

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

| | | |
|----------------------|---|------------------------|
| ALICIA A. EPPS, | : | APPEAL NO. C-240092 |
| | : | TRIAL NO. A-2303406 |
| Plaintiff-Appellant, | : | |
| vs. | : | <i>JUDGMENT ENTRY.</i> |
| KRYSTAL GULLEY, | : | |
| and | : | |
| MARCO GULLEY, | : | |
| Defendants. | : | |

This court sua sponte removes this cause from the regular calendar and places it on the court’s accelerated calendar, Loc.R. 11.1(C)(1), and this judgment entry is not an opinion of the court. *See* Rep.Op.R. 3.1; App.R. 11.1(E); Loc.R. 11.1.

Plaintiff-appellant Alicia Epps filed a complaint against defendants Krystal Gulley and Marco Gulley¹ asserting claims for “physical pain, mental health, and loss of quality of life” and for a violation of a Civil Rights Act. While Krystal filed a document denying the allegations in Epps’s complaint, Marco filed no responsive pleading. Epps filed a motion for a default judgment on her claims. The trial court issued an entry that denied Epps’s motion for a default judgment and sua sponte dismissed the complaint. Epps now appeals, raising five assignments of error for our review. Neither Krystal nor Marco have filed an appellate brief.

We begin with a review of Epps’s fifth assignment of error, as it is dispositive of this appeal. In the fifth assignment of error, Epps argues that the trial court erred in sua sponte dismissing her complaint.

¹ Because these parties share the same surname, we refer to them by their first names.

“The Rules of Civil Procedure neither expressly permit nor forbid courts to *sua sponte* dismiss complaints.” (Emphasis sic.) *State ex rel. Edwards v. Toledo City School Dist. Bd. of Edn.*, 72 Ohio St.3d 106, 108 (1995). Generally, a court should not dismiss a plaintiff’s complaint under Civ.R. 12(B)(6) on the court’s own motion unless the parties have been provided notice of the potential dismissal and an opportunity to respond. *Id.*; *Borthwick v. Dept. of Bldgs. and Inspections*, 2022-Ohio-1335, ¶ 9 (1st Dist.). “Dismissing a complaint *sua sponte*, without notice to the parties or an opportunity to respond, is both unfair and prejudicial.” *Borthwick* at ¶ 9. An exception to the general rule requiring notice and an opportunity to respond allows for *sua sponte* dismissal without notice “where the complaint is frivolous or the claimant obviously cannot possibly prevail on the facts alleged in the complaint.” *Edwards* at 108; *see Borthwick* at ¶ 9. When reviewing a trial court’s dismissal for failure to state a claim upon which relief can be granted, a court “must presume that all factual allegations of the complaint are true, and it must make all reasonable inferences in favor of the nonmoving party.” *Borthwick* at ¶ 12, quoting *Zalvin v. Ayers*, 2020-Ohio-4021, ¶ 13 (1st Dist.).

The allegations in Epps’s complaint are disjointed and hard to follow. In support of her first claim for “physical pain, mental health, and loss of quality of life,” Epps alleges that she was denied an opportunity to participate in funeral services for her deceased daughter, was denied participation in government-subsidized housing, and was assaulted by Krystal and an individual named Dante Ice. “Physical pain, mental health, and loss of quality of life” is not a recognized claim. But in light of the fact that Epps is proceeding pro so, we generously interpret this claim as potentially asserting either a claim that Epps was denied the right to participate in a government-subsidized housing program or a claim for battery.

To the extent that the complaint could be read to allege the former claim, it fails to set forth a claim upon which relief can be granted. Not only does the complaint fail to specify any statute or regulation under which the claim is brought, but it further lacks any allegations that the named defendants own or are in charge of any government housing that Epps has been denied or has been discriminated against while attempting to obtain. In fact, the complaint states that “Poah Communities” is the owner of the federally subsidized housing at issue.

We likewise find that the complaint fails to set forth a claim for battery upon which relief can be granted. While the allegations of Epps's complaint could be read to assert that she was the victim of "an intentional, unconsented-to contact with another," see *Turek v. Phelps*, 2016-Ohio-7552, ¶ 32 (11th Dist.), quoting *Snyder v. Turk*, 90 Ohio App.3d 18, 23 (2d Dist. 1993), the complaint contains no request for damages or prayer for relief.

