

Commonwealth Of Kentucky
Court of Appeals

NO. 2004-CA-002524-MR

HERBERT R. SMITH

APPELLANT

v.

APPEAL FROM FRANKLIN CIRCUIT COURT
HONORABLE WILLIAM L. GRAHAM, JUDGE
ACTION NO. 04-CI-00921

JOHN D. REES

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: BUCKINGHAM, JOHNSON, AND TAYLOR, JUDGES.

BUCKINGHAM, JUDGE: Herbert R. Smith, a prison inmate, appeals *pro se* from an order of the Franklin Circuit Court dismissing his petition for declaratory judgment against 19 present or former prison authorities. The issue for our review concerns whether the court properly dismissed Smith's petition pursuant to KRS¹ 454.405(1) and as being in violation of CR² 8.01. We affirm.

¹ Kentucky Revised Statutes.

² Kentucky Rules of Civil Procedure.

Smith is an inmate in the Kentucky prison system and is serving a 36-year sentence. On two prior occasions, Smith filed civil actions against prison authorities in the Lyon Circuit Court. Each action was dismissed by that court pursuant to KRS 454.405(1) and CR 8.01. These dismissals resulted in Smith losing 360 days of nonrestorable good time credits. See KRS 197.045(5) and CPP³ 15.2. As a result of these administrative actions, Smith filed a petition for declaratory judgment in the Franklin Circuit Court. Smith's petition consists of a 35-page petition typed in one and one-half line spacing and 66 pages of attachments.

The 19 individual respondents collectively filed a motion to dismiss the petition pursuant to KRS 454.405(1) on the grounds that its purpose was to harass the defendants and pursuant to CR 8.01 on the grounds that the petition was not a "short and plain statement of the claim" as the rule requires. After Smith filed a response, the court dismissed his petition pursuant to KRS 454.405(1) and CR 8.01 in an order entered on November 10, 2004. The court concluded that Smith's "pleadings are extremely difficult to understand, and are in fact, largely unintelligible. This lawsuit achieves no legitimate legal purpose, other than to harass the Respondents." The court also concluded that the petition violated CR 8.01 in that it did not

³ Corrections Policies and Procedures.

make a concise and clear statement of the claims presented. This appeal by Smith followed.

At the outset, we note a procedural problem with Smith's appeal. Although there were 19 individual respondents named in Smith's petition for declaratory judgment, Smith only named John D. Rees as an appellee in his notice of appeal. In fact, the caption named "John D. Rees, et al." as respondents, not appellees. No appellees were listed in the body of the notice of appeal.

CR 73.03(1) states in part that "[t]he notice of appeal shall specify by name all appellants and all appellees ('et al.' and 'etc.' are not proper designations of parties) and shall identify the judgment, order or part thereof appealed from." By identifying the appellees in his notice of appeal as "John D. Rees, et al.," Smith failed to comply with the rule. Because the other 18 individual respondents were not named as appellees in Smith's notice of appeal, they are not parties to the appeal. See Schulz v. Chadwell, 548 S.W.2d 181, 184 (Ky. 1977).

However, the failure to name the other 18 individuals as appellees is not grounds for dismissing the appeal as to Rees unless the others are deemed to be indispensable parties to the appeal. See id. and Anderson v. National Sec. Fire and Cas. Co., 870 S.W.2d 432, 434 (Ky.App. 1993). Our review of Smith's

petition indicates that Rees was the commissioner of DOC on January 14, 2004, when he denied Smith's grievance concerning the loss of his good time credits. As Rees has not filed a brief in this case, we will assume that the other 18 individuals are not indispensable parties. Thus, we will address the merits of Smith's appeal.⁴

KRS 454.405(1) provides as follows:

At any time, and upon its own motion or on motion of a party, a court may dismiss a civil action brought by an inmate or on behalf of an inmate if satisfied that the action is malicious or harassing or if satisfied that the action is legally without merit or factually frivolous. In addition to any other available disposition, a court may dismiss the civil action if satisfied that the affidavit of poverty in support of a request to proceed in forma pauperis is wholly or partly false or misleading.

CR 8.01(1) provides in part that "[a] pleading which sets forth a claim for relief . . . shall contain (a) a short and plain statement of the claim showing that the pleader is entitled to relief[.]" Further, CR 8.05(1) states in part that "[e]ach averment of a pleading shall be simple, concise, and direct."

In his brief, Smith characterized his petition for declaratory judgment as follows:

This said declaratory judgment action seeks declaratory, monetary, and injunctive relief

⁴ The record indicates that the circuit clerk complied with CR 73.03(2) by mailing a copy of Smith's notice of appeal to the attorney of record for the parties.

from numerous corrections personnel for the willful and malicious conduct of subjecting Appellant to the forfeiture of three hundred sixty (360) days of non-restorable earned good time credits under Kentucky Statutory Laws and a Kentucky Department of Corrections "rule" that are "patently unconstitutional" and resulted in Appellant sustaining severe mental and emotional distress injuries from substantial deprivations and being held in false imprisonment, in which, matters such as proving the false imprisonment and monetary relief thereof was reserved for another action in the courts.

Smith states that the circuit court's "grounds used for dismissal were fictitious and delusional and based upon blatant lies." He further states in his brief that his petition was sufficiently clear in all respects and that it is "totally impossible" for an inmate such as himself to present a claim like his in a simple, concise, and direct manner. He contends that he was required to present specific facts and state specific grounds in his petition to demonstrate his right to relief since his failure to do so could have resulted in the petition's dismissal under KRS 454.405(1).

We have reviewed Smith's petition and, like the circuit court, find it to be "extremely difficult to understand" and "largely unintelligible." However, it is not readily apparent to us that the petition was brought for the purpose of

harassing the appellees or that it was without merit or factually frivolous.⁵ See KRS 454.405(1).

However, we agree with the circuit court that the petition did not contain "a short and plain statement of the claim showing that the pleader is entitled to relief." See CR 8.01(1). Furthermore, contrary to Smith's assertions, we conclude that it was unnecessary for him to have filed such a lengthy and "largely unintelligible" petition when a much shorter and direct petition would have sufficed and would have properly apprised the responding parties and the court of the nature of his claim. In short, we conclude that the circuit court did not abuse its discretion in dismissing Smith's petition.⁶

The order of the Franklin Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

NO BRIEF FOR APPELLEE:

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⁵ We note again that Rees did not file a brief in this case.

⁶ See 61A Am.Jur.2d *Pleadings* §§ 192-94 (1999), for a general discussion of this issue.