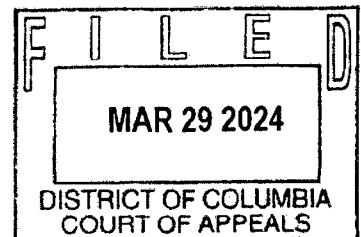


**District of Columbia
Court of Appeals**

No. 23-CV-0364



MARIA M. FAUST,

Appellant,

v.

2022-CA-003462-B

MICHAEL T. FAUST,

Appellee.

BEFORE: McLeese, Deahl, and Shanker, Associate Judges.

ORDER

On consideration of appellant's petition for rehearing and appellant's amended petition for rehearing, it is

ORDERED that appellant's amended petition for rehearing is denied.

PER CURIAM

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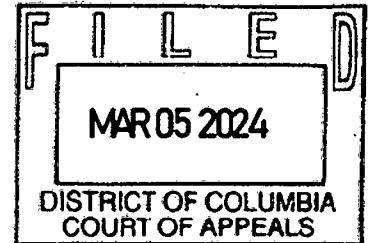
DISTRICT OF COLUMBIA COURT OF APPEALS

No. 23-CV-0364

MARIA M. FAUST, APPELLANT,

v.

MICHAEL T. FAUST, APPELLEE.



Appeal from the Superior Court of the
District of Columbia
(2022-CA-003462-B)

(Hon. Neal E. Kravitz, Trial Judge)

(Submitted February 21, 2024)

Decided March 5, 2024)

Before MCLEESE, DEAHL, and SHANKER, *Associate Judges*.

MEMORANDUM OPINION AND JUDGMENT

PER CURIAM: Appellant Maria M. Faust and appellee Michael T. Faust were divorced in 2015 pursuant to a final decree of divorce entered in the Virginia Circuit Court for the City of Virginia Beach. In 2022, Ms. Faust, proceeding pro se, sued Mr. Faust in Superior Court, asserting claims for adultery, assault, abuse, and abandonment and seeking fifty percent of the marital property, her personal items, and her car. The trial court dismissed the complaint under Super. Ct. Civ. R. 12(b)(6) for failure to state a claim due to both claim preclusion/res judicata and failure to allege plausible claims for relief. We agree that the complaint fails to state claims upon which relief can be granted and affirm on that basis.

I. Background

According to the complaint, Ms. Faust and Mr. Faust were married for 22 years and had two children. The complaint alleges that “for the last [four] years”¹ Mr. Faust abused Ms. Faust physically and psychologically and “abandoned” Ms. Faust in Washington, D.C., without any money. Ms. Faust suffered from “stress, anxiety, and depression.” The complaint states that it is based on “adultery, assault, abuse, and abandonment” and that Ms. Faust wants Mr. Faust to “explain[] the reason for his abuse, assault, and abandonment,” the reason that he “married immediately the person with whom he had an affair,” and the reason he “wanted to get rid of” Ms. Faust. Ms. Faust seeks “50 percent of what we built together as a couple” and her personal items and car.

Mr. Faust moved to dismiss the complaint and attached a final decree of divorce issued in 2015 in the Virginia Circuit Court for the City of Virginia Beach.

The trial court granted Mr. Faust’s motion and dismissed the complaint with prejudice. The court concluded that the complaint failed to state a claim upon which relief can be granted because it was barred by claim preclusion/res judicata in light of the divorce proceedings in Virginia, which finalized “all matters relating to the parties’ divorce.” The court also concluded that the complaint failed under Rule 12(b)(6) because it lacked “enough detail to explain to the court what the defendant has done to harm [Ms. Faust], what law has been violated, and what the court should do to address the harm.” The court observed that the complaint lacked “enough factual support to support plausible claims of adultery, assault, abuse, or abandonment.”²

This appeal followed.

¹ It is unclear whether the complaint is referring to the last four years of the couple’s marriage or the four years prior to the filing of the complaint, but, in his motion to dismiss the complaint, Mr. Faust averred that the last time he had “any direct contact whatsoever with Ms. Faust was in 2015.”

