

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-1299

Filed: 6 August 2019

Wake County, No. 18 CVS 1102

ASHLEY D. CARNEY, Plaintiff,

v.

WAKE COUNTY SHERIFF'S OFFICE, Defendant.

Appeal by plaintiff from order entered 12 September 2018 by Judge R. Allen Baddour in Wake County Superior Court. Heard in the Court of Appeals 9 May 2019.

Ashley D. Carney, pro se, for plaintiff-appellant.

Office of the Wake County Sheriff, by Paul G. Gessner and Hal F. Askins, for defendant-appellee.

DIETZ, Judge.

Ashley Carney appeals the dismissal of her *pro se* lawsuit against the Wake County Sheriff's Office. As explained below, the trial court properly concluded that Carney's complaint failed to state any legal claim on which relief could be granted. We therefore affirm the trial court's order.

Facts and Procedural History

On 25 January 2018, Plaintiff Ashley Carney filed a *pro se* complaint against

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Defendant Wake County Sheriff's Office, seeking damages of \$300,000 for "Harrassment [sic] (Cease and Decist [sic]), Pain and Suffering."

In her complaint, Carney alleged that she made a "confidential report to the Sheriff's Office" accusing her neighbor, a Wake County Jail employee, of suspected "criminal activity." She claimed that the Sheriff's Office "discredited" her report and "continued on multiple occasions to contact [her] mother" about the situation to instill "intimidation and fear" in Carney and her family as a form of "retaliation."

Carney further alleged that she contacted other law enforcement agencies about her report and "anytime the Sherriff's [sic] office would be tipped off they would contact [her] family member at her workplace." She added that the Sheriff's Office called her in December 2017 but she refused to speak to them, leading the Sheriff's Office to take "other avenues to cause confusion." Those "other avenues" involved further communications with Carney's mother. The complaint next alleges that Carney contacted the district attorney's office to ask for assistance "with having the harassment stop" and was told to have her mother reach out if any problem arose. The complaint ends with Carney stating "[t]his harassment needs to stop immediately."

On 8 March 2018, the Sheriff's Office filed a motion to dismiss under Rule of Civil Procedure 12(b)(6) for failure to state a claim on which relief could be granted.

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On 12 September 2018, the trial court granted the motion and dismissed all claims in the complaint. Carney appealed.

Analysis

Carney appeals the Rule 12(b)(6) dismissal of her complaint for failure to state a claim on which relief can be granted. We review *de novo* a trial court's grant of a Rule 12(b)(6) motion. *Jackson/Hill Aviation, Inc. v. Town of Ocean Isle Beach*, __ N.C. App. __, __, 796 S.E.2d 120, 123 (2017).

In her appellate brief, Carney first argues that she pleaded a claim under one of two statutes, N.C. Gen. Stat. § 14-196 and N.C. Gen. Stat. § 50C-1. Neither of these statutes provides a basis for a civil cause of action for damages—one criminalizes the use of certain profane or threatening language in telephone calls, and the other provides a process for obtaining a civil no-contact order.

Carney next argues that her complaint asserts claims for negligent infliction of emotional distress or intentional infliction of emotional distress. But her complaint does not allege the elements of these tort claims nor include any allegations from which these elements could be inferred. *See Dickens v. Puryear*, 302 N.C. 437, 452, 276 S.E.2d 325, 335 (1981) (elements of intentional infliction of emotional distress); *Johnson v. Ruark Obstetrics & Gynecology Assocs., P.A.*, 327 N.C. 283, 304, 395 S.E.2d 85, 97 (1990) (elements of negligent infliction of emotional distress). Because Carney's complaint for \$300,000 in damages for "harrassment" [*sic*] and "pain and

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suffering” does not allege a cognizable legal claim, the trial court properly dismissed it under Rule 12(b)(6) for failure to state a claim on which relief could be granted. We therefore affirm the trial court’s order.

AFFIRMED.

Judges MURPHY and COLLINS concur.

Report per Rule 30(e).