

Commonwealth Of Kentucky

Court of Appeals

NO. 2004-CA-000148-MR

HILDRETH YOUNG

APPELLANT

v. APPEAL FROM MONROE CIRCUIT COURT
HONORABLE EDDIE C. LOVELACE, JUDGE
ACTION NO. 03-CI-00125

AL SHIRLEY; MICHAEL MCPHERSON;
EDDIE BENNETT; FRED SHIRLEY;
TONY WALDEN; RICKY YOUNG; DALE FORD;
KENNY HAGAN; FREDDIE S. KIRKPATRICK;
DARRELL FORD; EDDIE P. MURPHY; AND
KEVIN BEATTY

APPELLEES

OPINION
AFFIRMING IN PART,
REVERSING IN PART,
AND REMANDING

** ** * * *

BEFORE: DYCHE, SCHRODER, AND VANMETER, JUDGES.

SCHRODER, JUDGE: This is an appeal from an order dismissing appellant's complaint against numerous defendants alleging violations of his civil rights pursuant to 42 U.S.C. § 1983 and malicious prosecution. The trial court properly ruled that the

claims arising out of a 1999 incident were barred by the one-year statute of limitation in KRS 413.140(1)(a). The court also properly dismissed the 42 U.S.C. § 1983 claims based on a 2002 incident which resulted in appellant's conviction for possession of a handgun by a convicted felon, where appellant's criminal conviction had not been overturned, expunged, declared invalid, or called into question by the issuance of a writ of habeas corpus. However, because appellant made sufficient allegations of fraud, corruption and perjury, we adjudge that dismissal of the claims of malicious prosecution relative to the 2002 incident and resulting conviction was premature and the claims must be allowed to proceed. Accordingly, we affirm in part and reverse in part and remand for further proceedings consistent with this opinion.

Appellant, Hildreth Young, filed the action herein pro se on September 2, 2003. The complaint, which was inartfully drafted, essentially attempted to state claims against numerous defendants for malicious prosecution and for violations of his civil rights pursuant to 42 U.S.C. § 1983, for actions arising out of two separate incidents.

The first incident occurred in 1999. Young alleges that certain Tompkinsville police officers, acting under color of state law, beat him severely in the course of an arrest.

The second incident was in December of 2002. Four Tompkinsville workers were allegedly sent by the then Tompkinsville mayor to harass Young at Young's son's home. According to the complaint, the four men had weapons, and a physical altercation between Young and his son and the four men ensued. One of the men then falsely claimed that Young possessed a gun during this altercation. Young maintains that Eddie Murphy, a Tompkinsville police officer who responded to the scene, then confiscated a gun belonging to Young's daughter-in-law which had been locked up in a shed behind the property. As a result, Young was charged with and convicted of possession of a firearm by a convicted felon. Apparently, Young is currently in prison on this conviction. Young alleges that all of the above was part of a politically-motivated conspiracy to get him convicted and imprisoned for a crime he did not commit.

On December 30, 2003, the court entered an order dismissing Young's complaint. The court adjudged that the claims based on the 1999 beating incident were barred by the one-year statute of limitations. As to the claims relating to his conviction for possession of a firearm by a convicted felon, the court adjudged that he could not re-litigate his guilt on the underlying charge and the allegations failed to state a claim under 42 U.S.C. § 1983. This pro se appeal by Young followed.

It has been held that in Kentucky the one-year statute of limitations for personal injury actions in KRS 413.140(1)(a) applies to 42 U.S.C. § 1983 claims. Collard v. Kentucky Board of Nursing, 896 F.2d 179 (6th Cir. 1990). Hence, the lower court properly adjudged that all of the claims arising out of the 1999 beating incident were barred by the one-year statute of limitations.

We next turn to the 42 U.S.C. § 1983 claims based on the alleged conspiracy to wrongly convict Young of possession of a firearm by a convicted felon. The United States Supreme Court has held that:

in order to recover damages for allegedly unconstitutional conviction or imprisonment, or for other harm caused by actions whose unlawfulness would render a conviction or sentence invalid, a § 1983 plaintiff must prove that the conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or called into question by a federal court's issuance of a writ of habeas corpus, . . .

Heck v. Humphrey, 512 U.S. 477, 487, 114 S. Ct. 2364, 2373, 129 L. Ed. 2d 383, 394 (1994) (footnote omitted). The Court reasoned that if a judgment in the plaintiff's favor in the civil proceeding would necessarily imply the invalidity of the criminal judgment, the criminal judgment must first be invalidated before the civil action can proceed because

otherwise the civil action would simply serve as a collateral attack on the conviction. Id.; see also Baranski v. Fifteen Unknown Agents of the Bureau of Alcohol, Tobacco, and Firearms, 401 F.3d 419 (6th Cir. 2005).

Young does not allege, and there is no indication in the record, that Young's conviction has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal, or called into question by the issuance of a writ of habeas corpus. Given the allegations by Young in this case (fraud, corruption and perjury as part of a conspiracy to wrongly convict him), a judgment in Young's favor would certainly imply the invalidity of his conviction. Hence, the 42 U.S.C. § 1983 claims based on his conviction for possession of a firearm by a convicted felon were properly dismissed.