² The trial court stated that deficiencies in service of process also supported dismissal but that it did not need to decide the issue. Likewise, the court declined to address “complicated” issues of subject-matter and personal jurisdiction because dismissal under Rule 12(b)(6) was warranted. And the court denied Mr. Faust’s requests for attorneys’ fees and costs and an order for a psychiatric evaluation of Ms. Faust.

II. Analysis

We discern no error in the trial court's dismissal of the complaint with prejudice and therefore affirm.

“As a motion to dismiss a complaint ‘presents questions of law, our standard of review . . . is *de novo*.’” *Scott v. FedChoice Fed. Credit Union*, 274 A.3d 318, 322 (D.C. 2022) (omission in original) (quoting *Johnson-El v. District of Columbia*, 579 A.2d 163, 166 (D.C. 1990)). “We treat the facts alleged in the complaint as true and construe them in the light most favorable to the nonmoving party” *Freyberg v. DCO 2400 14th St., LLC*, 304 A.3d 971, 976 (D.C. 2023). To meet the Rule 12(b)(6) standard, “[t]he complaint’s ‘[f]actual allegations must be enough to raise a right to relief above the speculative level.’” *Id.* (quoting *Chamberlain v. Am. Honda Finance Corp.*, 931 A.2d 1018, 1023 (D.C. 2007)). “And the complaint must ‘allege the elements of a legally viable claim.’” *Id.* (quoting *Chamberlain*, 931 A.2d at 1023). “Bare allegations of wrongdoing that are no more than conclusions are not entitled to the assumption of truth, and are insufficient to sustain a complaint.” *Id.* (quoting *Logan v. LaSalle Bank Nat'l Ass'n*, 80 A.3d 1014, 1019 (D.C. 2013)) (internal quotation omitted); *see Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (the standard for complaints “does not require detailed factual allegations, but it demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation” (internal quotation omitted)).

Even construing the pro se complaint liberally, *see Price v. Washington Metro. Area Transit Auth.*, 41 A.3d 526, 533 (D.C. 2012), we conclude that it fails to set forth sufficient factual allegations or the elements of legally viable claims. The complaint does not outline any specific causes of action or allege how Mr. Faust violated the elements of those causes of action. To the extent it references abuse or assault, it is devoid of any information about when or where such alleged conduct occurred, depriving Mr. Faust of fair notice of the allegations against him. *See Tingling-Clemmons v. District of Columbia*, 133 A.3d 241, 245 (D.C. 2016). “A court’s duty to construe a pro se complaint liberally does not permit a court to uphold completely inadequate complaints.” *Elmore v. Stevens*, 824 A.2d 44, 46 (D.C. 2003); *see id.* (“[T]he complaint at issue here is woefully inadequate even tested as a pro se one.”).

III. Conclusion

For the foregoing reasons, we affirm the trial court's order dismissing the complaint with prejudice.

So ordered.

ENTERED BY DIRECTION OF THE COURT:

Julio A. Castillo
JULIO A. CASTILLO
Clerk of the Court

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Director, Civil Division

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**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION**

MARIA M. FAUST,)	
Plaintiff)	
)	
)	Case No. 2022-CA-003462-B
v.)	
)	
)	Judge Neal E. Kravitz
MICHAEL T. FAUST)	
Defendant)	

ORDER GRANTING DEFENDANT'S MOTION TO DISMISS

The defendant, Michael T. Faust, has filed a motion to dismiss the complaint for insufficient service of process, *see* Super. Ct. Civ. R. 12(b)(5), a lack of both subject matter and personal jurisdiction, *see* Super. Ct. Civ. R. 12(b)(1)-(2), and a failure to state a claim on which relief can be granted, *see* Super. Ct. Civ. R. 12(b)(6). Mr. Faust contends that the plaintiff, his ex-wife, Maria M. Faust, is seeking to relitigate claims that were resolved through the parties' divorce case in the Circuit Court for the City of Virginia Beach, Virginia—litigation that ended in 2015 with the issuance of a divorce decree incorporating a settlement agreement of the parties.

