

ARKANSAS COURT OF APPEALS

DIVISION IV
No. CA09-1129

ANTHONY ROSE

APPELLANT

V.

LOUIS A. ETOCH, CHARLES
HALBERT, DONALD E. KNAPP, JR.,
AND ETOCH LAW FIRM

APPELLEES

Opinion Delivered April 7, 2010

APPEAL FROM THE PHILLIPS
COUNTY CIRCUIT COURT
[NO. CV-08-305]

HONORABLE RICHARD LEE
PROCTOR, JUDGE

AFFIRMED

WAYMOND M. BROWN, Judge

Anthony Rose brings this pro se appeal from the July 1, 2009 order of dismissal based on the trial court's conclusion that Rose's complaint did not state a valid cause of action against the defendants. Rose alleges eight points of error: 1) the trial court erred in granting the motion to dismiss the claim for fraud; 2) the trial court erred by stating that the facts of the case arose out of a set of circumstances that began with the filing of a complaint in the circuit court of Phillips County; 3) the trial court erred by stating that Rose had a remedy when the garnishment was first filed to object to the garnishment in the court that issued the writ of garnishment; 4) the trial court erred by stating that there is no specific allegation of damages in the complaint; 5) the trial court erred by stating that there was no fraud alleged in the complaint; 6) the trial court erred by stating that apparently there were no actions taken

against the Clark Estate by Rose; 7) the trial court erred by stating that the complaint does not state a valid cause of action against Etoch, Halbert, Knapp, and the Etoch Law Firm; and 8) the trial court erred by not addressing Rose's change-of-venue motion. We affirm.

Rose was the defendant in a wrongful-death action. Louis Etoch and Charles Halbert represented the Estate of Donald Wayne Clark in the action. Rose filed for Chapter 7 bankruptcy protection while the wrongful-death action was pending. Donald Knapp was employed with the Etoch and Halbert Law Firm during this time and appeared in bankruptcy court on two occasions for the firm. The Estate was able to obtain relief from the automatic stay in order to pursue the action to judgment. On June 25, 2001, Rose's debts were discharged. The wrongful-death action concluded, and a judgment in the amount of \$1,010,000 was entered against Rose on June 23, 2005. A writ of garnishment was issued on July 12, 2005. Etoch filed an adversary proceeding in bankruptcy court on February 2, 2007, seeking default judgment against Rose, or in the alternative, summary judgment. In an order dated August 21, 2007, the court denied the summary-judgment request and held the request for default judgment in abeyance. An order to show cause and an order setting hearings was also entered that day. A hearing took place on September 12, 2007. The adversary proceeding was dismissed by order on September 14, 2007, for want of subject-matter jurisdiction. Rose filed an adversarial action in bankruptcy court on November 11, 2007; however, that case was dismissed in November 2008.

Rose filed a complaint in circuit court on September 4, 2008,¹ stating that “the defendants have actively taken part in violating an injunction from Federal Bankruptcy Court and/or continuing efforts to prevent financially (sic) reimbursement to the plaintiff.” Rose sought compensatory damages in excess of one million dollars and punitive damages in excess of two million dollars. Rose also filed a motion for change of venue on September 4, 2008. Etoch, Knapp, and the Etoch Law Firm filed a motion to dismiss on September 12, 2008. Halbert’s motion to dismiss was filed on September 17, 2008. Rose sought an enlargement of time to serve all of the defendants, and his request was granted by order filed on January 15, 2009. Halbert filed a motion to dismiss and a brief in support of the motion on March 11, 2009. Halbert contended that the court lacked subject-matter jurisdiction to hear Rose’s case. Etoch, Knapp, and the Etoch Law Firm filed a motion to incorporate and adopt Halbert’s motion on March 17, 2009. Rose filed a response to the motions to dismiss on March 23, 2009. In that response, Rose stated “[t]he cover sheet to the foregoing civil case clearly states Fraud for the cause of action. Fraud occurred when the Defendants did take part in violating the Discharge Injunction by garnishing Plaintiff’s income and/or some other Bankruptcy proceeding appearances.”²

¹There is a first amended complaint included in the addendum and the record, but there is no file mark on the complaint.

²It is clear that Rose’s response was more than one page in length; however, the addendum and the record only contains a one-page response. Ordinarily, we would order rebriefing but rebriefing is not warranted in this case because it is clear that the trial court committed no error.

