

Commonwealth of Kentucky

Court of Appeals

NO. 2006-CA-002115-MR

PAUL WILLIAM LEWIS

APPELLANT

v. APPEAL FROM HARLAN CIRCUIT COURT
HONORABLE D. JEFF CHOATE, JUDGE
ACTION NO. 06-CI-00060

COUNTY OF HARLAN; HARLAN COUNTY
FISCAL COURT; JOE GRIESHOP, HARLAN
COUNTY JUDGE EXECUTIVE;
COMMONWEALTH OF KENTUCKY,
DEPARTMENT OF CORRECTIONS; AND
JOHN D. REES, COMMISSIONER

APPELLEES

OPINION
AFFIRMING

** ** * ** * ** *

BEFORE: THOMPSON AND VANMETER, JUDGES; PAISLEY,¹ SENIOR JUDGE.

VANMETER, JUDGE: Paul William Lewis appeals *pro se* from orders of the Harlan Circuit Court dismissing his claims as barred by sovereign immunity. We affirm.

¹ Senior Judge Lewis G. Paisley 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.

Lewis was on parole from a 26-year sentence when he was arrested for robbery in Harlan County in August 1989. Thus, his parole was revoked and he was ordered to serve the remainder of the 26-year sentence. In October 1989 he was convicted of the robbery charge and was sentenced to an additional 17 years' imprisonment.

Lewis remained in the Harlan County Detention Center until late 1990, when he was transferred to the Luther Lockett Correctional Complex to serve the remainder of the 26-year sentence. However, the Harlan Circuit Court apparently failed to provide the prison with certified copies of the 1989 robbery judgment as required by KRS 431.215(1), and the prison officials evidently were unaware of the additional conviction. Thus, Lewis was released from the prison in February 1992 after he finished serving his 26-year sentence. He moved to Tennessee, where he was arrested in March 1992 on a fugitive warrant pertaining to another pending Kentucky indictment. However, those charges were dismissed after Kentucky officials did not appear in Tennessee to establish probable cause for extradition.

Some ten years later, in July 2002, Lewis was arrested in Tennessee on a fugitive warrant relating to the robbery conviction. He was extradited to Kentucky several days later, and he was imprisoned for some three and one-half years in service of the 17-year sentence.

In January 2006, Lewis filed the underlying complaint seeking damages based on his assertion that his rights were violated when appellees knowingly failed to

reacquire custody of him for more than ten years after his premature release from prison, but thereafter required him “to serve nearly three and one-half years beyond the maximum expiration of the seventeen-year sentence imposed for the 1989 robbery conviction[.]” The trial court found that appellees were entitled to sovereign immunity and dismissed the claims against them. This appeal followed.

Sovereign immunity is “an inherent attribute of a sovereign state that precludes the maintaining of any suit against the state unless the state has given its consent or otherwise waived its immunity.” *Yanero v. Davis*, 65 S.W.3d 510, 517 (Ky.App. 2001), (citing *Restatement (Second) of the Law of Torts* § 895B(1) (A.L.I. 1979)); 72 Am. Jur. 2d, *States, Territories, and Dependencies*, § 99 (1974). Moreover, “[t]he absolute immunity from suit afforded to the state also extends to public officials sued in their representative (official) capacities, when the state is the real party against which relief in such cases is sought.” *Yanero*, 65 S.W.3d at 518. Further,

“[o]fficial immunity is immunity from tort liability afforded to public officers and employees for acts performed in the exercise of their discretionary functions. . . . Official immunity can be absolute, as when an officer or employee of the state is sued in his/her representative capacity, in which event his/her actions are included under the umbrella of sovereign immunity Similarly, when an officer or employee of a governmental agency is sued in his/her representative capacity, the officer's or employee's actions are afforded the same immunity, if any, to which the agency, itself, would be entitled[.]”

Id. at 522-23. The broad sweep of sovereign immunity also extends to counties, their governing bodies, and county officials in their official capacities. *Schwindel v. Meade*

County, 113 S.W.3d 159, 163 (Ky. 2005); *Department of Corrections v. Furr*, 23 S.W.3d 615, 617 (Ky. 2000); *Franklin County, Kentucky v. Malone*, 957 S.W.2d 195, 203 (Ky. 1997), *reversed on other grounds*, *Yanero*, 65 S.W.3d 510. Additionally, sovereign immunity shields “all 'departments, boards or agencies that are such integral parts of state government as to come within regular patterns of administrative organization and structure.” *Furr*, 23 S.W.3d at 617 (quoting *Withers v. University of Kentucky*, 939 S.W.2d 340, 344 (Ky. 1997)).

The appellees named in this appeal are a Kentucky county, the fiscal court and the judge executive of that county, and a state department and its commissioner. As noted above, the county, the fiscal court, and the state agency are immune from liability. Further, as the public officials were sued in their representative capacities for acts performed in the exercise of their discretionary functions, sovereign immunity also precludes the maintenance of the complaints against them. *Yanero*, 65 S.W.3d at 518. Thus, even without examining the merits, it is clear that the trial court was compelled to dismiss the claims against appellees. Additionally, no error resulted from the court's failure to appoint counsel to represent Lewis in this collateral proceeding seeking monetary damages. Finally, it is clear from our review of the record that Lewis's remaining complaints, including those relating to a long-final adoption proceeding, either lack merit on their face or are not properly before this court on review.

The circuit court's orders are affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Paul William Lewis, *Pro se*
Berea, Kentucky

BRIEF FOR APPELLEES COUNTY OF
HARLAN; HARLAN COUNTY FISCAL
COURT; AND JOE GRIESHOP, HARLAN
COUNTY JUDGE EXECUTIVE:

Jason E. Williams
London, Kentucky

BRIEF FOR APPELLEE
COMMONWEALTH OF KENTUCKY,
DEPARTMENT OF CORRECTIONS:

William H. Fogle
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