

STATE OF MICHIGAN
COURT OF APPEALS

TRAVIS TURNER, III, Individually and as Next
Friend of KRISTINA MARIE TURNER,

UNPUBLISHED
May 9, 2006

Plaintiff-Appellant,

v

No. 267193
Kent Circuit Court
LC No. 05-007865-CZ

GRAND RAPIDS BOARD OF EDUCATION,
AMY MABIN, LARRY JOHNSON, CITY OF
GRAND RAPIDS, EDWARD WALKER, and
TONYA M. MILLER, Individually and as Next
Friend of BREANNA MILLER,

Defendants-Appellees.

Before: White, P.J., and Fitzgerald and Talbot, JJ.

PER CURIAM.

Plaintiff appeals as of right from order of the circuit court granting summary disposition to defendants. We affirm.

This case arises from an incident of playground aggression that took place at Fountain Elementary School in Grand Rapids. Plaintiff reported an assault to the police. Defendant Walker conducted the police investigation, in the course of which defendant Mabin, the school's principal, reported that indications from the children and staff member involved led her to conclude that plaintiff's daughter was in fact the aggressor. Although plaintiff's daughter maintained that one aggressor punched her in the cheek and then pushed her head against a structure causing her to cut her mouth, the girl showed no visible signs of injury a week later.

Defendant Johnson, the school district's Director of Public Safety, sent a letter to plaintiff, in response to plaintiff's having acted "in an unprofessional and threatening manner," by way of "several phone contacts to administration and to Fountain School," and making "several accusations, threats and inappropriate comments toward staff" at a meeting scheduled in hopes of resolving the instant controversy. The letter informed plaintiff that the district "has a strict policy on disorderly behavior in and around school property," and that plaintiff was "warned not to be on the premises of Fountain Elementary School, or any other Grand Rapids Public Schools property," and directed plaintiff "to restrict . . . phone calls to Fountain Elementary for purposes only of reporting an excused absence."

Plaintiff sought a personal protection order (PPO) for his daughter against Breanna Miller. The Family Court judge declined to enter such an order in connection with “nine- and eight-year-olds fighting at school,” and advised, “you need to bring a regular motion for some other type of action.”

Plaintiff commenced the instant suit, asserting civil rights claims against the instant defendants in accordance with 42 USC 1983 and 1985(3). The trial court first granted summary disposition to Miller on the ground that plaintiff had failed to show a basis for holding her vicariously liable for the torts of her daughter, then, nine days later, declared plaintiff’s remaining claims to be frivolous, and so granted summary disposition to the remaining defendants. The court additionally imposed sanctions of \$1,500 each, in favor respectively of the Board of Education and its agents, and the City and its police officer.

Plaintiff has conducted this entire case *in propria persona*. Documents prepared and submitted without the assistance of counsel should be liberally construed in the interests of justice. See *Estelle v Gamble*, 429 US 97, 106; 97 S Ct 285; 50 L Ed 2d 251 (1976). Accordingly, we accepted plaintiff’s handwritten brief in excess of normal page limitations, and have chosen to overlook its irregular organization, including the failure to set forth argument in a form corresponding to the dozens questions presented. See MCR 7.212(C)(7). However, this dispensation does not extend to hunting for evidentiary particulars where argument is presented without reference to them. See *People v Jones (On Rehearing)*, 201 Mich App 449, 456-457; 506 NW2d 542 (1993); *In re Toler*, 193 Mich App 474, 477; 484 NW2d 672 (1992).

Plaintiff’s erratic arguments, and myriad questions presented, challenge the trial court’s decisions to grant summary disposition, and to award sanctions. We review a trial court’s decision on a motion for summary disposition de novo as a question of law. *Ardt v Titan Ins Co*, 233 Mich App 685, 688; 593 NW2d 215 (1999). “If it appears to the court that the opposing party, rather than the moving party, is entitled to judgment, the court may render judgment in favor of the opposing party.” MCR 2.116(I)(2).

“A trial court’s finding with regard to whether a claim or defense was frivolous will not be disturbed on appeal unless the finding is clearly erroneous.” *State Farm Fire & Casualty Co v Johnson*, 187 Mich App 264, 268-269; 466 NW2d 287 (1991). A finding is clearly erroneous if the reviewing court is left with a definite and firm conviction that a mistake has been made. *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

42 USC 1983 provides in pertinent part:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress

42 USC 1985(3) provides in pertinent part:

If two or more persons in any State or Territory conspire . . . for the purpose of depriving, either directly or indirectly, any person or class of persons

of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice President, or as a Member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators.

Plaintiff first argues that the trial court should have defaulted Miller, because Miller chose not to present affirmative defenses. However, Miller did answer the complaint, and that was all she was obliged to do to avoid a default. An affirmative defense is one that does not controvert the plaintiff's prima facie case, but instead denies the plaintiff's entitlement to recover for a reason not apparent from the plaintiff's pleadings. *Citizens Ins Co v Juno Lighting, Inc*, 247 Mich App 236, 241; 635 NW2d 379 (2001). An answer thus may, but need not, include affirmative defenses. Plaintiff similarly argues that Miller's failure to respond to his motion for summary disposition should have resulted in an decision in his favor. But, as the trial court explained, a motion for summary disposition is not a pleading, and thus does not invite a default if no response follows. See MCR 2.110(A) and (B); MCR 2.603(A).

Plaintiff asserts that he was coached to attempt the instant litigation by the judge who rejected his attempt to obtain a PPO. But stating to plaintiff, "you need to bring a regular motion for some other type of action," was no specific endorsement of the specific claims plaintiff brought, let alone a judicial finding that guaranteed plaintiff's success.

