[Cite as *Wildi v. Hondros College*, 2009-Ohio-5205.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Deborah A. Wildi,	:	
Plaintiff-Appellant,	:	
		No. 09AP-346
v.	:	(C.P.C. No. 08CVH-09-13094)
Hondros College,	:	(REGULAR CALENDAR)
Defendant-Appellee.	:	

D E C I S I O N

Rendered on September 30, 2009

Deborah A. Wildi, pro se.

Hrabeak & Company, Michael Hrabeak and *Heidi A. Smith*, for appellee.

APPEAL from the Franklin County Court of Common Pleas.

PER CURIAM.

{¶1} Plaintiff-appellant, Deborah A. Wildi ("appellant"), appeals from the judgment of the Franklin County Court of Common Pleas, in which that court granted the Civ.R. 12(B)(6) motion to dismiss filed by defendant-appellee, Hondros College ("appellee" or "the college").

{¶2} Appellant alleged the following facts in her complaint, which she filed on September 12, 2008.[1] In August 2004, appellant began taking real estate classes offered

[1] This is a refiled case; appellant voluntarily dismissed her first complaint filed in September 2006 pursuant to Civ.R. 41(A).

by appellee. According to the complaint, on the first day of classes, stalkers followed appellant to school and began to verbally harass her. Appellant contacted the local police, filed a report, and advised Linda Hondros ("Hondros"), an administrator for the college, of the situation. The stalking continued, however, prompting appellant to again seek assistance from the police. Appellant also informed appellee that her stalkers had not ceased their harassment, and that she planned to post flyers around campus that offered a cash reward for information related to their identities. Additionally, appellant took down the license plate numbers of her fellow students, who had "commented on the harassment," and alleged in her complaint that such practice was declared legal by a judge in another unrelated proceeding. Complaint ¶2.

{¶3} Although it is unclear from the complaint, at some point, Hondros requested that appellant leave the campus. Appellant alleges that she complied with Hondros' request based on the understanding that she would be permitted to reschedule completion of her classes. Thereafter, appellant attempted to contact Hondros, but Hondros failed to respond to appellant's phone calls.

{¶4} Appellant next contacted the police, who, according to appellant, advised her that Hondros "did not have any legal reason to request" that appellant leave the school. Appellant then contacted Hondros and advised that she would be returning to campus and planned on attending classes the next day. When appellant arrived, Hondros was standing outside the entrance and told appellant that she was not "wanted there" and handed appellant a "refund check" and told her "to leave." Complaint ¶5. Appellant borrowed the money to pay for her tuition from Citifinancial.

{¶5} Subsequent to the factual portion of the complaint, appellant set forth the following four counts:

> COUNT I
>
> 10. Plaintiff incorporates paragraphs 1 through 9 herein as if fully written.
>
> 11. Acceptance of payment for the courses constituted a contract between me and Hondros College.
>
> 12. Asking me to leave without cause constitutes a breach of contract.
>
> 13. As a direct and proximate result of this breach of contract, Deborah Wildi was damaged.
>
> COUNT II
>
> 14. Plaintiff incorporates paragraphs 1 through 13 herein as if fully written.
>
> 15. By not allowing me to complete the real estate licensing process, income was lost. But more importantly, because of income loss, I was unable to catch and prosecute those involved as well as those responsible for the stalking and harassment. Furthermore, I concurred another monthly payment without any additional income.
>
> 16. As direct and proximate result of this breach of contract, Deborah Wildi was damaged.
>
> COUNT III
>
> 17. Plaintiff incorporates paragraphs 1 through 16 herein as if fully written.
>
> 18. As a College, Hondros has a responsibility to provide a safe, harassment free learning environment for all of its students rather than asking them to leave without cause. There were many possible solutions to the problem. Their response was to remove me.

> 19. As a direct and proximate result of this breach of contract, Deborah Wildi was damaged.
>
> COUNT IV
>
> 20. Plaintiff incorporates paragraphs 1 through 19 herein as if fully written.
>
> 21. The continued comments made to me over the incident are a continuing source of distress and harassment.
>
> 22. As a direct and proximate result of the breach of contract, Deborah Wildi was damaged.

