

March 8, 2016

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

DAVID A. DARBY, Sovereign State Citizen
pursuant to Article 2, Section 3 of 1878
Constitution of the State of Washington,

Appellant,

v.

CLARK COUNTY, a political subdivision of
the State of Washington, including the
following officials acting for the County:

Grey Kimsey, Clark County Auditor
Doug Lasher, Clark County Treasure
Peter Van Nortwick, Clark County Assessor
David Madore, Clark County Commissioner
Anthony Golik, Clark County Prosecutor
Taylor R. Hallvik, Clark County Deputy
Prosecutor
Garry Lucas, Sheriff Clark County,

Respondents.

No. 47285-6-II

UNPUBLISHED OPINION

LEE, J. — David Darby appeals the superior court’s dismissal of his claims against Clark County, arguing that the superior court erred because it did not consider his claimed status as a “private sovereign free man” and “sovereign state citizen.” We disagree and hold that the superior court did not err because (1) Darby’s attempt to vacate an order and judgment filed under a separate cause number failed to comply with the requirements of CR 60(e)(1); and (2) Darby’s complaint failed to allege a cause of action upon which relief could be granted. We affirm.

FACTS

On September 11, 2014, Darby filed two documents in the Clark County Superior Court and the case was assigned cause number 14-2-02637-8.¹ The filing attempted to enter civil complaints against Clark County and several named county officials.² The filing also contained a CR 60(b)(5) motion to vacate an “Order and Judgment for Foreclosure” entered on August 15, 2014 in cause number 12-2-03432-3,³ alleging that the foreclosure was void for lack of jurisdiction because Darby was a “private sovereign free man” and a “Sovereign State Citizen.” Br. of Appellant at 18; Clerk’s Papers (CP) at 1, 8. The filing stated the requested relief was:

1. Plaintiff moves that the court vacate the void order and judgment for foreclosure in case number 12-2-03432-3.
2. Restore all rights to the property to the plaintiff and remove the property from the county [t]ax rolls.
3. Plaintiff moves this court to seal this case for private and personal reasons and safety.

CP at 8.

¹ Darby filed a document titled “Plaintiff Moves the Court for a Complaint for a Collateral attack to vacate a void Order and Judgment of Foreclosure” and a document titled “Plaintiff’s Mandatory Judicial Notice.” CP at 1-18. The “Order and Judgment of Foreclosure” that Darby sought to vacate was a “Final Order and Judgment of Foreclosure Authorizing the Sale of Tax Parcel 264614000” entered in Clark County Superior Court under cause number 12-2-03432-3. CP at 22-23.

² Those named officials are: Greg Kimsey, Clark County Auditor; Doug Lasher, Clark County Treasurer; Peter Van Nortwick, Clark County Assessor; David Madore, Clark County Commissioner; Edward L. Barnes, Clark County Commissioner; Anthony Golik, Clark County Prosecutor; Taylor R. Hallvik, Clark County Deputy Prosecutor; and Garry Lucas, Clark County Sheriff.

³ The order and judgment entered under cause number 12-2-03432-3 was not appealed.

The referenced “Order and Judgment of Foreclosure” is the “Final Order and Judgment of Foreclosure Authorizing the Sale of Tax Parcel 264614000” entered by Clark County Superior Court in August 2014 under cause number 12-2-03432-3. CP at 22. That order and judgment authorized the Clark County Treasurer “to conduct an online tax foreclosure sale of Tax Parcel No. 264614000 to collect delinquent real property taxes, interest, penalties and fees in the amount of \$22,988.71.” CP at 23. Tax Parcel 264614000 is a real property parcel Darby had owned, but refused to pay taxes on, in Clark County. Darby refused to pay taxes because he believes his claimed status as a “private sovereign free man” meant that the county did not have a right to collect taxes on his property. CP at 2; Reply Br. of Appellant at 4.

In response to Darby’s filing, the County filed “Defendants’ Motion to Dismiss Plaintiff’s Complaint Pursuant to CR 12(b)(6) and Defendants’ Motion for Sanctions Pursuant to CR 11 and RCW 4.84.185.” Suppl. CP at 61. Darby did not file a response to the County’s motions. After a hearing on the County’s motions, the superior court granted the County’s motions, dismissed Darby’s complaint without prejudice, imposed CR 11 sanctions against Darby, and awarded the County statutory attorney fees as the prevailing party. Darby appeals.

ANALYSIS

A. CR 60(b)(5) MOTION TO VACATE

Darby argues the superior court erred in dismissing his CR 60(b)(5) motion because the superior court did not consider the cases and constitutions⁴ he cited. We hold that Darby’s CR

⁴ Darby cites to the “1787 Constitution for the United States” and the “1878 Constitution of the State of Washington.” Br. of Appellant at 17-19.

60(b)(5) motion could not be granted because it sought to vacate an order from a different case. Therefore, the superior court did not err in dismissing Darby's CR 60(b)(5) motion.

CR 60(b)(5) states: "On motion and upon such terms as are just, the court may relieve a party . . . from a final judgment, order, or proceeding for the following reasons: . . . (5) The judgment is void." CR 60(e)(1) provides the procedure for vacating a judgment under CR 60, and requires that the "Application [to vacate the judgment] shall be made by motion filed in the cause."

The "Final Order and Judgment of Foreclosure Authorizing the Sale of Tax Parcel 264614000" was filed under cause number 12-2-03432-3. CP at 22-23. That order, and the associated order granting Clark County's motion for summary judgment, authorized Clark County to conduct an "online tax foreclosure sale of tax parcel 264614000 to collect delinquent real property taxes that are owed to date in connection with this parcel by David A. Darby." CP at 21. Darby did not appeal either order. Instead, Darby filed a CR 60(b)(5) motion under a *new* cause number, 14-2-02637-8, and argued that the order from cause number 12-2-03432-3 is void for lack of jurisdiction.

