

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

ALICIA A. EPPS,	:	APPEAL NO. C-240170
	:	TRIAL NO. A-2303788
Plaintiff-Appellant,	:	
vs.	:	<i>JUDGMENT ENTRY.</i>
KRYSTAL GULLEY,	:	
SHIRLEY COLBERT,	:	
ERIC COLBERT,	:	
ROSE CRAIG,	:	
and	:	
DANTE ICE,	:	
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 Krystal Gulley, Shirely Colbert, Eric Colbert, Rose Craig, and Dante Ice asserting three claims that were supported by allegations that are best described as disjointed and lacking coherence. Epps’s first claim was for “2923.01 conspiracy and civil rights act.” In support of this claim she alleged that she was physically attacked by Ice and Gulley, that Ice and Gulley conspired to take over the public housing in which Epps’s recently deceased daughter had resided, and that all defendants conspired to keep Epps away from her granddaughter. The second claim asserted in the complaint was for “pain and suffering,” and it was supported by allegations that the defendants intentionally disrupted the funeral services for Epps’s daughter by physically

attacking Epps and that they fraudulently took envelopes with condolence money from those services. The final claim asserted in the complaint was “extrinsic fraud.” The allegations in support of this claim stated that the defendants attempted to intimidate and bully Epps “into leaving,” although the complaint did not specify from where they attempted to force Epps to leave. The complaint further alleged that the defendants conspired to deceive unsuspecting attendees at the funeral out of money.

While Gulley and Eric Colbert filed responses denying the allegations in Epps’s complaint, service was never obtained on Shirely Colbert, and the remaining defendants did not file a responsive pleading. Epps filed a motion for a default judgment on her complaint, which was denied by a magistrate. The trial court issued an entry adopting the magistrate’s decision denying Epps’s motion for a default judgment, and then separately issued an entry *sua sponte* dismissing Epps’s complaint. Epps now appeals, raising four assignments of error for our review. None of the defendants filed an appellate brief.

In her first and second assignments of error, Epps argues that the trial court erred in *sua sponte* dismissing her complaint. “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 trial court dismissed Epps's first claim for "2923.01 conspiracy and civil rights act" after finding that Epps could not assert a claim for a violation of R.C. 2923.01 because it is a criminal offense and not a civil cause of action. The trial court was correct. The criminal offense of conspiracy is set forth in R.C. 2923.01. Criminal statutes may not serve as the basis of a civil lawsuit. *Costell v. Toledo Hosp.*, 38 Ohio St.3d 221, 223-224 (1988); *Shaw v. Bretz*, 2014-Ohio-3672, ¶ 39 (3d Dist.) (criminal violations are brought by the State of Ohio and not in the name of an individual party).

With respect to this claim, the trial court additionally found that Epps could not sue the defendants for violations of the Civil Rights Act because they are private citizens and not state actors. We agree. To the extent that this claim could be read to assert a claim for a violation of a Civil Rights Act, Epps has failed to state a claim upon which she could prevail. First, Epps failed to specify any statute or law under which this claim is brought, leaving both the trial court and this court to guess as to what law to apply. Further, Epps failed to allege that she is a member of a protected class, specific discriminatory actions taken by the defendants, or that the defendants were state actors. *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."); *Henderson v. DeWine*, 2022-Ohio-1025, ¶ 11 (1st Dist.) (a claim under Section 1983, Title 42, U.S.Code requires proof that the conduct at issue was committed by a person acting under color of state law).

The trial court dismissed Epps's claim for "pain and suffering" after finding that pain and suffering is a form of economic damages and not an independent cause of action. The trial court correctly recognized that pain and suffering is not an independent cause of action. That being said, as Epps is a pro se litigant, this court will grant some leniency towards her and "will consider all cognizable contentions presented." *Marreez v. Jim Collins Auto Body, Inc.*, 2021-Ohio-4075, ¶ 4 (1st Dist.). In her appellate brief, Epps contends that her claim for pain and suffering is, in fact, a claim for assault and battery. But even if we were to treat Epps's claim as one for assault and battery, we still hold that she has failed to set forth a claim upon which she can prevail. While the complaint contains allegations that Epps was physically

attacked and restrained, these allegations are interspersed throughout all claims in the complaint and are interwoven with unrelated allegations concerning the defendants' conspiracy to obtain the condolence money from the funeral for Epps's daughter.

Civ.R. 8(A) requires that a complainant set forth "a short and plain statement of the claim showing that the party is entitled to relief." "Although a plaintiff is not required to prove his case in the complaint, the complaint must allege the facts constituting the elements of the claim with sufficient particularity so that reasonable notice is given to the opposing party." *Jones v. Mahoning Cty. Clerk of Court*, 2019-Ohio-1097, ¶ 9 (7th Dist.). The allegations in support of this claim are not sufficient to put the defendants on notice that a claim of assault and battery has been asserted. If this court were to conclude otherwise, it would be creating an argument where Epps has failed to develop one and constructing a claim out of convoluted reasoning. *See Borthwick*, 2022-Ohio-1335, at ¶ 7 (1st Dist.).

The trial court dismissed Epps's claim for "extrinsic fraud" after finding that Epps failed to allege the claim with particularity. Civ.R. 9(B) provides that a claim of fraud must be pled with particularity. A "party alleging the fraud must include the time, place, and content of the false misrepresentation, the misrepresented facts, the identity of the person giving the false information, and the nature of what was obtained or given in connection with the fraud." *Wick v. Ach*, 2019-Ohio-2405, ¶ 11 (1st Dist.). Further, all elements of the fraud claim must be pled. *Id.* at ¶ 12. It is difficult to discern from the allegations in Epps's complaint exactly what fraudulent action was taken by the defendants, and we cannot find that she has complied with Civ.R. 9(B)'s requirement that she plead her claim with particularity. We accordingly find no error in the trial court's sua sponte dismissal of Epps's complaint and overrule the first and second assignments of error.

Epps argues in her third assignment of error that the trial court erred in penalizing her for common mistakes made by pro se litigants. We disregard this assignment of error because Epps failed to separately argue it in her appellate brief and has provided no legal support or argument in support thereof. *See App.R. 12(A)(2)*.

In her fourth assignment of error, Epps challenges the trial court's denial of her motion for a default judgment. This assignment of error has been rendered moot by our resolution of the first and second assignments of error.

The trial court's judgment dismissing Epps's complaint is accordingly affirmed.

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**