The case was heard on June 15, 2009. Rose appeared pro se and told the court that the root of the lawsuit was that the defendants garnished his wages “while a bankruptcy was pending.” Rose stated that he attempted to take the matter up in bankruptcy court but that his attorney had trouble serving the defendants. Rose contended that the case was a “new action that is not continued from the bankruptcy.” Rose told the court that he did not take his bankruptcy discharge to his employer once his wages were garnished in November or December 2005 because he “had to go through the legal process to get this stopped[.]” Rose stated that it was two years before the garnishments stopped. He said that it took so long because the case kept being continued. Rose stated that he never filed an objection to the garnishment. Rose said that he wanted one million dollars because his wages were garnished and he suffered mental anguish and stress. Rose presented the circuit court with a laundry list of rules; however, he failed to show how any of the rules justified his cause of action. Rose told the court that this new action for fraud was the result of the “wrongful doing of not obeying the law.” According to Rose, he wanted the attorneys held civilly liable for violating the bankruptcy order. Rose also attempted to have his motion for change of venue heard; however, the court stated that it was going to wait to hear that motion. The trial court entered an order on July 1, 2009, granting the defendants’ motion to dismiss. Rose filed a timely notice of appeal. This appeal followed.

We review a circuit court’s decision to grant a motion to dismiss pursuant to Rule 12(b)(6) by treating the facts alleged in the complaint as true and by viewing them in the light

most favorable to the plaintiff.³ In viewing the facts in the light most favorable to the plaintiff, the facts should be liberally construed in the plaintiff's favor.⁴ However, Arkansas law requires fact pleading, and a complaint must state facts, not mere conclusions, in order to entitle the pleader to relief.⁵ According to Ark. R. Civ. P. 8(a)(1), a pleading that sets forth a claim for relief shall contain a statement in ordinary and concise language of facts showing that the pleader is entitled to relief.⁶ Rules 8(a)(1) and 12(b)(6) must be read together in testing the sufficiency of a complaint.⁷ We look to the underlying facts supporting an alleged cause of action to determine whether the matter has been sufficiently pled.⁸

Rose's first and seventh points on appeal are essentially the same: that the trial court erred in dismissing his complaint for fraud against Etoch, Halbert, Knapp, and the Etoch Law Firm. The elements of fraud are (1) a false representation of a material fact; (2) knowledge that the representation is false or that there is insufficient evidence upon which to make the representation; (3) intent to induce action or inaction in reliance upon the representation; (4) justifiable reliance on the representation; and (5) damage suffered as a result of the reliance.⁹

³See *Biedenharn v. Thicksten*, 361 Ark. 438, 206 S.W.3d 837 (2005).

⁴See *id.*

⁵*Smith v. Eisen*, 97 Ark. App. 130, 138, 245 S.W.3d 160, 168 (2006).

⁶*Id.*, 245 S.W.3d at 168.

⁷*Id.*, 245 S.W.3d at 168.

⁸*Id.*, 245 S.W.3d at 168.

⁹*Joplin v. Joplin*, 88 Ark. App. 190, 196 S.W.3d 496 (2004).

The circuit court was correct in dismissing Rose's complaint because he failed to make any allegations to support his claim of fraud or his entitlement to relief. On appeal he attempts to show how the facts of his case satisfy the elements of fraud; however, he did not present this evidence or argument to the circuit court. As a rule, we do not address issues that are raised for the first time on appeal.¹⁰

Rose's second through sixth points on appeal fail to include any citations to legal authority. It has been repeatedly held that the appellate court will not consider arguments unsupported by convincing argument or sufficient citation to legal authority.¹¹

Finally, Rose argues that the court erred by not addressing his venue motion. He also contends that his motion for venue should be granted because he does not feel that he can obtain "a fair and impartial trial." It is well settled that issues not ruled on by the trial judge will not be considered on appeal.¹²

Affirmed.

VAUGHT, C.J., and PITTMAN, J., agree.

¹⁰*Stanley v. Hogan*, 2010 Ark. App. 107.

¹¹*Omni Holding & Dev. Corp. v. 3D.S.A., Inc.*, 356 Ark. 440, 156 S.W.3d 228 (2004).

¹²*See, e.g., Ghegan & Ghegan, Inc. v. Barclay*, 345 Ark. 514, 49 S.W.3d 652 (2001).