

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

THOMAS H. STARKS,	:	APPEAL NO. C-090813
	:	TRIAL NO. A-0907778
Plaintiff-Appellant,	:	
	:	<i>JUDGMENT ENTRY.</i>
vs.	:	
GREATER CINCINNATI WATER	:	
WORKS,	:	
	:	
THE VILLAGE OF GOLF MANOR,	:	
	:	
RUMPKE WASTE AND RECYCLING,	:	
	:	
and	:	
	:	
THE CITY OF CINCINNATI,	:	
	:	
Defendants-Appellees.	:	

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

In six assignments of error, Thomas Starks appeals the trial court’s judgment dismissing his complaint under Civ.R. 12(B)(6) for a failure to state a claim upon which relief could be granted. For the following reasons, we affirm.

Starks Sues After His Water is Turned Off

The village of Golf Manor contracted with Rumpke Waste and Recycling for trash-removal services. Each Golf Manor resident was billed for Rumpke’s services.

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

The charge for Rumpke's service appeared on residents' Greater Cincinnati Water Works ("GCWW") bills. Starks claimed that he always paid the water portion of this combined bill, but not the trash collection-portion. When GCWW did not receive full payment on Starks's combined bill, it turned off Starks's water. Starks then sued Golf Manor, GCWW, Rumpke and the city of Cincinnati, claiming that shutting off his water under these circumstances was illegal, and that he had suffered various injuries as a result

The specific claims pleaded in Starks's complaint were "bad faith," "conspiracy," "breach of contract," "emotional distress," and "illegally binding plaintiff to a contract he did not authorize."

Defendants moved for a dismissal of Starks's complaint under Civ.R. 12(B)(6). The trial court granted defendants' motions, and this appeal followed.

The Record Does Not Support Starks's Allegations

In Starks's first assignment of error, he alleges that the trial court "allowed misrepresented evidence and used it to dismiss [the] complaint." There is no indication in the record that this occurred. This assignment of error is therefore overruled.²

In his second assignment of error, Starks asserts that the trial court "ignored the bad faith committed by defendants." Starks argues here, in part, that counsel for the defendants misrepresented case law to the court, and that GCWW and Golf Manor should not have claimed governmental immunity. Upon our review of the

² See *Knapp v. Edwards Laboratories* (1980), 61 Ohio St.2d 197, 199, 400 N.E.2d 384.

record, we find no bad faith on the part of defense counsel.³ This argument has no merit.

The Trial Court Properly Dismissed Starks's Complaint

In the remainder of Starks's second assignment of error, as well as in his fourth and sixth assignments of error, Starks claims that the trial court should not have dismissed his complaint for a failure to state a claim. We address these assignments together.

Appellate review of the trial court's judgment is de novo.⁴ We must accept the factual allegations in Starks's complaint as true and view all reasonable inferences in his favor to determine as a matter of law if his complaint states a claim upon which relief may be granted.⁵

Here, the trial court correctly concluded that Starks's factual allegations did not state a legal claim. Starks did not allege in his complaint facts that would, if true, support the causes of action he pleaded. There was nothing necessarily improper with a combined billing system, or with the decision to stop Starks's water service for a failure to pay his combined bill.⁶ Starks alleged no facts to support a conclusion that the defendants' actions were illegal. Therefore, Starks's second, fourth, and sixth assignments of error are overruled.

In Stark's fifth assignment of error, he claims that it was illegal for Rumpke and GCWW to split the payments he had sent between them. These allegations are

³ See *Knapp*, supra; see, also, Civ.R. 11; *State ex rel. Dreamer v. Mason*, 115 Ohio St.3d 190, 2007-Ohio-4789, 874 N.E.2d 510.

⁴ *Perrysburg Twp. v. Rossford*, 103 OhioSt.3d 79, 2004-Ohio-4362,814N.E.2d44, ¶5; *Cincinnati v. Beretta U.S.A. Corp.*,95 Ohio St.3d 416, 2002-Ohio-2480, 768 N.E.2d1136, ¶4-5.

⁵ *State ex rel. Hanson v. Guernsey Cty. Bd. of Commrs.*(1992), 65 Ohio St.3d 545, 547, 1992-Ohio-73, 605 N.E.2d 378; see, also, *Byrd v. Faber* (1991), 57 Ohio St.3d 56, 565 N.E.2d 584.

⁶ See *Athens v. Spofforth* (Mar. 9, 1992), 4th Dist. No. 1487.

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not in Starks's complaint, and therefore they are not properly before this court.⁷ And even if Starks had pleaded these facts, it is unclear how they would have supported a cause of action. This assignment of error is overruled.

The trial court's judgment is affirmed.

A certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

SUNDERMANN, P.J., HENDON and MALLORY, JJ.

To the Clerk:

Enter upon the Journal of the Court on June 30, 2010
per order of the Court _____.
Presiding Judge

⁷ See *State v. Ishmail* (1978), 54 Ohio St.2d 402, 377 N.E.2d 500, paragraph one of the syllabus.