{¶6} Appellant's complaint also contained a prayer for relief that provided:

> [P]laintiff, Deborah A. Wildi requests judgment against the defendant on all four Counts and requests the following damages:
>
> 1. 1.5 million dollars in damages.
>
> 2. All costs incurred to be paid by the defendant.
>
> 3. The grades for the three incompleted [sic] course[s] be changed to incompletes which is the correct designation.
>
> or
>
> 1. Admittance to Hondros College so the college credit will be from Franklin University.
>
> 2. The grades for the three incompleted [sic] courses be changed to incompletes which is the correct designation.
>
> 3. The option of paying for off-duty police officers or private security if I feel the need.
>
> 4. All costs to be paid by the defendant.

{¶7} On October 16, 2008, appellee filed a motion to dismiss, or, in the alternative, a motion for summary judgment. On November 24, 2008, appellant requested an extension of time in which to respond to appellee's motion. Specifically,

appellant requested that she be given until 28 days "after the Domestic Relations Magistrate rules on Motions which go to trial on December 16." (Motion at 1.) According to appellant, "[e]vidence will be presented [in the domestic relations matter] which should resolve some of the issues related to the complaint." Id. Appellee opposed appellant's motion for an extension of time. On February 6, 2009, the trial court denied appellant's motion for an extension of time and ordered appellant to respond to appellee's motion within 14 days from the date of the decision.

{¶8} On February 20, 2009, appellant filed a motion requesting an additional 21 days in which to respond to appellee's motion. In her motion, appellant stated that she has "a number of health issues, has been ill and unable to respond." Appellant attached documentation to her motion, including the response she filed to appellee's motion for summary judgment filed in the original case, discharge instructions (that did not contain the identity of the patient), as well as patient information sheets for two prescriptions (propoxyphene and acetaminophen). Appellee opposed appellant's motion for an extension of time. On March 5, 2009, the trial court granted appellee's motion to dismiss and denied its motion for summary judgment.

{¶9} Appellant appeals, assigning the following two assignments of error:

> [1.] ERROR OF DISMISSING THE BREACH OF CONTRACT FOR FAILURE TO STATE A CAUSE OF ACTION UPON WHICH RELIEF MAY BE GRANTED.
>
> [2.] ERROR OF DENYING AN EXTENSION OF TIME TO FILE ANSWER.

{¶10} Appellate review of a trial court's decision to dismiss a case, pursuant to Civ.R. 12(B)(6), is de novo. *Singleton v. Adjutant Gen. of Ohio*, 10th Dist. No. 02AP-971,

2003-Ohio-1838. In order for a court to dismiss a case, pursuant to Civ.R 12(B)(6), "it must appear beyond doubt from the complaint that the plaintiff can prove no set of facts entitling him to recovery." *O'Brien v. Univ. Community Tenants Union, Inc.* (1975), 42 Ohio St.2d 242, syllabus. The court must presume all factual allegations in the complaint are true and draw all reasonable inferences in favor of the nonmoving party. *Bridges v. Natl. Engineering & Contracting Co.* (1990), 49 Ohio St.3d 108, 112. In considering a motion to dismiss under Civ.R. 12(B)(6), the court looks only to the complaint to determine whether the allegations are legally sufficient to state a claim. *Springfield Fireworks, Inc. v. Ohio Dept. of Commerce*, 10th Dist. No. 03AP-330, 2003-Ohio-6940. We will not, however, consider unsupported conclusions that may be included among, but not supported by, the factual allegations of the complaint because such conclusions cannot be deemed admitted and are not sufficient to withstand a motion to dismiss. *Wright v. Ghee*, 10th Dist. No. 01AP-1459, 2002-Ohio-5487, citing *Grange Mut. Cas. Co. v. Klatt* (Mar. 18, 1997), 10th Dist. No. 96AP07-888.

{¶11} In support of her first assignment of error, appellant maintains that her complaint states a claim for breach of contract. Appellant asserts that she sufficiently pled the element of damages, to wit, "the loss of income and the loan from Citifinancial * * * [and] it clearly asks for a monetary judgment." (Appellant's brief at 5.) She further argues that "[a]lthough interest was not specifically mentioned, the loan and required payments were included in the complaint * * * and it is reasonable for this court to expect that interest was paid. * * * My lost income is not speculative and can be documented. The complaint meets the requirements and facts can be proven which would entitle me to recovery." Id. at 6.