Plaintiff asserts that Miller condoned her daughter's aggression against his daughter, but does not allege that Miller actually instructed her daughter to bully his daughter, or acted in concert with her for that purpose. Miller's statements in the family court indicate no more than that she was aware of typical, minor aggression taking place, about which plaintiff had not chosen to speak to her informally.

Plaintiff further suggests that Miller conspired with others to cover up the playground incident in question, but points to no evidence, beyond his daughter's innocent account of playground aggression plus his dissatisfaction with the results of the investigation, to show that any such conspiracy existed. We reject plaintiff's characterization of Mabin's appearance, along with Miller, at the PPO hearing as establishing any such thing.

Indeed, plaintiff repeatedly makes issue of his general dissatisfaction with the authorities' response to the playground incident, asserting that Principal Mabin's and Officer Walker's respective investigations were deficient. Plaintiff additionally asserts that his daughter was singled out as one whose grievances would not be investigated or remedied, but points to no

evidence of the existence of any such pernicious custom or policy. Further, plaintiff cites no authority for the proposition that a parent aggrieved over alleged minor playground aggression against a child has a constitutional right to compel a governmental investigation, let alone force an existing investigation to continue to whatever extent the parent wishes. Nor does the Constitution guarantee that school officials will punish certain alleged schoolyard misconduct. Such authorities have wide discretion in such matters, and the decision to credit certain witnesses, and conclude therefrom that the matter should be closed, cannot, without more, be fairly characterized as gross negligence or wilful misconduct.

Plaintiff characterizes both his daughter's brief detention on the playground, and his own prohibition from entering school properties, as violations of their respective First Amendment rights of expression and assembly, and Fourteenth Amendment rights to Equal Protection. But such minor disciplinary detention as plaintiff's daughter suffered, even if based on a misapprehension of the facts, simply does not implicate those doctrines. Similarly, plaintiff cites no authority that stands for the proposition that restrictions on access to a school, stemming from perceptions of a parent's inappropriate behavior and abuse of privilege, constitute constitutional deprivations.

Plaintiff complains that certain statements Mabin may have made to Walker were hearsay. But the rules of evidence do not prevent, or impugn, such communications in the course of administrative investigations. Resort to hearsay for purposes of assisting a police officer's investigation is not actionable misconduct under any theory.

Plaintiff additionally implies that Mabin misrepresented the facts to Walker, and thus obstructed the investigation under color of state law, thus depriving plaintiff of his constitutional rights. However, plaintiff had no difficulty spurring police involvement in the first instance, and remained free to urge further such involvement, despite Mabin's machinations, however the latter may have been motivated. This issue touches on no deprivation of constitutional rights.

Plaintiff repeatedly asserts that the trial court found his motions for summary disposition frivolous, but does so in error. The trial court so characterized plaintiff's entire cause of action, not his motions for summary disposition.

Plaintiff argues that the trial court erred in imposing sanctions for a frivolous lawsuit. We disagree. MCR 2.114(F), authorizing sanctions in response to frivolous claims, refers to MCR 2.625(A)(2), which authorizes a court to award costs "as provided by MCL 600.2591." The statute in turn authorizes awards of reasonable costs and attorney fees to the prevailing party in a frivolous civil action. An action is frivolous if the party bringing it had "no reasonable basis to believe that the facts underlying that party's legal position were in fact true," or if the party maintained a legal position that was "devoid of arguable legal merit." MCL 600.2591(3)(a).

By signing and submitting a document to a court, the signer attests to a "belief formed after reasonable inquiry" that the document is "well grounded in fact and is warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law . . ." MCR 2.114(D)(3). The inquiry into reasonableness for this purpose is an objective one. See *Attorney General v Harkins*, 257 Mich App 564, 576; 669 NW2d 296 (2003). Even a plaintiff proceeding without assistance of counsel is on inquiry notice concerning the law he or she calls upon the courts to apply, or parties to defend against.

Plaintiff may have earnestly believed that his daughter was blameless for the altercation underlying this litigation, and even that defendants conspired to prevent her vindication for reasons stemming from some form of impermissible discrimination. Plaintiff has no evidence of this beyond his own dissatisfaction with the official responses that followed the incident.

Even more problematic is plaintiff's basic position that authorities who decline to credit a particular account of a minor playground skirmish, including by way of imposing minimal detention on person wishing to provide that account who is suspected of being the aggressor, then truncating the investigation and deciding against punishing the other alleged aggressors, along with asking a parent to avoid school premises and restrict calls to the school in response to overly aggressive advocacy, rises to the level of violations of his or his daughter's civil rights, either under cover of state law, or in conspiracy with others so acting. The only possible injury here is the minor battery alleged by plaintiff and his daughter, attributed to certain of her schoolmates, plus the curbing of plaintiff's rights to visit school facilities or telephone his daughter's school. Plaintiff points to no discriminatory custom or policy of which his daughter might have been the victim. A school district could hardly function if a difference of opinion concerning responsibility for routine, minor, playground skirmishes, and how to respond to them, engendered federal civil rights litigation. Likewise a district's informing an overly zealous parent that he has abused certain privileges and must desist.

Because any reasonable inquiry into the law would have persuaded any reasonable person that the actions of which plaintiff complains, coupled with nothing more than his empirical speculation concerning the actors' motives, cannot be elevated to federal civil rights actions, the trial court did not clearly err in concluding that defendants were entitled to recover sanctions from plaintiff.

Affirmed.

/s/ E. Thomas Fitzgerald

/s/ Michael J. Talbot