Ms. Faust has filed an opposition and two *praecipes* in response to the motion. The opposition asserts, among other things, that Ms. Faust was pressured by her lawyer into signing the divorce agreement in 2015. Ms. Faust states multiple times that she has evidence of her allegations, attaching notes, records, and photographs from 2012 to 2015 relating to the parties' relationship, divorce, and financial affairs. She also disputes a number of statements Mr. Faust makes in his motion relating to events during the parties' marriage and since their divorce.¹

¹ In particular, Ms. Faust objects to certain statements of Mr. Faust's regarding her mental health and her alleged harassment of him. The court notes that the only issue before it is the sufficiency of Ms. Faust's complaint in her current lawsuit against Mr. Faust. The court states no view on other issues relating to Ms. Faust's behavior.

It is apparent that Ms. Faust has unresolved feelings of anguish relating to the dissolution of her marriage to Mr. Faust. For the following reasons, however, the court concludes that Ms. Faust's complaint does not present any issues the court can resolve. The motion, therefore, must be granted and the complaint must be dismissed with prejudice.

Failure to State a Claim

A complaint is subject to dismissal under Rule 12(b)(6) of the Superior Court Rules of Civil Procedure if it fails to state a claim on which relief can be granted. There are two reasons why Ms. Faust's complaint fails this standard.

First, the doctrine of res judicata "precludes relitigation of the same claim between the same parties." *Elwell v. Elwell*, 947 A.2d 1136, 1139-40 (D.C. 2008). This means that when a court has already made a final decision in a case, a party to the earlier case cannot bring up the same issues again in that court or another court. Ms. Faust's complaint describes the parties' marriage and her feelings of fear, anxiety, abandonment, and trauma following the parties' separation. Without elaborating further, Ms. Faust states, "I want justice" and "I ask the Honorable Court 50 percent of what we built together as a couple, for my personal items that belong to me, and my car."

Mr. Faust argues that all of Ms. Faust's claims, to the extent she makes them, relate to divorce proceedings that were finalized in the Circuit Court of Virginia Beach in 2015. In support of his argument, Mr. Faust attaches copies of the final decree of divorce and stipulation signed by the parties. *See* Def.'s Mot., Exhibits A-B. These documents show that all matters relating to the parties' divorce, including alimony and the division of marital assets, were finalized in 2015 in the Virginia Beach court. Under the doctrine of res judicata, Ms. Faust is prohibited from asking this court to revisit the division of the parties' marital assets or to rule on

whether she was compensated fairly through the divorce proceedings.² This is the case even if, as she states in her opposition, Ms. Faust was dissatisfied with her legal representation in the divorce proceeding. The complaint therefore fails to state a claim on which relief can be granted by this court.

Second, Rule 12(b)(6) also includes a requirement, set forth in Rule 8(a)(2), that the complaint contain “a short and plain statement of the claim showing that the pleader is entitled to relief.” *See Potomac Dev. Corp. v. District of Columbia*, 28 A.3d 531, 543–44 (D.C. 2011). The plaintiff must plead “factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* at 544 (internal quotation marks omitted) (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)). This means that the plaintiff must include in her complaint enough detail to explain to the court what the defendant has done to harm her, what law has been violated, and what the court should do to address the harm.

Even if Ms. Faust’s claims were not barred by res judicata, as described above, her complaint still would be subject to dismissal under Rule 12(b)(6) because it does not adequately describe what she thinks Mr. Faust did to break the law. Ms. Faust mentions adultery, assault, abuse, and abandonment—but simply mentioning those terms is not enough. A complaint must describe what happened and when, in sufficient detail to make out a plausible claim for relief. This Ms. Faust’s complaint does not do. In her opposition to Mr. Faust’s motion to dismiss, Ms. Faust simply reiterates that she has evidence to support her claims, and in one of her praecipes she includes a list of things she says Mr. Faust did in 2012. *See* Pl.’s Praecipe, March 14, 2023.

² In her opposition, Ms. Faust states that Mr. Faust often deposited his alimony payments late. If Ms. Faust is arguing that Mr. Faust failed to comply with the terms of the divorce settlement as agreed to in 2015, then she must return to the Court of Virginia Beach, not this court, to seek enforcement of the agreement.

Yet even those additional details do not provide enough factual support to support plausible claims of adultery, assault, abuse, or abandonment.

Ms. Faust also states that she seeks answers to certain questions about the reasons behind Mr. Faust's actions at the end of their marriage; for instance, "I want to know the reason why Mr. Michael T. Faust wanted to get rid of me." These are not questions a court can properly answer through a civil case.

