

**IN THE COURT OF COMMON PLEAS
- GENERAL DIVISION -
TRUMBULL COUNTY, OHIO**

CASE NUMBER: 2017 CV 00451

**JOHN W KUCEK
PLAINTIFF**

VS.

JUDGE W WYATT MCKAY

**SAMS CLUB CORPORATE
HEADQUARTERS
DEFENDANT**

JUDGMENT ENTRY

This matter is before the Court on the Defendants' Motion for Judgment on the Pleadings. The Court has reviewed the Motion and the Response, together with the Complaint.

The purpose of a Civ.R. 12(C) motion for judgment on the pleadings is to resolve questions of law. State ex rel. Midwest Pride IV, Inc. v. Pontious (1996), 75 Ohio St.3d 565. In ruling on the motion, the court may consider both the complaint and answer, but must construe all of the material allegations as true and draw all reasonable inferences in favor of the nonmoving party. Id.; Whaley v. Franklin Cty. Bd. of Commrs. (2001), 92 Ohio St.3d 574. In order to grant the motion, this Court must find beyond doubt that the nonmoving party can prove no set of facts that would entitle him or her to relief.

On March 15, 2017 plaintiff filed his complaint alleging that on or about July 4, 2015, he was "scrapping" in Sam's Club trash receptacles when Defendant Woolensack, a Sam's Club employee, instructed him to stop. As plaintiff proceeded to drive away

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with items that he procured from Sam's Club, the employee allegedly jumped on the hood of plaintiff's truck. Plaintiff continued to drive his truck until Woolensack fell off.

Plaintiff was charged with two counts of Aggravated Robbery and one count of Felonious Assault, for which he is serving six years in prison. Plaintiff, acting pro se, alleges that due to Defendants' negligence, he suffered irreversible injury and was incarcerated.

In considering a motion under Ohio Civ. R. 12(C), the court must construe the material allegations in the complaint, with all reasonable inferences drawn therefrom, as true and in favor of the non-moving party. A court granting the motion must find that the plaintiff can prove no set of facts in support of the claims that would entitle him or her to relief. *JTO, Inc. v. State Auto. Mut. Ins. Co.*, 194 Ohio App.3d 319, 956 N.E.2d 328, 2011-Ohio-1452 (11th Dist.), ¶ 11, quoting *Frazier v. Kent*, 11th Dist. Nos.2004-P0077 & 2004-P-0096, 2005-Ohio-5413, ¶ 14.

Ohio is a notice pleading state and does not ordinarily require a plaintiff to plead with particularity. *Cincinnati v. Beratta U.S.A. Corp.* 95 Ohio St. 3d 416, (2002). Civ. R. 8(A) requires only a short and plain statement of the claim that gives the defendant fair notice of the plaintiff's claim and the grounds upon which it is based. *Illinois Controls, Inc. v. Langham* 70 Ohio St. 3d 512, 526.

Although a complaint need not state with precision all elements that give rise to a legal basis for recovery, fair notice of the nature of the action must be provided. *McWreath v. Cortland Bank*, 11th Dist. No. 2010-T-0023, 2012-Ohio-3013, ¶40, citing *Bridge v. Park Nat'l Bank*, 10th Dist. No. 03AP-380, 2003-Ohio-6932, ¶ 5. Under the

notice pleading requirements, "to constitute fair notice, the complaint must still allege sufficient underlying facts that relate to and support the alleged claim, and may not simply state legal conclusions." *Gonzalez v. Posner*, 6th Dist. No. F-09-017, 2010-Ohio-2117, ¶ 11.

In this case, the Court agrees with the Defendant that Plaintiff's complaint is so vague that it fails to place Defendants on fair notice of any cognizable claim against them. The complaint is unclear as to what causes of action are being alleged against defendants. However, in any case, any potential cause of action is without merit for the following reasons.