Civ.R. 8(A) provides that a pleading must contain "a demand for judgment for the relief to which the party claims to be entitled." It further states that "[i]f the party seeks more than twenty-five thousand dollars, the party shall so state in the pleading but shall not specify in the demand for judgment the amount of recovery sought." *Id.* The Ohio Supreme Court has held that "Civ.R. 8(A) requires all complainants to specify in the complaint the actual amount of damages sought." *Rockey v. 84 Lumber Co.*, 66 Ohio St.3d 221, 224 (1993). It is appropriate to dismiss a claim where damages have not been properly alleged in accordance with Civ.R. 8(A). See *Alex-Bell Oxford Ltd. Partnership v. Wood*, 1998 Ohio App.LEXIS 2376, *13 (2d Dist. June 5, 1998); *DiPrima v. A.W. Tavern, Inc.*, 96 Ohio App.3d 470, 474-475 (8th Dist. 1994). Nowhere in the complaint does Epps specify the amount of damages sought or state that she suffered damages in excess of \$25,000. Rather, in relation to this claim, Epps seems to be requesting a declaration that she is entitled to participate in a government-subsidized housing program. So even if Epps's complaint could be read to assert a claim for battery, Epps cannot prevail on the claim because she failed to comply with the pleading requirements in Civ.R. 8(A).

The allegations in support of the second claim in Epps's complaint for a violation of a Civil Rights Act are equally muddled, and include assertions that Epps was denied the opportunity to participate in the Civil Rights Act, that Marco allowed Krystal to assault Epps, and that Krystal mistreated Epps's granddaughter. We hold that on the facts alleged in the complaint, Epps cannot possibly prevail on this claim. First, Epps cites no statute or law under which she is bringing her claim, leaving both the trial court and this court to guess as to what type of violation she is alleging. To the extent that Epps could be alleging a violation of Title VII of the Civil Rights Act of 1964, the complaint contains no allegation that Epps is a member of a protected class and it fails to set forth actions taken by the named defendants that

OHIO FIRST DISTRICT COURT OF APPEALS

constituted discrimination against Epps. *See Hollingsworth v. Time Warner Cable*, 2006-Ohio-4903, ¶ 22 (1st Dist.) (explaining that “Title VII of the Civil Rights Act of 1964 prohibits discrimination based on race, color, religion, sex, or national origin.”). Nor could the complaint be read to assert a claim under Section 1983, Title 42, U.S.Code, because it does not allege that Krystal and Marco were operating under color of state law. *See Henderson v. DeWine*, 2022-Ohio-1025, ¶ 11 (1st Dist.) (a Section 1983 claim requires proof that the conduct at issue was committed by a person acting under color of state law). While we will consider all contentions raised by Epps, we will not create an argument where she has failed to develop one. *See Borthwick*, 2022-Ohio-1335 at ¶ 7 (1st Dist.) And here, Epps’s complaint contains no argument or allegations to support a claim for a violation of a Civil Rights Act.

Because the complaint does not set forth facts on which Epps can possibly prevail, we hold that the trial court did not err in sua sponte dismissing the complaint. *See Edwards*, 72 Ohio St.3d at 108; *Borthwick* at ¶ 9. The fifth assignment of error is overruled. Our resolution of the fifth assignment of error renders moot Epps’s remaining assignments of error in which she argues that the trial court erred in denying her motion for a default judgment and raises additional challenges to the dismissal of her complaint.

Having found that the trial court did not err in sua sponte dismissing Epps’s complaint, we accordingly affirm the trial court’s judgment.

The court further orders that 1) a copy of this Judgment constitutes the mandate, and 2) the mandate be sent to the trial court for execution under App.R. 27. Costs shall be taxed under App.R. 24.

CROUSE, P.J., WINKLER and KINSLEY, JJ.

To the clerk:

Enter upon the Journal of the Court on 9/4/2024 per Order of the Court.

By: _____
Administrative Judge