breach of contract.

On appeal, Plaintiff argues that the trial court erred in granting Defendants' Motion for Judgment on the Pleadings because, according to Plaintiff, "[Plaintiff] has an enormous amount of well documented proof, and significant proof in support of his claim in his individual case, have already been proven in higher courts and it has already been determined and a standard set, that [Plaintiff] is entitled to relief, inasmuch, as he already received small payments as evidence of proof that he can prove his claims and that those claims are worthy of relief [sic]." Additionally, he contends that a judgment on the pleadings for failure to state a claim was erroneously granted because his Complaint and Amended Complaint "acquainted [Defendants] well enough with the real issues" to enable Defendants to file a Response.

The argument section of Plaintiff's brief devoted to challenging the judgment on the pleadings suffers from the same glaring inadequacies described above with regard to his argument concerning the motion to dismiss. That is, Plaintiff cites authority only in relation to the standard of review for judgments on the pleadings, he cites no authority concerning the specific causes of action dismissed–nor does he mention the eight specific causes of action at all–and he makes no citations to his complaint to suggest where a sufficient claim has been stated. Additionally, within his argument section related to the judgment on the pleadings, Plaintiff makes no citations to the record.

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[6]We are mindful that Plaintiff is a pro se litigant. "*Pro se* litigants are entitled to fair and equal treatment." ***Whitaker v. Whirlpool Corp***., 32 S.W.3d 222, 227 (Tenn. Ct. App. 2000) (citing *Childs v. Duckworth*, 705 F.2d 915, 922 (7th Cir. 1983)). "*Pro se* litigants, are not, however, entitled to shift the burden of litigating their case to the courts." ***Id.*** (citing *Dozier v. Ford Motor Co.*, 702 F.2d 1189, 1194 (D.C. Cir. 1983)). "*Pro se* litigants are not excused from complying with the same substantive and procedural requirements that other represented parties must adhere to." ***Id.*** (citing *Irvin v. City of Clarksville*, 767 S.W.2d 649, 652 (Tenn. Ct. App. 1989)).

To be clear, Plaintiff has not addressed the claims dismissed via Defendants' Motion for Judgment on the Pleadings in any way; he has not listed the elements of such claims or even identified the causes of action dismissed. This Court simply will not sift through Plaintiff's thirty-two page Amended Complaint, which contains no outline or headings, to discern whether claims were adequately stated for eight causes of action. Plaintiff has failed to provide any direction regarding where such claims can be found within the Amended Complaint or any explanation as to how the elements of these claims, or facts supporting such claims, have been asserted. It is not the duty of this Court to craft Plaintiff's argument for him. Accordingly, this issue is waived. ***Sneed v. Bd. of Prof'l Responsibility of Sup. Ct.***, 301 S.W.3d 603, 615 (Tenn. 2010) ("It is not the role of the courts, trial or appellate, to research or construct a litigant's case or arguments for him or her, and where a party fails to develop an argument in support of his or her contention or merely constructs a skeletal argument, the issue is waived.").

C. Grant of Summary Judgment

On appeal, Plaintiff next argues that the trial court erred in granting summary judgment in favor of Defendants. Plaintiff seems to concede that no motion titled as one for summary judgment was filed in this case, but he contends that "by all appearances and standards of review, it appears [Defendants] did [file a motion for summary judgment], even though they couched it under a different title, for purpose of evading the requisite period of time to allow a response from [Plaintiff,] it appears from their inclusion of certain documents, and the language in the *final orders* they repeatedly prepared and entered in the court."

After claiming that a motion for summary judgment was filed and granted, Plaintiff argues that such grant was in error due to the existence of disputed issues of material fact. Specifically, Plaintiff contends that "there are significant factual disputes that exist, chief among them is the fact that there is substantial, convincing documented evidence that support[s] [Plaintiff's] claims that the Defendants have no legal standing and do not hold any security interest in the subject real property which is the same property upon which the Defendants have attempted to execute a fraudulent foreclosure." Additionally, he claims "the fraudulent billing, fraudulent foreclosure, [and] question of ownership of any security interest, are all factual disputes, material to the outcome of the case and each of these claims create genuine issues for trial."

Although Plaintiff fails to specify which motion was allegedly converted to a motion for summary judgment, we presume he intends to argue that Defendants' Motion to Dismiss was so converted. Tennessee Rule of Civil Procedure 12.02 provides that if a trial court, when considering a Rule 12.02(6) to dismiss for failure to state a claim upon which relief can

be granted, considers matters outside of the pleading, "the motion shall be treated as one for summary judgment[.]"

On appeal, Plaintiff argues only that unspecified "certain documents" were considered by the trial court without further explanation or citation to the record. In its order granting Defendants' Motion to Dismiss, the trial court indicated that its dismissal was based upon its "review[] [of] the pleadings and pertinent legal authority, and . . . the oral arguments of the parties[.]" We find nothing in the record to indicate that the Motion to Dismiss was converted to a Motion for Summary Judgment. Because the trial court did not grant a Motion for Summary Judgment, it necessarily could not have erred in granting a Motion for Summary Judgment. This issue is without merit.

D. Actions of Trial Judge

Finally, Plaintiff argues that the trial court erred in denying his Motion for Disqualification and Recusal of the trial judge, Chancellor Laurence M. McMillan, Jr.[7] Plaintiff impliedly alleges that Chancellor McMillan "mock[ed], bull[ied], laugh[ed] at and ridicule[d]" him and he claims that Chancellor McMillan "announced in open court that he is bias[ed] against" Plaintiff and that he "openly engaged in egregious acts of wrongdoing and facilitated the unethical acts of Defendants['] counsel." In further support of his allegation of bias, Plaintiff claims that Chancellor McMillan "debated and delayed" in granting his request to add a jury demand, that he set an "excessive bond[,]" and that he "knowingly signed and entered Orders which he knew contained blatantly false statements and made intentionally false misrepresentations about occurrences for which he was present[.]"

In his brief, Plaintiff provides no citations to support his sweeping allegations. Many of his allegations relate to alleged statements of the trial judge and no transcripts have been filed in this case. Moreover, Plaintiff has not pointed to any evidence suggesting that Chancellor McMillan's supposed delay in granting Plaintiff's request to add a jury demand–the request was filed on April 20, 2012 and it was granted on June 4, 2012–is in anyway indicative of bias or other ill motive. Because Plaintiff has failed to direct this Court to any evidence in support of his claims of alleged misconduct, we conclude that the issue is waived. ***See Belardo v. Belardo***, No. M2012-02598-COA-R3-CV, 2013 WL 5925888, at *13 (Tenn. Ct. App. W.S. Nov. 1, 2013) (citing *Owen v. Long Tire, LLC*, No. W2011-01227-COA-R3-CV, 2011 WL 6777014, at *4 (Tenn. Ct. App. Dec. 22, 2011) ("This Court is under no duty to verify unsupported allegations in a party's brief[.]")).

[7]We consider Plaintiff's fourth and fifth issues together.

IV. Conclusion

For the aforementioned reasons, we affirm the decision of the chancery court. Costs of this appeal are taxed to Appellant, Daniel Scott Bowman, for which execution may issue if necessary.

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ALAN E. HIGHERS, P.J., W.S.