

**Commonwealth Of Kentucky**

**Court of Appeals**

NO. 2002-CA-001478-MR

JAMES C. EBLEN; AND  
JOAN E. ELBEN

APPELLANTS

v. APPEAL FROM HENDERSON CIRCUIT COURT  
HONORABLE STEPHEN A. HAYDEN, JUDGE  
ACTION NO. 98-CI-00827

STEVE HARGIS, HENDERSON COUNTY  
PROPERTY VALUATION ADMINISTRATOR;  
KENTUCKY REVENUE CABINET, DEPARTMENT  
OF PROPERTY VALUATION; AND  
COMMONWEALTH OF KENTUCKY, BOARD OF  
TAX APPEALS

APPELLEES

OPINION

AFFIRMING

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BEFORE: EMBERTON, CHIEF JUDGE; BARBER AND DYCHE, JUDGES.

BARBER, JUDGE: Appellants James C. and Joan E. Eblen appeal pro  
se the Henderson Circuit Court's grant of a motion to dismiss.

The motion to dismiss was sought by Appellee Steve Hargis,  
Henderson County Property Valuation Administrator, the Kentucky  
Board of Tax Appeals, the Revenue Cabinet and the Department of  
Property Taxation.

Eblen objected to a property assessment increasing the taxable value of his home. Eblen argued that his property was valued more highly than similar property in the same area. Eblen filed the underlying civil complaint after an adverse determination in an administrative complaint before the Kentucky Board of Tax Appeals (KTBA). Eblen still has pending an appeal of the administrative determination. The KBTBA affirmed the increase in value of Eblen's residence as assessed by Hargis, the Henderson County PVA.

The state agencies named in the complaint filed a motion to dismiss asserting that they had not been properly served. The trial court found that Eblen's attempt to serve the state agencies and PVA Hargis in his official capacity was not in accordance with CR 4.04(6). The trial court found that Hargis had been properly served in his individual capacity. For that reason, the court dismissed the complaint against every named defendant except Hargis individually. The state agencies also requested dismissal on the ground of sovereign immunity from tort liability, citing Franklin Co. v. Malone, Ky., 957 S.W.2d 195, 202 (1997). The dismissal of the state agencies is affirmed. See Withers v. Commonwealth of Kentucky, Ky., 939 S.W.2d 340 (1997).

Counsel for Hargis and the state agencies filed various motions to dismiss this action, to which Eblin replied,

pro se. Upon Hargis' motion, the trial court dismissed the action against Hargis in his official capacity, recognizing his immunity for actions taken within the scope of his job duties. The trial court also dismissed the action against Hargis individually, finding that the complaint did not make any claims against Hargis outside the scope of his employment. The trial court did not dismiss Eblen's appeal of the KBTA decision.

The trial court found that the complaint did not state claims against Hargis in his individual capacity and dismissed that portion of the civil complaint. Kentucky law requires that allegations against a state actor in his individual capacity be made with specificity. Calvert Investments, Inc. v. Louisville & Jefferson Co. Metropolitan Sewer District, Ky., 805 S.W.2d 133 (1991). The record shows that the complaint consisted solely of allegations that Hargis had acted improperly during his employment as PVA. A review of the initiating complaint shows that Hargis was named and served in his official capacity, and that all claims regarding Hargis were made against him in his official capacity.

Eblen argues that Hargis intentionally, willfully or deliberately violated state law when assessing the property, and is not immune from individual liability for those actions, citing Carr v. Wright, Ky., 423 S.W.2d 521, 522 (1968). Eblen asserts that the substance of the complaint shows that it was

against Hargis in his individual capacity. We disagree, and find that the complaint does not assert a cause of action against Hargis in his individual capacity.

Eblen asserts that the trial court's denial of his motion to amend the complaint was in error. The trial court held a hearing, in which Eblen was represented by counsel, to determine what claims were being pressed by Eblen. The trial court found that neither the record nor Eblen's argument at the hearing supported a finding that claims were made against Hargis in his individual capacity. The trial court ruled that the motion requesting leave to amend the complaint evidenced no new claims against Hargis individually. The trial court also found that years had passed since the inception of the action, and that during that time Eblen had failed to amend his complaint, or assert any claim against Hargis in his individual capacity. The trial court then denied Eblen's motion to amend the complaint.

Eblen complains that the law permits him to amend his complaint, as of right, prior to the filing of a responsive pleading, pursuant to CR 15.01. A court may, however, deny an amendment when the proposed amendment fails to state a claim upon which relief may be granted. First Nat. Bank of Cincinnati v. Hartmann, Ky. App., 747 S.W.2d 614, 616 (1988). The denial of a motion to amend may be reversed by this Court only where

the Appellant shows an abuse of discretion. Lambert v. Franklin Real Estate Co., Ky. App., 37 S.W.3d 770, 779 (2000). We find that Eblen has failed to show such an abuse of discretion, and therefore affirm the trial court's ruling.

EMBERTON, CHIEF JUDGE, CONCURS.

DYCHE, JUDGE, CONCURS IN RESULT:

DYCHE, JUDGE, CONCURRING IN RESULT: I concur with the result reached by the majority. I would, however, dismiss the appeal since it is taken from a non-final judgment. The judgment does not resolve all the claims, and does not contain full finality language. CR 54.02

BRIEFS FOR APPELLANTS:

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BRIEF FOR APPELLEES STEVE  
HARGIS, HENDERSON COUNTY PVA  
AND REVENUE CABINET,  
COMMONWEALTH OF KENTUCKY:

Thomas J. Hodge  
Frankfort, Kentucky