{¶12} We note that under the Ohio Rules of Civil Procedure, a complaint need only contain "a short and plain statement of the claim showing that the party is entitled to relief." Civ.R. 8(A). The complaint need not state with precision all elements that give rise to a legal basis for recovery as long as fair notice of the nature of the action is provided. *Fancher v. Fancher* (1982), 8 Ohio App.3d 79, 83. "Notice pleading" under Civ.R. 8(A) and 8(E) requires that a claim concisely set forth only those operative facts sufficient to give "fair notice of the nature of the action." *DeVore v. Mut. of Omaha Ins. Co.* (1972), 32 Ohio App.2d 36, 38; *Welch v. Finlay Fine Jewelry Corp.*, 10th Dist. No. 01AP-508, 2002-Ohio-565; *Goodman v. Grange Mut. Cas. Co.,* 10th Dist. No. 02AP-198, 2002-Ohio-6971. The complaint must contain allegations from which an inference may fairly be drawn that evidences the material parts introduced at trial. *Lone Star Steakhouse & Saloon of Ohio, Inc. v. Quaranta*, 7th Dist. No. 01 CA 60, 2002-Ohio-1540.

{¶13} The elements of a claim for breach of contract are the existence of a contract, performance by the plaintiff, breach by the defendant, and damage or loss to the plaintiff. *Jarupan v. Hanna,* 173 Ohio App.3d 284, 2007-Ohio-5081, ¶18. In this case, the trial court dismissed appellant's breach of contract claim for failure to state a cause of action upon which relief may be granted. The court explained:

> Plaintiff's complaint gives notice that she claims the existence of a contract based on her enrollment, the payment of tuition fees and acceptance thereof by the defendant. The complaint further alleges that the defendant forced her to leave school without cause. However, as in *Bo Guess v. The Toledo Blade* [*Newspaper Co.* (Feb. 6, 1998), 6th Dist. No. L-97-1276], plaintiff's complaint acknowledges that she received a refund of her tuition payment from the defendant. While the complaint also states that plaintiff was forced to take out a loan to pay her tuition, the complaint does not assert that plaintiff was unable to repay the loan from the reimbursed

> tuition or that she suffered any loss through interest payments or other specified damages. From the face of the complaint, it appears that plaintiff received reimbursement of whatever monies she expended to enroll at the defendant's college and she has no recognizable damages. *Bo Guess v. The Toledo Blade*, supra. Therefore, even under Ohio's notice pleading, plaintiff has failed to state a claim for breach of contract. The motion to dismiss the breach of contract claim for failure to state a cause of action upon which relief may be granted is **SUSTAINED**.

(Trial court's decision at 6-7, fn. omitted.)

{¶14} Upon review of the record and pertinent case law, we agree with the trial court's determination. In *Guess v. Toledo Blade Newspaper Co*., 6th Dist. No. L-97-1276, a case relied upon by the trial court, the Sixth District Court of Appeals dismissed a similar claim, explaining that:

> The only cognizable cause of action from the facts appellant alleges is breach of contract. However, that cause requires damages as an essential element. *Doner v. Snapp* (1994), 98 Ohio App.3d 597, 600. On its face, appellant's complaint states that appellee refunded the amount of the unused subscription. Consequently, appellant alleges no legally recognizable damages under a breach of contract theory. Therefore, dismissal pursuant to Civ.R. 12(B)(6) is appropriate.

{¶15} As applied here, appellant's complaint states that appellee tendered to her a "refund check." Complaint ¶5. Upon appellant's refusal to accept the check, appellee mailed the same to appellant. Because appellee reimbursed appellant for her enrollment and tuition expenses, appellant does not have a claim for recognizable damages under a breach of contract theory. Accordingly, we overrule appellant's first assignment of error.

{¶16} In her second assignment of error, appellant argues that the trial court should have granted her request for an extension of time in which to respond to

appellee's motion to dismiss. This assignment of error is moot in light of our disposition of appellant's first assignment of error. Because we found that appellant failed to state a claim for recognizable damages, discussion of whether the trial court abused its discretion in denying appellant's motion for an extension of time to respond to appellee's motion to dismiss would not affect our disposition of this appeal. Accordingly, we overrule appellant's second assignment of error as moot.

{¶17} Having overruled both of appellant's assignments of error, we affirm the judgment of the Franklin County Court of Common Pleas.

Judgment affirmed.

McGRATH, BRYANT and BROWN, JJ., concur.

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