

Jeff J. VACHON, On Behalf of Himself and All Persons
Similarly Situated v. CITY OF FORT SMITH

91-216

826 S.W.2d 277

Supreme Court of Arkansas
Opinion delivered March 23, 1992

1. COURTS — JURISDICTION — DETERMINED FROM THE PLEADINGS. — Jurisdiction must be determined entirely from the pleadings, and if it is not established by the pleadings, the court cannot proceed further.
2. PLEADINGS — COMPLAINT CONCLUSORY IN NATURE — ISSUES COULD NOT BE REACHED. — Where the complaint was conclusory in nature, and failed to set out either the itemized costs charged to appellant or the statutory costs which appellant contended were illegally exacted, the appellate court could not decide the issue of jurisdiction because appellant failed to allege the specific facts upon which he based his claims.

Appeal from Sebastian Chancery Court; *Warren O. Kimbrough*, Chancellor; affirmed as modified.

Anthony J. Sherman and *Timothy Davis Fox*, for appellants.

Dailey, West, Core, Coffman, & Canfield, by: *Wyman R. Wade, Jr.*, for appellee.

ROBERT H. DUDLEY, Justice. Appellant was charged with and convicted of three moving traffic violations in the Municipal Court of Fort Smith. Fines were imposed. He paid the fines and court costs to the Clerk of the Municipal Court and subsequently filed this suit in chancery court. He alleged that the City of Fort Smith illegally exacted court costs from him and violated his right to due process. He sought to have the suit declared a class action and asked for attorney's fees under 42 U.S.C. § 1988 (1988) and Ark. Code Ann. § 26-35-902 (1987). The chancellor dismissed the suit because of a lack of jurisdiction. We affirm the dismissal of the action, but do so without prejudice.

Appellant's theory of his "illegal exaction" count, his principal basis for chancery jurisdiction, is derived from the fact that criminal offenses are now defined as either felonies, misdemean-

ors, or violations, *see* Ark. Code Ann. § 5-1-105 (1987), and while some traffic offenses continued to be “misdemeanors,” others are designated only as “violations” under Ark. Code Ann. § 5-1-108 (1987). The City therefore wrongfully collected “misdemeanor” costs from him because he was only guilty of “violations.” As stated, the chancellor dismissed the suit for a lack of jurisdiction.

[1, 2] Jurisdiction must be determined entirely from the pleadings, and if jurisdiction is not established by the pleadings, the court is not to proceed further. *Department of Human Services v. Crunkleton*, 303 Ark. 21, 791 S.W.2d 704 (1990). The complaint in this case is similar to the complaint filed in *McKinney v. City of El Dorado*, 308 Ark. 284, 824 S.W.2d 826 (1992), and supplemental opinion, 308 Ark. 288-A, 824 S.W.2d 826 at 828 (1992). In this suit, just as in *McKinney v. City of El Dorado*, the complaint, while lengthy, is conclusory in nature and neither sets out the itemized costs charged to appellant nor sets out the statutory costs which appellant contends were wrongfully collected. Just as in *McKinney v. City of El Dorado*, we cannot decide the issue of jurisdiction until the appellant alleges the specific facts upon which he bases his claims and, accordingly, we affirm the chancery court’s dismissal but do so because of appellant’s failure to meet the requirements of A.R.C.P. Rule 12(b)(6), and thus the dismissal is without prejudice.

Affirmed as modified.
