

Commonwealth of Kentucky

Court of Appeals

NO. 2006-CA-001002-MR

CHARLES LUDWIG

APPELLANT

v. APPEAL FROM WOODFORD CIRCUIT COURT
HONORABLE ROBERT G. JOHNSON, JUDGE
ACTION NO. 05-CI-00339

BOARD OF REGENTS, KENTUCKY
COMMUNITY AND TECHNICAL
COLLEGE SYSTEM

APPELLEE

OPINION
AFFIRMING

** ** * * * **

BEFORE: KELLER AND NICKELL, JUDGES; KNOPF,¹ SENIOR JUDGE.

NICKELL, JUDGE: Charles Ludwig (hereinafter “Ludwig”) has appealed from an order of the Woodford Circuit Court entered on April 12, 2006, which dismissed his complaint and petition for declaration of rights against the Board of Regents, Kentucky Community and Technical College System (hereinafter “KCTCS”). For the following reasons, we affirm.

¹ Senior Judge William L. Knopf sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes (KRS) 21.580.

KCTCS was created by an act of the Kentucky General Assembly in the First Extraordinary Session of 1997. The Act, then known as House Bill 1, was signed into law on May 29, 1997, and was codified in Kentucky Revised Statutes (KRS) Chapter 164. Prior to the existence of KCTCS, personnel and employees of Kentucky's community and technical colleges were governed by the provisions of KRS Chapter 151B² and the administrative regulations promulgated thereunder. In an effort to maintain the rights and privileges accrued to employees who would be transferred into the KCTCS personnel system, the Legislature mandated that employees who had achieved a tenured status under the old system be treated similarly under the new system.³ Furthermore, KRS 164.5805(1)(e) required the Board of Regents of KCTCS to adopt administrative regulations that were “the same as the administrative regulations under KRS Chapter 151B in effect on June 30, 1998, to govern the certified and equivalent employees who transfer from the Cabinet for Workforce Development”⁴ Employees were given the option to elect to be governed under the new KCTCS rules or the rules under which the employee transferred, and were allowed to make this choice at

² KRS Chapter 151B was the governing chapter for the Kentucky Department for Technical Education, a component of the Cabinet for Workforce Development. This department was legislatively created in 1990 to replace the Kentucky Tech System schools which had been administered under KRS Chapter 18A. The provisions of KRS Chapter 18A and the administrative regulations promulgated thereunder are not in question on this appeal.

³ See KRS 164.5805(1)(d) which includes provisions regarding tenured employees; accumulated sick leave, compensatory time, and annual leave; salaries; retirement plans; health benefits; and life insurance.

⁴ KCTCS adopted the administrative regulations promulgated under KRS Chapter 151B verbatim as Kentucky Administrative Regulations (KAR) Chapter 780.

any time.⁵ Upon exercising the option to participate in the KCTCS personnel system, an employee was prohibited from returning to the old personnel system.

Ludwig, a professor at Jefferson Community and Technical College who began his career before the creation of KCTCS, filed a complaint and petition for declaration of rights pursuant to KRS 418.040 and 418.045 on October 5, 2005, in the Woodford Circuit Court. Ludwig alleged House Bill 1 required former KRS Chapter 151B employees who had not opted-in to the KCTCS personnel system to be governed under the administrative regulations in effect on June 30, 1998, as well as the statutory language of Chapter 151B. The complaint and petition contained no allegation of specific injury, but rather sought a declaratory judgment that he and others similarly situated⁶ be governed under the Chapter 151B statutory language and administrative regulations, and further be exempt from the provisions of KRS Chapter 164. Ludwig's entire cause of action was premised upon a question of statutory interpretation.

KCTCS filed a motion to dismiss alleging Ludwig had failed to state a claim upon which relief could be granted, citing Kentucky Rules of Civil Procedure (CR) 12.02(f), and further that no actual controversy existed between the parties thus depriving the circuit court of subject matter jurisdiction, citing CR 12.02(a). The circuit court denied the motion to dismiss, but requested briefing on the issues and clarification as to

⁵ Employees hired after July 1, 1997, were automatically governed by the rules and regulations established by the board of KCTCS.

