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Commonwealth of Kentucky

Court of Appeals

NO. 2005-CA-000411-MR

STEVEN REDMON

APPELLANT

APPEAL FROM JEFFERSON CIRCUIT COURT
v. HONORABLE JUDITH E. MCDONALD-BURKMAN, JUDGE
ACTION NO. 03-CI-006808

LOUISVILLE AND JEFFERSON COUNTY
HUMAN RELATIONS COMMISSION

APPELLEE

AND

JESSE GARON

REAL PARTY IN INTEREST

OPINION
AFFIRMING

** ** *

BEFORE: CLAYTON, KELLER, AND MOORE, JUDGES.

CLAYTON, JUDGE: This is a case involving a Petition for a Writ of Prohibition.

The Appellant appeals an Opinion and Order of the Jefferson Circuit Court

denying the issuance of a writ prohibiting the Louisville and Jefferson County Human Relations Commission (HRC) from conducting further proceedings against the Appellant in an administrative action.

FACTUAL AND PROCEDURAL HISTORY

In August of 2001, Jesse Garon filed a Complaint of Discrimination against Appellant Steve Redmon with the HRC. The Complaint alleged that Mr. Garon was the victim of hate crimes perpetrated by Mr. Redmon. On November 20, 2002, the HRC found probable cause regarding the commission of the crimes and tendered a Conciliation Agreement (CA) to Mr. Redmon. HRC informed Mr. Redmon that he could either pay the compensatory and punitive damages demanded by Mr. Garon (\$537,283.29) or he could elect to either proceed with an administrative hearing through the HRC or take the matter to circuit court. Mr. Redmon rejected the CA and notified HRC that he was electing to pursue the action in Jefferson Circuit Court. HRC then notified Mr. Redmon that it had erred in its information regarding his ability to bring a circuit court action, his only avenue being an administrative hearing.

Mr. Redmon thereafter filed a Petition for a Writ of Prohibition in Jefferson Circuit Court asserting that he had a right under the Kentucky Constitution to have a jury trial. The Jefferson Circuit Court denied his Petition on the grounds that, due to the appeal process, an adequate remedy existed. Mr. Redmon then brought this appeal.

STANDARD OF REVIEW

Under *Hoskins v. Maricle*, 150 S.W.3d 1, 6 (Ky. 2004), the Kentucky Supreme Court held that a writ of prohibition may only be granted if the Appellant establishes that:

- 1.) the lower court is proceeding or is about to proceed outside its jurisdiction and there is no adequate remedy by appeal, or
- 2.) the lower court is about to act incorrectly, although within its jurisdiction, and there exists no adequate remedy by appeal or otherwise and great injustice and irreparable injury would result.

An appellate court should not disturb a lower court's decision to either grant or deny a petition absent an abuse of discretion as such a decision falls within the discretion of the court in which the petition was filed. *Id.* at 5. A court has abused its discretion if its decision was arbitrary, unreasonable, unfair or unsupported by sound legal principles. *Jaroszewski v. Flege*, 204 S.W. 3d 148, 150 (Ky.App. 2006).

ANALYSIS

Under Louisville Metro Code 281, Series 1991 § 98.49(a),

[n]o person shall discriminate against another person by intentionally interfering with another person or the property of another person with the motive to intimidate or interfere with or oppress the other person because the other person is a member of one or more classes of persons referenced in paragraph (b)(1) of the federal Hate Crime Statistics Act (Public Law 101-275) and/or, in addition, classes of persons identifiable by gender and/or disability or health related condition.

“The statute which creates a right can prescribe a proceeding for adjudication of that right in an administrative forum without a jury trial.”

Kentucky Commission on Human Rights v. Fraser, 625 S.W.2d 852, 854 (Ky. 1981), *citing Curtis v. Loether*, 415 U.S. 189, 94 S.Ct. 1005, 39 L.Ed. 2d 260 (1974).

Mr. Redmon asserts that the Jefferson Circuit Court abused its discretion in concluding that the constitutional question should be set aside in favor of allowing the orderly, even if erroneous, proceedings of the HRC to go forward. He also argues that it erred in determining that his right to a jury trial was remedied by his ability to appeal the decision of the administrative body.

Section 7 of the Kentucky Constitution provides that “[t]he ancient mode of trial by jury shall be held sacred, and the right thereof remain inviolate, subject to such modifications as may be authorized by this Constitution.”

In *Atlas Roofing Co., Inc. v. Occupational Safety, Etc.*, 430 U.S. 442, 97 S.Ct. 1261, 51 L.Ed.2d 464 (1977), the United States Supreme Court held that the right to a trial by jury means the rights which existed in suits under the common law. In *Kentucky Commission on Human Rights v. Fraser*, 625 S.W.2d 852 (Ky. 1981), the Supreme Court of Kentucky agreed with that holding and applied it to the Kentucky Constitution. It held that Section 7 of the Kentucky Constitution did not create a right to a jury trial; it merely preserved that right which existed under the common law. *Id.* at 854.

The *Fraser* Court went on to opine that,

Because the right to be free from discrimination based on race, color, religion, national origin, sex, and age is a creature of statute and not a common-law tort, it does not fall within the scope of the right to trial by jury preserved by the seventh amendment and by Section 7 of the Kentucky Constitution. (Citation omitted). The statute which creates a right can prescribe a proceeding for adjudication of that right in an administrative forum without a jury trial. (Citation omitted).

Id.

In the present action, Louisville Metro Code § 98.48, *et seq.* involves bias-related or “hate” crimes. While Mr. Redmon argues that these crimes are simply common law torts, this Court disagrees. In *Fraser*, the Court found that the right to be free from discrimination based upon one’s race, color, religion, national origin, sex or age was created by statute and was not a common law tort. *Id.* at 854.

While Louisville Metro Code § 98.48, *et seq.* involves actions which have some of the same elements as common law torts, the actions are different in an essential element. The actions must have hate or bias in order to be brought under these sections. Consequently, these rights are created legislatively and a jury trial is not required. *Id.* Common law tort actions for assault and trespass do not require hate or bias to be present.

The Jefferson Circuit Court did not abuse its discretion in denying Mr. Redmon’s Petition for a Writ of Prohibition prohibiting the HRC from adjudicating his case in an administrative forum without a jury. Thus, its decision of January 31, 2005, is affirmed.

BRIEFS FOR APPELLANT:

Jeffery B. Skora
Michael R. Mazzoli
Louisville, Kentucky

ORAL ARGUMENT FOR
APPELLANT:

Michael R. Mazzoli

BRIEF FOR APPELLEE,
LOUISVILLE AND JEFFERSON
COUNTY HUMAN RELATIONS
COMMISSION:

Mark Dobbins
Louisville, Kentucky

NO BRIEF FILED FOR RPII

ORAL ARGUMENT FOR
LOUISVILLE AND JEFFERSON
COUNTY HUMAN RELATIONS
COMMISSION:

William J. Walsh
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