Initially it appears that plaintiff's complaint may state a claim for false imprisonment or false arrest. ("Plaintiff Kucek was not violating any law in which Defendant Sam's Club or its representative should have legally detained him." Complaint Count 1, ¶1.) False imprisonment and false arrest are indistinguishable under Ohio law. To prove false arrest the plaintiff must show that he was 1) unlawfully 2) taken into custody or otherwise deprived of his liberty, as a result of which he 3) suffered damages. Additionally, an essential to recovery is a showing that a detention or confinement occurred without lawful justification. *McFinley v. Bethesda Oak Hospital*, 79 Ohio App. 3d 613, 607 N.E.2d 936 (1st Dist. 1992).

In Ohio, shopkeepers are privileged to detain those suspected of theft for a limited time to allow investigation. *Monrean v. Higbee Dept Stores*, 11th Dist. No. 99-T-0099, 2001 WL 20808. R.C. 2935.041 allows for "a merchant, or his employee or agent, who has probable cause to believe that items offered for sale by a mercantile

establishment have been unlawfully taken by a person may ... detain the person in a reasonable manner for a reasonable length of time within the mercantile establishment or its immediate vicinity."

In this case, it is evident Defendants were privileged to detain Plaintiff for a reasonable period of time. By the description of the events contained in the complaint, Plaintiff was detained only for minutes. ("Plaintiff Kucek instructed Defendant Woolensack to get off his pickup. Defendant Woolensack didn't comply, so Plaintiff Kucek slowly drove his vehicle in a left circle, speeding up until Defendant Woolensack let go and slid off the hood." Plaintiff's Complaint ¶6.) The Court cannot find that mere minutes constitute an unreasonable period of time. Any cause of action for false arrest or false imprisonment must fail as a matter of law.

Plaintiff's complaint also mentions that Defendants' "negligent actions caused irreversible injury to Plaintiff" potentially alleging a claim of negligence. Complaint Count 1, ¶2. However, Plaintiff failed to allege any of the essential elements of negligence- (1) that defendant owed a duty to plaintiff; (2) that defendant breached that duty; (3) that defendant's breach of duty directly and proximately caused plaintiff's injury; and (4) damages." *McWreath v. Cortland Bank*, supra, at ¶ 29. Plaintiff fails to plead any facts to allow the court to draw a reasonable inference that Defendants are liable for the damages alleged. Plaintiff pled guilty to Aggravated Robbery and Felonious Assault and sentenced to 6 years in prison. It is unclear after reading the Complaint as to how Defendants are responsible for Plaintiff's criminal conviction.

If Plaintiff's complaint were to be construed to state a cause of action for malicious prosecution, Plaintiff's complaint still fails as a matter of law. The elements of the tort of malicious criminal prosecution are (1) malice in instituting or continuing the prosecution, (2) lack of probable cause, and (3) termination in favor of the accused. *Canfora v. Coiro*, 11th Dist. No. 2006-L-105, 2007 Ohio 2314, ¶157. Plaintiff claim fails in that the termination of the prosecution was not in favor of the accused. Rather, he pled guilty to the charges.

For the foregoing reasons, Defendants' Motion for Judgment on the pleadings is well taken and Plaintiff's complaint is dismissed with prejudice. Costs to Plaintiff. This is a final appealable order and there is no just cause for delay.

W. Wyatt McKay

JUDGE W WYATT MCKAY

Date:

7/2/17

Copies to:
ROBERT S. YALLECH
PRO SE

**TO THE CLERK OF COURTS:
YOU ARE ORDERED TO SERVE COPIES OF THIS JUDGMENT
ON ALL COUNSEL OF RECORD OR UPON THE PARTIES
WHO ARE UNREPRESENTED FORTHWITH
BY ORDINARY MAIL.**

W. Wyatt McKay

JUDGE W. WYATT MCKAY

MAILED 10:45 AM
CLERK OF COURTS
TROMBULL COUNTY
2017 JUL -7 AM 10:45
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