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Commonwealth of Kentucky

Court of Appeals

NO. 2011-CA-001231-MR

WILLIAM HARRY MEECE

APPELLANT

v. APPEAL FROM FRANKLIN CIRCUIT COURT
HONORABLE PHILLIP J. SHEPHERD, JUDGE
ACTION NO. 07-CI-01692

COMMONWEALTH OF KENTUCKY,
DEPARTMENT OF CORRECTIONS;
JOHN REES, LADONNA THOMPSON,
TOM SIMPSON, PHILLIP PARKER,
NANCY DOOM, ALLAN BROWN,
PATTI TREAT, DUKE PETIT,
ROBERT "ROCKY" ROBERTS
AND SHEILA BURNHAM, in their
individual and official capacities as
staff at Kentucky State Penitentiary

APPELLEES

OPINION
AFFIRMING

** ** * ** * ** *

BEFORE: NICKELL, TAYLOR, AND VANMETER, JUDGES.

VANMETER, JUDGE: William Meece appeals *pro se* from the Franklin Circuit Court's opinion and order granting summary judgment in favor of the Commonwealth of Kentucky, Department of Corrections, *et al.*¹ (hereinafter collectively referred to as the "Department"). For the following reasons, we affirm.

Meece is serving a death sentence at the Kentucky State Penitentiary ("Penitentiary") in Eddyville, Kentucky. Due to his status as a death row inmate, Meece is confined to the Special Security Unit, which is separated from the general population prisoners in the Penitentiary. Meece filed a petition for declaratory judgment seeking injunctive relief and monetary damages stemming from his allegations that the Department denied his access to the Institutional Religious Center ("Center") in the Penitentiary to observe the Sabbath on Friday evenings and Saturday mornings, and argued that on the days he is granted access to the Center, he is subjected to the worship of religions other than his own which distracts his observance. The Department filed a motion for summary judgment, seeking dismissal of Meece's claims, which the trial court granted. This appeal followed.

On appeal, Meece argues the trial court erred by granting summary judgment because the Department violated CPP² 23.1 and his rights under the

¹ John Rees, LaDonna Thompson, Tom Simpson, Phillip Parker, Nancy Doom, Allan Brown, Patti Treat, Duke Petit, Robert "Rocky" Roberts, and Sheila Burnham in their individual and official capacities as staff at Kentucky State Penitentiary.

² Kentucky Corrections Policies and Procedures.

Religious Land Use and Institutionalized Persons Act of 2000 (“RLUIPA”). We disagree.

Summary judgment shall be granted only if “the pleadings, depositions, answers to interrogatories, stipulations, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” CR³ 56.03. The trial court must view the record “in a light most favorable to the party opposing the motion for summary judgment and all doubts are to be resolved in his favor.” *Steelvest, Inc. v. Scansteel Serv. Ctr., Inc.*, 807 S.W.2d 476, 480 (Ky. 1991) (citations omitted). Further, “a party opposing a properly supported summary judgment motion cannot defeat it without presenting at least some affirmative evidence showing that there is a genuine issue of material fact for trial.” *Id.* at 482 (citations omitted).

Our standard of review is “whether the trial court correctly found that there were no genuine issues as to any material fact and that the moving party was entitled to judgment as a matter of law.” *Lewis v. B & R Corp.*, 56 S.W.3d 432, 436 (Ky. App. 2001) (citations omitted). Because no factual issues are involved and only legal issues are before the court on a motion for summary judgment, we do not defer to the trial court and our review is *de novo*. *Hallahan v. Courier-Journal*, 138 S.W.3d 699, 705 (Ky. App. 2004).

³ Kentucky Rules of Civil Procedure.

CPP 23.1 requires the Department to ensure that inmates have “the opportunity to participate in practices of his religious faith in accordance with the Religion Reference Manual [(“Manual”)].” CPP 23.1(II)(A). Religious practice may be limited upon a showing of a threat to the safety of persons involved in the activity or a disruption to the order in the institution. CPP 23.1(II)(A)(2). The Manual states the Sabbath begins on Friday night and ends Saturday night one hour after sundown, during which time two congregate services are conducted: one on Friday evening and the other on Saturday morning. It further provides that congregational worship takes place when there are ten adult male Jews present; if ten are not present, it remains preferable to pray in unison, rather than as an individual. The Manual also states that congregational worship take place in the Center.

The record indicates that the Department denied Meece’s request to have access to the Center on Fridays and Saturdays on the basis that he is a death row inmate who, for security concerns, must be segregated from the general population, which uses the Center on those days. Meece is allowed access to the Center on the same days and same time as other death row inmates. The Department pointed out that since Meece is the only practicing Jewish inmate on death row in Kentucky, he does not have the opportunity to take part in congregational worship, and thus his freedom to observe the Sabbath within his cell is adequate. Meece argued that he is not permitted to pray near the toilet in his cell, but no such restriction is referenced in the Manual, and evidence was presented that Meece can pray near a

toilet if the toilet is covered by a sheet, which Meece is permitted to do. Thus, we find the Department's decision to deny Meece access to the Center at times not designated for the death row inmates to be consistent with CPP 23.1 and the Manual.

With respect to Meece's argument that the Department violated RLUIPA, as stated above, we fail to appreciate any substantial burden placed on Meece's ability to practice his religion. RLUIPA provides in part: "No government shall impose a substantial burden on the religious exercise of a person residing in or confined to an institution," unless the burden furthers "a compelling governmental interest," and does so by "the least restrictive means[.]" 42 U.S.C.⁴ § 2000cc-1(a)(1)-(2). Meece cites to *Murphy v. Missouri Dep't. of Corrs.*, 372 F.3d 979, 988 (8th Cir. 2004), for the proposition that to constitute a substantial burden, the government action

must "significantly inhibit or constrain conduct or expression that manifests some central tenet of a [person's] individual [religious] beliefs; must meaningfully curtail a [person's] ability to express adherence to his or her faith; or must deny a [person] reasonable opportunities to engage in those activities that are fundamental to a [person's] religion."

(quoting *Weir v. Nix*, 114 F.3d 817, 820 (8th Cir. 1997)).

Here, as we discussed above, Meece asserts the substantial burden he faces is being forced to observe the Sabbath from his prison cell, and being exposed to other inmate's worship services in the Center. These restrictions can best be

⁴ United States Code.

described as an inconvenience to Meece's desired approach to practice his religion, but in no way inhibit his expression of religious beliefs. Additionally, the restrictions placed on Meece by the Department do not coerce him to change his behavior regarding his religious beliefs, but merely restrict where he can exercise his religious beliefs on certain days of the week. For this reason, we do not find the Department's regulations in violation of RLUIPA.

The opinion and order of the Franklin Circuit Court is affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

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BRIEF FOR APPELLEE:

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