

**Commonwealth Of Kentucky**

**Court of Appeals**

NO. 2003-CA-000323-MR

BILL MAXIE

APPELLANT

v. APPEAL FROM MCCRACKEN CIRCUIT COURT  
HONORABLE R. JEFFREY HINES, JUDGE  
ACTION NO. 99-CI-00737

PAXTON MEDIA GROUP, INC.,  
d/b/a THE PADUCAH SUN AND  
WSPD-TV; and FRED PAXTON

APPELLEES

OPINION  
AFFIRMING

\*\* \*\* \* \* \*

BEFORE: BAKER, COMBS, AND SCHRODER, JUDGES.

BAKER, JUDGE: Bill Maxie (Maxie) appeals the denial of his Ky.  
R. Civ. P. (CR) 60.02 motion by the McCracken Circuit Court. We  
affirm.

Maxie's original complaint stemmed from allegations  
that Paxton Media Group, Inc., d/b/a/ The Paducah Sun and WSPD-  
TV, Fred Paxton, et al (collectively referred to as "the Media  
Group") had published and broadcast defamatory reports about

him. The Media Group filed a Motion for Summary Judgment, claiming that Maxie had failed to demonstrate any material issues of fact. On May 6, 2002, the McCracken Circuit Court entered an Order Granting Summary Judgment.

Maxie subsequently filed a CR 60.02(a) motion to alter, amend or vacate the judgment of the circuit court due to mistake, surprise, inadvertence, or excusable neglect. Specifically, Maxie asserted he did not receive the Media Group's Motion for Summary Judgment because he was transferred to a different correctional facility during the course of the proceedings. Maxie claimed he was, therefore, not given the opportunity to respond. The McCracken Circuit Court denied Maxie's CR 60.02 motion. This appeal follows.

It is well established that the circuit court's denial of a CR 60.02 motion will not be disturbed unless there has been an abuse of discretion. See Berry v. Cabinet for Families and Children, Ky., 998 S.W.2d 464 (1999). The purpose of CR 60.02 is "to provide relief where the reasons for the relief are of an extraordinary nature." Ray v. Commonwealth, Ky. App., 633 S.W.2d 71 (1982). In deciding upon a CR 60.02 motion, a court should generally look to whether the party "was treated fairly." Lewallen v. Commonwealth, Ky. App., 584 S.W.2d 748 (1979).

Pursuant to CR 5.02, service is properly made by delivering or mailing a pleading to a party "at his last known

address." CR 5.02. When proceedings were initiated in this case, Maxie was an inmate at the Green River Correctional Complex ("Green River"). Unbeknownst to the Media Group or to the court, Maxie was transferred to the Western Kentucky Correctional Complex during the course of the proceedings. Believing that Maxie was still incarcerated at Green River, the Media Group mailed a copy of its Motion for Summary Judgment to him at that facility. As this was the last known address that the Media Group or the court had for Maxie, service was proper pursuant to CR 5.02.

Since service was proper, we do not believe that the reasons given by Maxie for relief under CR 60.02 are "extraordinary." Likewise, we do not believe that Maxie was treated unfairly. On the whole, we think summary judgment was proper and that, even if Maxie had responded to the Media Group's motion, the circuit court's decision would not have been altered. Accordingly, we hold that the McCracken Circuit Court did not abuse its discretion by denying Maxie's CR 60.02(a) motion.

For the foregoing reasons, the decision of the McCracken Circuit Court is affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT - pro se: BRIEF FOR APPELLEE:

Bill Maxie  
Central City, Kentucky

Mark C. Whitlow  
Paducah, Kentucky