

**Commonwealth Of Kentucky**

**Court of Appeals**

NO. 2003-CA-002126-MR

LARRY RILEY and  
EDNA RILEY

APPELLANTS

v. APPEAL FROM GRAVES CIRCUIT COURT  
HONORABLE JOHN T. DAUGHADAY, JUDGE  
ACTION NO. 99-CI-00245

COMMONWEALTH OF KENTUCKY  
TRANSPORTATION CABINET AND  
CHARLES GIBSON D/B/A GIBSON'S  
AUTO SERVICE

APPELLEES

OPINION  
AFFIRMING

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BEFORE: BARBER AND VANMETER, JUDGES; HUDDLESTON, SENIOR JUDGE.<sup>1</sup>

BARBER, JUDGE: Appellants, Larry Riley and Edna Riley (the Rileys), bring this appeal from an order of the circuit court denying their motion to dismiss the Commonwealth of Kentucky Transportation Cabinet's action against them for violation of the Recycler Act, KRS 177.905 to KRS 177.951. We affirm.

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<sup>1</sup> Senior Judge Joseph R. Huddleston sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

On July 24, 1997 the Rileys were notified by the Commonwealth of Kentucky Transportation Cabinet (the Cabinet) that they were in violation of the Recycler Act and had 30 days to comply with its provisions. The Rileys failed to do so and on June 10, 1999 the Cabinet filed a complaint against the Rileys<sup>2</sup> asking the court to compel the Rileys to comply with the Act. The court granted the Cabinet a temporary injunction that required the Rileys to bring their site into compliance with the Act. The Rileys then entered into an agreed order that barred the operation of a recycling center or automobile resale facility on the site. Shortly thereafter the circuit court issued a permanent injunction barring the Rileys from operating any business on the site without first obtaining the proper permits, licenses, certificates, or meeting other necessary legal requirements.

Larry Riley was also held in contempt on several occasions for failing to comply with the orders of the court. The vehicles on the property were ordered impounded and sold and a judgment against the Rileys was entered in favor of Charles

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<sup>2</sup> Larry Riley and another individual were originally named in the complaint. It was subsequently amended to dismiss that individual and add Edna Riley as a party. The circuit court made her subject to the orders that applied to Larry Riley.

Gibson d/b/a Gibson's Auto Service<sup>3</sup> for towing, storage, and attorney fees.

The Rileys then filed a motion to dismiss the action arguing that the circuit court lacked subject matter jurisdiction. The court denied the motion and this appeal followed.

On appeal the Rileys have made numerous arguments for why the circuit court did not have subject matter jurisdiction. The essential nature of these arguments is that because the Recycler Act provides for administrative hearings pursuant to KRS Chapter 13B, the Cabinet's failure to afford the Riley's such a hearing prior to seeking an injunction in circuit court deprives that court of subject matter jurisdiction. We disagree.

The Recycler Act requires the Cabinet to hold public administrative hearings in certain circumstances. An administrative hearing is mandated: (1) "before the issuance of any final order prohibiting the performance by any person" acts that are contrary to "any administrative regulation[], order[], or permit[]" of the Cabinet; (2) "before denial, revocation, or modification of any permit" issued pursuant to the Recycler Act; or, (3) "before any other final determination is made by [the

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<sup>3</sup> The Rileys have not presented any arguments in their briefs to this Court regarding issues involving Charles Gibson d/b/a Gibson's Auto Service and Gibson has not filed a brief.

Cabinet] which directly affects the activities of any person." KRS 177.940(1). The Cabinet may also conduct an administrative hearing if an aggrieved person requests. KRS 177.940(2). The Rileys never requested a hearing.

There is no question that the first two circumstances that mandate an administrative hearing do not apply to the Rileys. There is no final order concerning an administrative regulation, order, or permit from the Cabinet. The Rileys are charged with violation of the statute itself, specifically KRS 177.910 which prohibits unauthorized recyclers and declares them to be a public nuisance. There is certainly no question regarding denial, revocation, or modification of any permit since the Rileys never possessed one.

The last circumstance necessitating a hearing requires the Cabinet to have made some sort of final determination that directly affects the Rileys activities. In this case we agree with the circuit court that the Cabinet does not have the ability to "affect the activities" of an illegal recycler in the sense that it cannot compel compliance with the Recycler Act.

Thus, the legislature has provided that the Cabinet has the power to:

Institute in a court of competent jurisdiction procedures, including injunctive relief, to compel compliance with the provisions of KRS 177.905 to 177.950 and

with the final orders and administrative regulations issued pursuant thereto.

KRS 177.935(8). A simple reading of this statute unmistakably allows the Cabinet to institute, in a court, a proceeding that requests injunctive relief to compel compliance with the Recycler Act. We believe this avenue is provided to the Cabinet for situations such as the one presented here where the individual or entity is acting illegally. Other chapters in the Kentucky Revised Statutes have similar provisions. See KRS 313.022 which allows an action in court to enjoin the unauthorized practice of dentistry although KRS 313.150 provides for an administrative hearing for those who have a license.

The Riley's arguments are all based on their contention that the Cabinet should have conducted an administrative hearing prior to filing suit in circuit court. Since we believe that this was unnecessary the Rileys other arguments must also fail. The judgment of the circuit court is affirmed.

ALL CONCUR.

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