For the reasons stated above, the court concludes that Ms. Faust's complaint must be dismissed with prejudice under Rule 12(b)(6) for failure to state a claim on which relief can be granted. The dismissal of the complaint "with prejudice" means that the claims alleged in the complaint are dismissed permanently and cannot be brought again either in this case or in another case in this court or elsewhere.

Service of Process

Mr. Faust also argues that Ms. Faust failed to properly serve him with her lawsuit. Although the court need not reach this issue given its decision to dismiss the complaint under Rule 12(b)(6), Ms. Faust's faulty service also supports dismissal.

Service of process may be accomplished through registered or certified mail, return receipt requested. *See* Super. Ct. Civ. R. 4(c)(4). However, service must be effected by someone who is not a party. *See* Super. Ct. Civ. R. 4(c)(2). And if service is made through certified mail, an affidavit must be submitted to the court identifying the person who signed the return receipt and, if the person who signed the receipt is not the defendant, explaining how the person who signed the receipt is a proper person through whom to serve the defendant. *See* Super. Ct. Civ. R. 4(l)(1)(B)(iv). Simply put, it is always the plaintiff's responsibility to prove either that the defendant himself signed for the papers or that a person sufficiently close to the

defendant signed for the papers on the defendant's behalf. The purpose of these requirements is to maximize the likelihood that the defendant receives actual notice of the lawsuit against him.

Ms. Faust filed an affidavit of service on February 16, 2023 indicating that she mailed a copy of the complaint package to Mr. Faust by certified mail and received a return receipt signed by Stacy M. Can. The affidavit was deficient for two reasons: first, because it was signed by Ms. Faust herself, a party to the action, and second, because it does not explain who Stacy M. Can is and why she was a suitable person through whom to serve Mr. Faust.

Ms. Faust's failure to prove proper service of process on Mr. Faust within sixty days of the filing of the complaint requires dismissal of the complaint under Super. Ct. Civ. R. 4(m)(4).

Personal and Subject Matter Jurisdiction

To hear a case, the District of Columbia courts must have both personal jurisdiction over the parties and subject matter jurisdiction over the dispute. Mr. Faust argues that this court lacks personal jurisdiction over him and subject matter jurisdiction over this action. Ms. Faust responds that jurisdiction is proper because the events in 2012 that she refers to, during their marriage and separation, occurred in the District. These are complicated questions, and the court declines to address them given its determination, discussed above, that the complaint must be dismissed on other grounds.

Other Relief

Mr. Faust also asks the court to take two actions aimed at deterring Ms. Faust from further misuse of the courts to harass him: (1) grant him an award of attorney's fees and costs, and (2) order a psychiatric evaluation of Ms. Faust "to substantiate future claims from being submitted by the Plaintiff." Mr. Faust states that a previous judge cautioned Ms. Faust "that her continued misuse of the justice system may result in the financial burden of court and legal fees

sustained by the Defendant and subsequently have an order to undertake a psychological evaluation" but that Ms. Faust apparently was not deterred by this warning. Mr. Faust does not provide any further information describing the proceeding in which this warning was made. Ms. Faust responds that she should not have to pay Mr. Faust's attorneys' fees because it was his decision to hire a lawyer, and that he has no legitimate basis for ordering her to submit to a psychiatric evaluation.

Under the "American rule," each party in a civil case must bear his or her own attorney's fees unless an applicable statute, contract, or exception to the rule authorizes the shifting of one party's fees to another party. As Mr. Faust has not identified any applicable statute, contract, or exception, his request for an award of attorney's fees must be denied. And as the dismissal of the complaint with prejudice should give Mr. Faust sufficient documentation to quickly defend against any future duplicative claims, the court also declines to order a psychiatric evaluation.

Accordingly, it is this 3rd day of April 2023

ORDERED that the motion is granted. All claims in the complaint against Michael T. Faust are dismissed with prejudice, all future hearings are canceled, and the case is closed.³



Neal E. Kravitz, Associate Judge
(Signed in Chambers)

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³ For Ms. Faust's benefit, the court will ask the Office of Court Interpreting Services to translate this order into Spanish. The court will mail the Spanish translation to both parties as soon as it has been prepared.

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