

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

CURTISS McCULLEY,	:	APPEAL NO. C-070495
Plaintiff-Appellant,	:	TRIAL NO. A-0702751
vs.	:	<i>JUDGMENT ENTRY.</i>
GRAEBEL-CINCINNATI MOVERS, INC.,	:	
and	:	
GRAEBEL VAN LINES, INC.,	:	
Defendants-Appellees.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.¹

Curtiss McCulley appeals the trial court’s judgment that dismissed his complaint against Graebel-Cincinnati Movers, Inc., and Graebel Van Lines, Inc., (collectively, “Graebel”). We conclude that his sole assignment of error does not have merit, so we affirm the judgment of the trial court.

McCulley filed a complaint against Graebel. In the complaint, he alleged that he had entered into a contract with Graebel for the lease-purchase of a truck. According to the contract, McCulley was to be an independent contractor for Graebel

¹ See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

and would haul exclusively for Graebel. For each move, Graebel would provide local helpers to assist in the loading and unloading of the truck. The helpers were to be drug-tested, background-checked, and uniformed.

On June 30, 2005, McCulley was picking up freight in Tennessee. Pursuant to the contract, Graebel provided local helpers. McCulley alleged that one of the helpers did not do his share of the work, that the helper became angry over the amount of pay that McCulley gave him, and that the helper assaulted McCulley. As a result of the assault, McCulley suffered injuries. He also was unable to perform his job and to make payments on the truck, which was later repossessed.

In his complaint, McCulley sought damages from Graebel for the injuries that he had suffered. Upon motion of Graebel, the trial court dismissed the complaint pursuant to Civ.R. 12(B)(6).

In his sole assignment of error, McCulley now asserts that the trial court erred when it dismissed his complaint. “In order for a court to dismiss a complaint for failure to state a claim upon which relief can be granted * * *, it must appear beyond doubt from the complaint that the plaintiff can prove no set of facts entitling [him] to recovery.”²

To survive the motion to dismiss his claim of negligence, McCulley had to demonstrate that Graebel had a duty, that it had breached the duty, and that the breach was the proximate cause of his injuries.³ McCulley contends that Graebel owed him a duty based on its contract with him. But McCulley did not allege sufficient facts that Graebel had breached its contractual duty to provide drug-tested, background-checked,

² *O'Brien v. University Community Tenants Union* (1975), 42 Ohio St.2d 242, 327 N.E.2d 753, syllabus.

³ *Jeffers v. Olexo* (1989), 43 Ohio St.3d 140, 142, 539 N.E.2d 614.

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uniformed helpers. Even if the complaint is construed to allege negligent hiring on the part of Graebel, McCulley could not have survived a motion to dismiss, because he did not allege that Graebel knew or should have known of the helper's violent tendencies.⁴

The trial court did not err in granting Graebel's motion to dismiss. The sole assignment of error is overruled, and we therefore affirm the judgment of the trial court.

Further, a certified copy of this Judgment Entry shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

PAINTER, P.J., DINKELACKER and WINKLER, JJ.

RALPH WINKLER, retired, from the First Appellate District, sitting by assignment.

To the Clerk:

Enter upon the Journal of the Court on March 26, 2008
per order of the Court _____.
Presiding Judge

⁴ See, generally, *Ruta v. Breckenridge-Remy Co.* (Dec. 12, 1980), 6th Dist. No. E-80-39.