We now move on to Young's claims of malicious prosecution relative to his conviction for possession of a firearm by a convicted felon. The six basic elements necessary to maintain an action for malicious prosecution are: institution of original judicial proceedings; by or at the instance of the plaintiff(s); termination of such proceedings in defendant's favor; malice in the institution of the proceeding; lack of probable cause for the proceeding; and suffering damage as a result of the proceeding. Raine v. Drasin, 621 S.W.2d 895 (Ky. 1981). An exception to the threshold requirement that the

criminal proceeding must have terminated in the claimant's favor is where the conviction was obtained by fraud, corruption or perjury. Freeman v. Logan, 475 S.W.2d 636 (Ky. 1972); Taylor v. Nohalty, 404 S.W.2d 448 (Ky. 1966).

Relative to his indictment and conviction for possession of a firearm by a convicted felon, Young alleged in his complaint that the ex-mayor of Tompkinsville, Freddie Kirkpatrick, initiated the politically-motivated conspiracy against him. Young claimed that on December 26, 2002, Kirkpatrick sent four city employees to his son's home with weapons to start a fight with Young and his son. According to Young's complaint, the only weapon he had in his possession during the ensuing fight was a long stick. The complaint goes on to claim that when Tompkinsville Police Officer Eddie Murphy responded to altercation, one of the four men, Al Shirley, lied and told Officer Murphy that Young had a gun. Young claimed that Murphy then confiscated a gun belonging to his daughter-in-law, Angie Young, which had been locked in a shed behind the house during the entire altercation. The complaint alleged that Officer Murphy thereafter lied about obtaining the gun from Young and that Al Shirley also lied to the Grand Jury, testifying that Young had a gun during the altercation. Also alleged in the complaint was the fact that fingerprint tests done on the gun revealed that there were no prints of Young

thereon. Young averred that the four city employees (the complaint only identified one, Al Shirley), Kirkpatrick, Officer Murphy, and Deputy Sheriff Darrell Ford, who were all friends and political allies, were part of the conspiracy to get Young convicted of possession of a firearm by a convicted felon and sent to prison. The complaint also stated, albeit inartfully:

Plaintiff was also lied on, conspired against, and due to this, was frauded out of money, Live, Liberty, and Property, plus his Freedom, at and by the hands of the defendants, whom are employeed [sic] by the various State, County, City and Sheriff's Departments, plus some of the Defendants are private citizens who have lied, conspired and threatened Plaintiff, to cause this action.

Young submitted four affidavits in support of his complaint. The first was by Angie Young, who stated that she witnessed the fight in question and that Young did not have a gun during the fight. She further corroborated the allegations in Young's complaint regarding the gun, stating that the gun confiscated by the police had been locked up in a shed behind her house during the entire fight and that Young could not have gotten the gun because he did not have a key to the shed.

The second affidavit was that of Larry Young, appellant's son. Larry Young also stated that his father did not have a gun during the fight. According to Larry, the only gun on his property was his wife's and it was locked up in a

shed during the fight. Larry likewise maintains that one of the men involved in the fight lied to police about his father having a gun.

The other two affidavits were submitted by Young. In one, he identified the four city employees who started the fight as Ricky Young, Al Shirley, Fred Shirley, and Eddie Bennett (who were all named defendants in the complaint). Young further claimed that when he and his son went to the County Attorney to file charges against the four men, they were denied the opportunity to do so. And again, Young stated that Al Shirley lied about him having a gun and that Officer Murphy knew that the gun he seized had been locked up during the altercation. In the second affidavit, Young stated that Darrell Ford lied under oath when he stated that Angie Young gave him the gun, and that Ford told him that he was going to see that Young would go to prison one way or another.

Since the court considered affidavits and responses to discovery, as well as the pleadings, the order dismissing Young's action was a summary judgment. Bowlin v. Thomas, 548 S.W.2d 515 (Ky.App. 1977). Summary judgment is proper only where, drawing all factual inferences in favor of the nonmoving party, the trial court can conclude that there are no issues as to any material fact and that the moving party is entitled to judgment as a matter of law. Fischer v. Jeffries, 697 S.W.2d

159 (Ky.App. 1985). Summary judgment should only be used to terminate litigation when, as a matter of law, it would be impossible for the respondent to produce evidence at trial warranting a judgment in his favor and against the movant. Steelvest, Inc. v. Scansteel Service Center, Inc., 807 S.W.2d 476 (Ky. 1991).

Pro se litigants are allowed some degree of flexibility in pleading their actions. Haines v. Kerner, 404 U.S. 519, 92 S. Ct. 594, 30 L. Ed. 2d 652 (1972). Although the complaint at issue was crudely drafted, from our review of the record, we believe that Young made sufficient allegations of perjury, fraud, and corruption to withstand summary judgment on the malicious prosecution claim against Freddie Kirkpatrick, Darrell Ford, Eddie Murphy, Al Shirley, Fred Shirley, Eddie Bennett, and Ricky Young relative to his prosecution for possession of a firearm by a convicted felon. Considering the allegations in the light most favorable to Young, Young raised genuine issues of material fact regarding whether the criminal proceeding was initiated by or at the instance of the seven above individuals with malice and a lack of probable cause. See Raine v. Drasin, 621 S.W.2d 895. Accordingly, the summary judgment is reversed as to the malicious prosecution claim relative to his conviction for possession of a firearm by a

convicted felon, and the cause is remanded for further proceedings.

For the reasons stated above, the order of the Monroe Circuit Court is affirmed in part and reversed in part and remanded for further proceedings consistent with this opinion.

ALL CONCUR.

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