

RENDERED: OCTOBER 5, 2007; 10:00 A.M.  
NOT TO BE PUBLISHED

SUPREME COURT GRANTED DISCRETIONARY REVIEW:  
FEBRAURY 13, 2008  
(2007-SC-0950-D)

**Commonwealth of Kentucky**  
**Court of Appeals**

NO. 2006-CA-001626-MR

DAVID WILKINS

APPELLANT

v.

APPEAL FROM FRANKLIN CIRCUIT COURT  
HONORABLE THOMAS D. WINGATE, JUDGE  
ACTION NO. 05-CI-01437

KENTUCKY RETIREMENT SYSTEMS  
BOARD OF TRUSTEES

APPELLEE

OPINION  
AFFIRMING

\*\* \*\* \*

BEFORE: DIXON, MOORE, AND TAYLOR, JUDGES.

MOORE, JUDGE: David Wilkins appeals from the Franklin Circuit Court's order dismissing as untimely his petition for review from the final order of the Disability Appeals Committee of the Kentucky Retirement Systems' Board of Trustees ("Board").

After a careful review of the record, we affirm the Franklin Circuit Court's order because Mr. Wilkins's petition for review was untimely filed in the circuit court.

## **I. FACTUAL AND PROCEDURAL BACKGROUND**

Mr. Wilkins filed an application for hazardous in-line-of-duty disability retirement; his application, however, was denied. He appealed, and on September 8, 2005, the Board entered its final order dismissing his appeal. Mr. Wilkins was personally served with the Board's order on September 9, 2005. He filed his petition for review in the Franklin Circuit Court on October 11, 2005. The circuit court dismissed his petition as untimely filed.

Mr. Wilkins moved for reconsideration of the Franklin Circuit Court's order, arguing that pursuant to Kentucky Revised Statutes (KRS) 2.110(1), October 10, 2005, was a legal holiday because it was Columbus Day and therefore, pursuant to KRS 446.030 and CR 6.01, he had until the following day, Tuesday, October 11, 2005, to file his petition. Thus, Mr. Wilkins asserted that the petition for review, which he filed on October 11, 2005, was timely filed. Upon consideration of Mr. Wilkins's motion for reconsideration, the circuit court reiterated its conclusion that the appeal was untimely filed, reasoning that pursuant to Section 3.03 of the Local Rules of Practice, Franklin Circuit Court was not closed on Columbus Day. Therefore, Mr. Wilkins's petition for review was dismissed as untimely. He appeals that dismissal.

## **II. ANALYSIS**

KRS13B.140(1) provides that, when a party seeks judicial review of the final order of an administrative agency, the petition for review should be filed “within

thirty (30) days after the final order of the agency is mailed or delivered by personal service.” Strict compliance with this time period is jurisdictional. *Metro Medical Imaging, LLC v. Commonwealth*, 173 S.W.3d 916, 917 (Ky. App. 2005). Furthermore, KRS 446.030(1)(a) provides, in pertinent part,

[i]n computing any period of time prescribed or allowed by order of court, or by any applicable statute or regulation, the day of the act, event or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, a Sunday, a legal holiday, or a day on which the public office in which a document is required to be filed is actually and legally closed, in which event the period runs until the end of the next day which is not one (1) of the days just mentioned.

The final order of the Board was served on Mr. Wilkins on September 9, 2005, so his thirty-day time period for filing his petition for review in the circuit court began the next day, September 10, 2005. The thirty-day time period expired on October 9, 2005, but that day was a Sunday. Therefore, pursuant to KRS 446.030, Mr. Wilkins had until Monday, October 10, 2005, to file his petition in the Franklin Circuit Court. However, October 10, 2005, was Columbus Day. Mr. Wilkins argues that Columbus Day is a "legal holiday" pursuant to KRS 2.110 and that he therefore had until Tuesday, October 11, 2005, to file his petition. However, Franklin Circuit Court was open on Columbus Day pursuant to its local rules.

KRS 2.110(1) provides as follows:

The first day of January (New Year's Day), the third Monday of January (Birthday of Martin Luther King, Jr.), the nineteenth day of January (Robert E. Lee Day), the thirtieth day of January (Franklin D. Roosevelt Day), the twelfth day of February (Lincoln's Birthday), the third Monday in February (Washington's Birthday), the last Monday in May (Memorial Day), the third day of June (Confederate Memorial

Day, and Jefferson Davis Day), the fourth day of July (Independence Day), the first Monday in September (Labor Day), *the second Monday in October (Columbus Day)*, the eleventh day of November (Veterans Day), the twenty-fifth day of December (Christmas Day) of each year, and all days appointed by the President of the United States or by the Governor as days of thanksgiving, *are holidays*, on which all the public offices of this Commonwealth *may* be closed.

(Emphasis added).

Courts have held that this statute designates the days that may be "legal holidays" in the Commonwealth. *See, e.g., Gish v. Brown*, 338 S.W.2d 383, 383 (Ky. 1960); *Louisville & Jefferson County Planning & Zoning Comm'n v. Ogden*, 307 Ky. 362, 364, 210 S.W.2d 771, 772 (Ky. 1948). Therefore, pursuant to KRS 2.110, Columbus Day *may* be a legal holiday for purposes of our analysis of the timeliness of Mr. Wilkins's petition for review under KRS 446.030(1)(a). We note, however, that under KRS 446.010(20), when interpreting statutes, the term "may" is permissive. Thus, the days listed in KRS 2.110 are not *required* legal holidays; they simply *may* be designated as legal holidays.

KRS 2.110 having set forth a list of permissive holidays, our analysis next turns to determining which of the holidays listed in KRS 2.110 have been adopted by the Kentucky Court of Justice. Pursuant to Kentucky Constitution Sections 110 and 116, the Chief Justice of the Kentucky Supreme Court has the authority to develop procedures for the administration of the judicial branch of government. In accordance with that authority, the Chief Justice has issued Supreme Court Order 2005-03, which sets forth the policies of the Court of Justice. Included in these policies are the dates that the Chief Justice has determined to be legal holidays for the Court of Justice, from the list of permissible holidays included in KRS 2.111(1). Columbus Day is not included as a legal

holiday in the Court of Justice. Accordingly, Franklin Circuit Court was open and Mr. Wilkins's petition was therefore due on October 10, 2005. Hence, we conclude that the circuit court properly dismissed Mr. Wilkins's petition as untimely.

Accordingly, the order of the Franklin Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

William C. Jacobs  
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BRIEF FOR APPELLEE:

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