Darby's CR 60(b)(5) motion could not be granted by the superior court because, contrary to the requirements of CR 60(e)(1), the motion was not "filed in the cause" (i.e. filed under the cause number that the challenged order and judgment was filed). CR 60(e)(1). Darby filed his motion under cause number 14-2-02637-8, but his motion sought to vacate an order entered in cause number 12-2-03432-3. Thus, Darby's motion cannot be granted because it did not comply with CR 60(e)(1). The superior court did not err in dismissing Darby's CR 60(b)(5) motion.

B. COMPLAINT

Darby argues the superior court erred in dismissing his complaint because the superior court did not consider his claimed status of a “private sovereign free man.” Br. of Appellant at 19. We disagree.⁵

1. Standard of Review

CR 12(b)(6) permits a trial court to dismiss a complaint when it fails to “state a claim upon which relief can be granted.” We review a trial court’s CR 12(b)(6) dismissal de novo. *Nissen v. Pierce County*, 183 Wn.2d 863, 872, 357 P.3d 45 (2015).

Dismissal under CR 12(b)(6) is appropriate only if the trial court concludes beyond a reasonable doubt that, on the face of the plaintiff’s complaint, he or she cannot prove any set of facts that would justify recovery. *FutureSelect Portfolio Mgmt., Inc. v. Tremont Grp. Holdings, Inc.*, 180 Wn.2d 954, 962, 331 P.3d 29 (2014). The trial court is to take all facts alleged in the complaint as true and may consider hypothetical facts that support the plaintiff’s claims. *FutureSelect*, 180 Wn.2d at 962. If a plaintiff’s claim remains legally insufficient, even under hypothetical facts, dismissal under CR 12(b)(6) is appropriate. *FutureSelect*, 180 Wn.2d at 963.

2. Complaint Failed to State a Claim Upon Which Relief Can Be Granted

Darby’s September 11 filing is titled as a complaint, names defendants, and has its own cause number. However, the filing does not allege a cause of action. Complaints failing to allege

⁵ To the extent Darby argues that the superior court should have allowed his claim because of his status as a “private sovereign free man,” this argument fails. A CR 12(b)(6) determination is not based solely on a party’s status. The validity of Darby’s claimed status alone does not create a cause of action and the relief he requested could not be provided by the court.

“a claim upon which relief can be granted” are properly dismissed. CR 12(b)(6); *Nissen*, 183 Wn.2d at 872.⁶

Moreover, the superior court cannot provide the relief Darby requested. Darby’s filing asked the court to: (1) vacate the order and judgment of foreclosure in a different case; (2) return property to him that had been foreclosed upon in a different case; (3) remove the returned property from Clark County tax rolls; and (4) seal the current case. First, as discussed above, Darby sought to vacate an order and judgment entered under a different cause number that was never appealed. CR 60(e)(1) sets forth the requirements to accomplish what Darby was requesting. Darby failed to comply with the requirements of CR 60(e)(1); therefore, the superior court could not provide the relief that Darby sought. Second, Darby sought to have returned to him property that had been foreclosed upon in a different case, and then have that property removed from the county tax rolls. These requests were premised on Darby’s contention that the order and judgment entered in cause number 12-2-03432-3 was void. The complaint provided no legal basis upon which a superior court could “undo” an order and judgment entered in a different cause number that was never appealed. Finally, Darby sought to seal the case he filed under cause number 14-2-02637-8. The complaint provides no facts or legal basis to support this request. There is merely the statement that “Plaintiff moves this court to seal this case for private and personal reasons and safety.” CP at 8. Thus, because there are no set of facts in the complaint that could justify sealing the case,

⁶ Darby also argues that there were unsworn declarations provided by and relied upon by the County in this case. To the extent unsworn declarations were provided or relied upon, such provision and reliance is immaterial in a CR 12(b)(6) analysis because the superior court takes all facts Darby alleges in his complaint as true when determining whether a cause of action is stated. *FutureSelect*, 180 Wn.2d at 962.

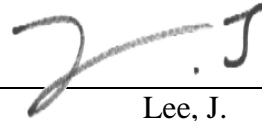
there is no relief the superior court could provide. The superior court's dismissal under CR 12(b)(6) was proper.

C. CR 11 SANCTIONS AND RCW 4.84.185 FEES

Darby does not assign error to or present argument regarding the superior court's imposition of CR 11 sanctions and RCW 4.84.185 fees. "Appellate courts will only review a claimed error if it is included in an assignment of error, or clearly disclosed in the associated issue included in the brief." *Rhinehart v. Seattle Times*, 59 Wn. App. 332, 336, 798 P.2d 1155 (1990). Therefore, we do not consider whether the superior court abused its discretion in imposing CR 11 and RCW 4.84.185 fees against Darby.

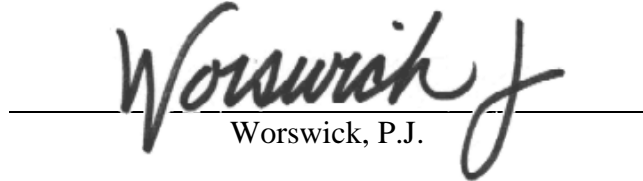
We affirm the trial court's dismissal of Darby's complaint.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.



Lee, J.

We concur:



Worswick, P.J.



Melnick, J.