

Commonwealth of Kentucky

Court of Appeals

NO. 2007-CA-000703-MR

ROBERT WAGER

APPELLANT

v. APPEAL FROM MUHLENBERG CIRCUIT COURT
HONORABLE DAVID H. JERNIGAN, JUDGE
ACTION NO. 05-CI-00469

PATTI WEBB, WARDEN; AND
KENTUCKY DEPARTMENT OF
CORRECTIONS

APPELLEES

OPINION
AFFIRMING

** ** * ** * **

BEFORE: NICKELL, THOMPSON, AND VANMETER, JUDGES.

THOMPSON, JUDGE: Robert Wager appeals the Muhlenberg Circuit Court's dismissal of his declaratory judgment action in which he requested the right to use prison facilities to engage in group worship. For the reasons stated below, we affirm.

On August 22, 2005, Wager, an inmate at the Green River Correctional Complex, filed a petition for his declaration of rights in the Muhlenberg Circuit Court. In his petition, Wager contended that he was being denied the right to use the prison

chapel to engage in group worship because he was a Wiccan, an adherent of the Wicca faith. He contended that this denial of his use of prison facilities violated Kentucky prison regulations, the Religious Land Use and Institutionalized Persons Act of 2000 (“RLUIPA”), and the Constitutions of the United States and Kentucky.

Wager relied upon *Cutter v. Wilkinson*, 544 U.S. 709, 715, 125 S.Ct. 2113, 161 L.Ed.2d 1020 (2005), wherein the U.S. Supreme Court held that the RLUIPA prohibits states receiving federal funds from imposing a substantial burden on the religious exercise of a person residing in or confined to institutions unless the government demonstrates that the burden furthers “a compelling governmental interest” and does so by “the least restrictive means.” Thus, because the Department had not met this test, Wager contended that he and other Wiccans could not be deprived of group worship.

Further, Wager's petition provided the following:

10. The purpose of Petitioner's request for a Declaration of Rights is very straight-forward. He is a Wiccan and he desires the same rights as the Christian and Muslim groups to utilize chapel space, at a designated time, to gather, worship and study his religion. To have at the very least, a couple of hours a week to be able to gather, worship and study, and be free from the current prison yard ridicule he is forced to endure due to the Kentucky Department of Corrections misguided assertion that the Wicca religion is one where “corporate worship is not allowed” (see exhibit # 10).

At the conclusion of his petition, Wager requested, in pertinent part, the following:

1. An Order declaring that Petitioner's Equal Protection Rights have been violated, and that Petitioner has a right to gather, worship and study his religion, at a minimum of 2 hours a week, in the chapel area.
2. That Respondent's Religious Practices Handbook is discriminatory and violates Petitioner's right of religious exercise in accord with the First, Eighth, and Fourteenth Amendments of the United States Constitution, and Section 2, 3, 5, and 11 of the Kentucky Constitution, and the Religious Land Use and Institutionalized Persons Act (“RLUIPA”)...

After attempts to settle Wager's grievance failed, the Justice and Public Safety Cabinet (Cabinet) filed a memorandum of law against Wager's petition. Without addressing the past validity of Wager's petition, the Cabinet asserted that the policies of the Kentucky Department of Corrections (Department), in the area of religious practices, had been recently amended and satisfactorily addressed Wager's grievance.

According to the Cabinet, the Department, in response to the *Cutter* decision, convened a religious practices committee to bring it into compliance with federal law. After consulting with federal authorities, the committee recommended that the Department adopt the Federal Bureau of Prisons (Bureau) “Inmate Religious Belief and Practices” manual because the Bureau's manual had successfully complied with RLUIPA-type statutes for several years prior to their application to the states.

According to its amended policies, as provided in Corrections Policy and Procedure (CCP) 23.1, the Department of Corrections must ensure that an inmate has the opportunity to participate in the practice of his religious faith in accordance with the Bureau's manual. Religious publications, religious symbols, congregational religious services, individual and group counseling, religious study classes, and religious diets are regarded as religious practices.

Further, each institution must provide space and adequate equipment for the administration of each religious program. Institutions must provide a basic library of religious material for the faiths represented by its inmate population. Each institution must permit inmates to possess items essential to the practice of their particular religious faith if the items are not a threat to institutional security.

Additionally, the Department adopted the Bureau's manual's description of the Wiccan faith. According to the manual, Wiccans meet in sacred circles where rituals are held. They have group meetings to worship and discuss various topics. They have eight significant dates in which they attribute spiritual importance. The manual also lists religious items important to the Wiccan faith. Accordingly, the Cabinet contended that Wager's petition was moot because the Department's amended policies provided Wager with an opportunity to adequately practice his faith.

On December 27, 2006, Wager filed a response wherein he stated that the policy changes were “well received and appreciated.” However, he moved the court to

hold the case in abeyance for forty-five days to ensure that the Department complies with its new policies.

On February 7, 2007, in his last court filing, Wager stated that “the respondents [Department] have given the petitioner, and those of the Wiccan faith, two (2) days a week for study and worship. This schedule allows for study and observance of the Sabbaths and Esbats involved in the Wiccan faith. This is all the petitioner has asked for in this action.”

Subsequently, on March 2, 2007, the trial court issued an order dismissing Wager's petition. Recognizing that the Department had amended its policies to comply with RLUIPA and that Wager's central complaint had been resolved, the trial court ruled that Wager's petition was moot. This appeal follows.

Wager contends that the trial court erred by ruling that his case was moot. Specifically, although the Department has given him access to the inmate chapel and an opportunity to gather and worship, he contends that the Department is impermissibly refusing to obtain Wicca books due to the false belief that the books are gang-related. Further, he contends that he is being denied an equal and fair share of chapel funds for the purchasing of Wiccan material.

In order for a trial court to address the merits of a party's complaint, the record must contain an actual and justiciable controversy. *Associated Industries of Kentucky v. Commonwealth*, 912 S.W.2d 947, 950 (Ky. 1995). If a case has facts which make a court's ruling for the complaining party meaningless, the case is rendered moot

because there is no grievance to resolve. *Commonwealth v. Hughes*, 873 S.W.2d 828, 830 (Ky. 1994).

After reviewing the record, we conclude that the trial court did not err by dismissing Wager's petition. In his petition, Wager never mentions that the Department was impermissibly refusing to provide funds for the purchase of Wiccan material. His sole complaint was that he and other Wiccans were being denied the right to use prison facilities to engage in group worship. However, in a later court filing, Wager complained that the Department was failing to purchase Wiccan material and equally divide chapel funds among the various religious groups.

Despite Wager's belated introduction of the purchasing and funding issues, in his last filing, he conceded that the Department had complied with his original request which was to allow Wiccans to engage in group worship. Therefore, because the Department's amended policies satisfactorily resolved Wager's grievance and his unequivocal declaration that the Department had resolved his grievance, we agree with the trial court that Wager's petition was moot.

For the foregoing reasons, the order of the Muhlenberg Circuit Court denying Wager's petition for a declaration of rights is affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

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