

Commonwealth Of Kentucky

Court of Appeals

CASE NO. 2007-CA-000223-MR

DONALD VIOLETT

APPELLANT

v. APPEAL FROM WARREN CIRCUIT COURT
HONORABLE JOHN R. GRISE, JUDGE
CIVIL ACTION NO. 05-CI-00050

ZACHARY M. KAFOGLIS;
TERESA SEXTON (a/k/a TERESA CAROL LONDON)

APPELLEES

OPINION
AFFIRMING

** ** * ** * ** *

BEFORE: DIXON AND KELLER, JUDGES; GRAVES,¹ SENIOR JUDGE.

GRAVES, SENIOR JUDGE: Donald Violettt appeals from an order of the Warren Circuit Court dismissing his complaint against Zachary M. Kafoglis and Teresa Sexton. Finding no error, we affirm.

Violettt and Sexton married in 1988. Sexton filed a petition for dissolution in 1994. Violettt is currently incarcerated and Sexton is remarried. In 1996, the matter was resolved by final decree, including disposition of all marital and non-marital

¹ Senior Judge John W. Graves, sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

property. As with many dissolution actions, the parties did not agree as to the characterization of certain property. Violettt contends that the marital residence should not have been awarded to Sexton as her non-marital property, although he admits that the residence was originally owned by her parents. Violettt, formerly the owner and operator of Don Violettt Plumbing, also argues that he was essentially cheated out of thousands of dollars worth of plumbing tools and bills owed to his company. Violettt alleges that he was cheated out of his fair share of the marital and non-marital property by fraud committed on the divorce court by Sexton and her attorney, Kafoglis. Violettt did not appeal the decision of the divorce court.

Although he did not appeal the final decree, Violettt did bring a post-divorce suit against Sexton for money allegedly owed to him. On September 2, 2005, after a hearing on the matter, the Warren Family Court entered an order relieving Sexton of her obligation to pay Violettt \$11,500 that was ordered in the original decree of dissolution. Apparently, Violettt did not appeal that decision.

In January 2005, Violettt brought a "Civil Complaint for Recovery of Personal Property Losses/Damages" against Dewayne Sexton, Teresa's current husband, later amended to include Sexton and Kafoglis. Mr. Sexton was dismissed as a party from the original complaint and is not a party to this appeal. Essentially, Violettt's complaint alleged that Sexton and Kafoglis conspired to commit fraud and perjury upon the court in both prior actions. Violettt sought relief for recovery of his property, one million dollars in compensatory damages, and one million dollars in punitive damages. On December

21, 2006, upon Sexton and Kafoglis' motion, the trial court dismissed Violet's complaint because none of the causes of action stated claims upon which relief could be granted and were barred by res judicata. This appeal followed.

Violet concedes that the allegations in his complaint all relate to the “overt acts of fraud, dishonesty, and deceit during the dissolution proceedings” It is undisputed that Violet did not appeal the final decree of dissolution. Thus, the trial court properly dismissed Violet's complaint. Absent a timely appeal, the proper avenue for Violet to challenge the final decree is by motion under CR 60.02.² Accordingly, the trial court did not abuse its discretion in dismissing Violet's complaint against Sexton and Kafoglis.

The judgment of the Warren Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

NO BRIEF FILED FOR APPELLEES

Donald Violet
LaGrange, Kentucky

² Rules of Civil Procedure 60.02, authorizes a trial court, upon motion of a party, to relieve the party from its final judgment based upon, *inter alia*, perjury, falsified evidence, and fraud. Although, under the facts of this case, we have grave doubts as to the veracity of Violet's claims. Moreover, we remind the trial court of its authority under KRS 454.405 to dismiss civil actions brought by inmates if it is satisfied that the action is malicious, harassing, without merit or frivolous.