

Commonwealth Of Kentucky

Court of Appeals

NO. 2001-CA-002553-MR

DAVID HUSBAND

APPELLANT

v. APPEAL FROM BOYLE CIRCUIT COURT
HONORABLE DARREN W. PECKLER, JUDGE
ACTION NO. 00-CI-0366

JAMES L. MORGAN, WARDEN;
LT. JULIE PHILLIPS

APPELLEES

OPINION
AFFIRMING
** **

BEFORE: BAKER, GUIDUGLI, AND SCHRODER, JUDGES.

BAKER, JUDGE. David Husband brings this appeal from an October 3, 2001, order of the Boyle Circuit Court. We affirm.

On August 31, 2000, appellant filed a petition for declaratory judgment in the Boyle Circuit Court. Kentucky Revised Statutes (KRS) 418.040. Appellant also filed a motion to proceed *in forma pauperis* which was granted by the circuit court. In his petition, appellant alleged that the adjustment hearing officer erroneously adjudicated him guilty of

unauthorized use of drugs. By a November 17, 2000 order, the circuit court dismissed the petition, and an appeal ensued to the Court of Appeals.

In Appeal No. 2000-CA-002806-MR, the Court of Appeals rendered an Opinion reversing and remanding the circuit court's order. The Court concluded that the prison authorities failed to establish a proper chain of custody of appellant's urine sample. The Court set aside appellant's adjudication of guilt for unauthorized use of drugs. On remand, the circuit court entered an order stating, in part, as follows:

The Court of Appeals having rendered its Opinion in this matter, it is hereby Ordered that in conformity with said Opinion, the punishment imposed upon the Petitioner by the Respondents in this action is hereby SET ASIDE for a failure to properly establish proof of a proper chain of custody. . . .

Appellant, thereupon, filed a "Motion to Alter or Amend Judgment Pursuant to CR 59.05." Appellant alleged entitlement to "compensatory damages" under Ky. R. Civ. P. (CR) 54.04. Specifically, appellant claimed reimbursement for "filing fees, and costs incurred as a result of copies and postage in this matter." In an order entered October 3, 2001, the circuit court denied appellant's motion. This appeal follows.

Appellant contends the circuit court committed reversible error by denying him "damages" under CR 54.04. We must disagree.

CR 54.04(2) reads, in relevant part, as follows:

A party entitled to recover costs shall prepare and serve upon the party liable therefor a bill itemizing the costs incurred by him in the action, . . . (emphasis added.)

CR 54.04(2) clearly states that a party wishing to recover costs "shall prepare and serve" an itemized bill specifying such costs. Here, appellant failed to tender such an itemization of costs. As such, we are unable to conclude the circuit court abused its discretion by denying appellant costs under CR 54.04. Cf. Trimble County Fiscal Court v. Trimble County Board of Education, Ky. App., 587 S.W.2d 276 (1979). For the foregoing reasons, the order of the Boyle Circuit Court is affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

David Husband, Pro Se
Burgin, Kentucky

BRIEF FOR APPELLEE:

Rebecca Baylous
Frankfort, Kentucky