⁶ Ludwig has chosen to continue to be governed under the Workforce Development personnel system, having declined to opt-in to the KCTCS personnel system.

whether Ludwig had been transferred into the KCTCS personnel system. Upon receipt of supplemental arguments and briefs, and on KCTCS's renewed motion to dismiss, the circuit court granted the motion and dismissed Ludwig's action on April 12, 2006. In its order, the circuit court held no actual controversy existed, and further, Ludwig had failed to allege any facts demonstrating KCTCS had violated any rule or regulation to his detriment. This appeal followed.

In determining whether to dismiss a complaint, a trial court is not required to make findings of fact; rather the question is one of pure law. *James v. Wilson*, 95 S.W.3d 875, 883 (Ky.App. 2002). “Our review of a question of law is *de novo* as contrasted with the deferential standard to which we are held as to questions of fact.” *New v. Commonwealth*, 156 S.W.3d 769 (Ky.App. 2005) (citing *Faust v. Commonwealth of Kentucky, Tourism Development Cabinet, Department of Parks*, 142 S.W.3d 89, 96 (Ky. 2004)).

In order to prosecute a claim, “a party must have a judicially recognizable interest in the subject matter of the suit.” *Healthamerica Corp. of Kentucky v. Humana Health Plan, Inc.*, 697 S.W.2d 946, 947 (Ky. 1985) (citing *Lexington Retail Beverage Dealers Assn. v. Department of Alcoholic Beverage Control*, 303 S.W.2d 268 (Ky. 1957)). “The interest of a plaintiff must be a present or substantial interest as distinguished from a mere expectancy.” *City of Ashland v. Ashland F.O.P. #3, Inc.*, 888 S.W.2d 667, 668 (Ky. 1994) (citing *Winn v. First Bank of Irvington*, 581 S.W.2d 21

(Ky.App. 1979)). An action for declaration of rights is a statutorily created cause of action and may be brought only when an actual controversy exists. *See* KRS 418.045.

“An ‘actual controversy’ is not one which involves a question which is academic or hypothetical or which calls for nothing more than an advisory opinion. Rather, it is a controversy over present rights, duties, and liabilities [citations omitted].” *Bischoff v. City of Newport*, 733 S.W.2d 762, 764 (Ky.App. 1987). Further, a court ““will not decide speculative rights or duties which may or may not arise in the future, but only rights and duties about which there is a present actual controversy presented by adversary parties, and in which a binding judgment concluding the controversy may be entered.”” *Veith v. City of Louisville*, 335 S.W.2d 295, 297 (Ky. 1962) (quoting *Black v. Elkhorn Coal Corp.*, 233 Ky. 588, 26 S.W.2d 481, 483 (Ky. 1930)).

After a careful review of the record, we agree with the circuit court that Ludwig has failed to state a justiciable claim. Ludwig set forth no factual basis upon which a judgment could be rendered, nor did he allege a violation of any specific right or duty by KCTCS. Instead, Ludwig has generally contended KCTCS refused to grant him the full rights and protections guaranteed under KRS Chapter 151B. Furthermore, while he alleged his rights had been restricted and violated, and otherwise he had been adversely affected by KCTCS's narrow interpretation of KRS 164.5805, the trial court correctly noted in its order Ludwig alleged no facts or specific instances of such transgressions, or any specific actions taken by KCTCS which have had an adverse impact upon him or others similarly situated. The nature of any controversy cannot be

inferred from the pleadings filed in the trial court. Even if taken as true, the material allegations of Ludwig's complaint and petition for relief do not give rise to a claim upon which relief may be granted, nor do they establish any justiciable issues ripe for adjudication. Therefore, any judgment rendered upon the complaint would be speculative and advisory. Such is not the proper province of the courts of this Commonwealth.

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

ALL CONCUR.

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