

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

GINA L. WATSON,	:	APPEAL NO. C-180517
	:	TRIAL NO. A-1705825
Plaintiff-Appellant,	:	
	:	<i>JUDGMENT ENTRY.</i>
vs.	:	
	:	
OHIO AMBULANCE SOLUTIONS,	:	
LLC,	:	
	:	
Defendant-Appellee.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* Rep.Op.R. 3.1; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Gina L. Watson appeals the judgment of the Hamilton County Court of Common Pleas dismissing her claims against her former employer, Ohio Ambulance Solutions, LLC, (“OAS”). In four assignments of error, Watson argues that the trial court erred by: (1) granting summary judgment in favor of OAS “in violation of Civ.R. 8, and after referral to mediation and until trial on the merits”; (2) granting summary judgment in favor of OAS without giving her “fair opportunity to expand her prima facie case”; (3) dismissing the complaint “as one for summary judgment and with prejudice—without fair notice and opportunity for a more definite statement”; and (4) “by denying her Rule 60(B) motion thus violating the plaintiff’s right for the case to be adjudicated upon the merits and by ‘substantial evidence’ metrics.”

Contrary to Watson's assertion that the trial court entered summary judgment, the trial court granted OAS's Civ.R. 12(B)(6) motion to dismiss for failure to state a claim upon which relief may be granted. Because each of Watson's first three assignments of error challenge the dismissal of her complaint and are interrelated, we address them collectively. We review a dismissal pursuant to Civ.R. 12(B)(6) de novo. *Perrysburg Twp. v. Rossford*, 103 Ohio St.3d 79, 2004-Ohio-4362, 814 N.E.2d 44, ¶ 5.

A trial court may not grant a motion for failure to state a claim upon which relief may be granted unless it appears beyond doubt from the complaint that the plaintiff can prove no set of facts entitling the plaintiff to recover. *O'Brien v. Univ. Community Tenants Union, Inc.*, 42 Ohio St.2d 242, 327 N.E.2d (1975), syllabus. The trial court must review only the complaint, accepting all factual allegations as true and making every reasonable inference in favor of the nonmoving party. *Mitchell v. Lawson Milk Co.*, 40 Ohio St.3d 190, 192, 532 N.E.2d 753 (1988). However, the court need not accept as true any unsupported and conclusory legal propositions in the complaint. *See Rudd v. Ohio State Hwy. Patrol*, 2016-Ohio-8263, 78 N.E.3d 273, ¶ 12 (10th Dist.).

Our review of Watson's 35-page amended complaint demonstrates that she failed to allege sufficient facts to support her discrimination claims, and instead advanced unsupported, conclusory legal propositions, which are insufficient to withstand a motion to dismiss. *See State ex rel. Seikbert v. Wilkinson*, 69 Ohio St.3d 489, 490, 633 N.E.2d 1128 (1994). The complaint did not even include "a formulaic recitation of the elements of any of the causes of action purportedly asserted, not to mention sufficient operative facts to establish the elements of each of the claims." *Sultaana v. Horseshoe Casino*, 8th Dist. Cuyahoga No. 102501, 2015-Ohio-4083, ¶ 13. Therefore, the trial court did not err in dismissing the complaint. *See id.* at ¶ 14.

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Consequently, we overrule the first, second, and third assignments of error. We do not reach the merits of Watson’s fourth assignment of error relating to the trial court’s denial of her Civ.R. 60(B) motion because she did not appeal that judgment.

Notwithstanding the appropriateness of the dismissal, the trial court erred in dismissing the case with prejudice. *See Fletcher v. Univ. Hosps. of Cleveland*, 120 Ohio St.3d 167, 2008-Ohio-5379, 897 N.E.2d 147, ¶ 16. A dismissal under Civ.R. 12(B)(6) for failure to state a claim is without prejudice “except in those cases where the claim cannot be pleaded in any other way.” *Id.* at ¶ 17. Accordingly, the trial court’s judgment dismissing the complaint is modified to reflect that it is without prejudice, and we affirm the judgment as modified. *See Martin v. Wegman*, 1st Dist. Hamilton Nos. C-180268 and C-180308, 2019-Ohio-2935, ¶ 23.

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.

MOCK, P.J., MYERS and WINKLER, JJ.

To the clerk:

Enter upon the journal of the court on September 25, 2019

per order of the court _____.
Presiding Judge