RENDERED: October 5, 2001; 2:00 p.m.
NOT TO BE PUBLISHED

# Commonwealth Of Kentucky

# Court Of Appeals

NO. 2000-CA-002457-MR

CHARLES W. LUDWIG — APPELLANT

v.

APPEAL FROM FRANKLIN CIRCUIT COURT
HONORABLE WILLIAM L. GRAHAM, JUDGE
ACTION NO. 00-CI-00502

DR. MICHAEL B. MCCALL, PRESIDENT, KENTUCKY COMMUNITY & TECHNICAL COLLEGE SYSTEM; AND DR. KEITH BIRD, CHANCELLOR, KENTUCKY COMMUNITY & TECHNICAL COLLEGE SYSTEM — APPELLEES

OPINION
AFFIRMING
** ** ** ** **

BEFORE: GUDGEL, CHIEF JUDGE; DYCHE AND TACKETT, JUDGES.

DYCHE, JUDGE: Charles W. Ludwig appeals from a September 6, 2000, summary judgment of the Franklin Circuit Court in favor of the appellees. Upon review of the record and the arguments of counsel, we find no error. Hence, we affirm.

The Kentucky Justice Cabinet, Department of Corrections (DOC), entered into a memorandum of agreement with the Kentucky Community & Technical College System (KCTCS) for KCTCS to provide technical/vocational training to inmates at several correctional institutions around the Commonwealth. KCTCS hired Ludwig to

teach at the Kentucky Correctional Institution for Women (Pewee Valley). Although Ludwig is KCTCS faculty, he teaches at Pewee Valley in facilities provided by the DOC.

Ky. Rev. Statute (KRS) 164.321(1)(b) requires the membership of the KCTCS Board of Regents (Board) to have two representatives from KCTCS's current teaching faculty. Further, KRS 164.321(6)(b) requires the Board to establish a process to elect these faculty representatives. In 1997, the Board devised and established procedures to elect its faculty representatives; however, the procedure excludes faculty that teach at correctional institutions pursuant to the agreement between the DOC and KCTCS.

In April, 2000, the faculty at Pewee Valley selected Ludwig to be their nominee for one of the Board's faculty representatives. The Board cited the procedures it established in 1997, denied Ludwig's nomination and refused to place Ludwig's name on its website and its official ballots for consideration by the entire KCTCS faculty.

After the Board denied Ludwig's nomination, Ludwig filed a complaint on April 18, 2000, against Dr. Michael B. McCall in his capacity as president of KCTCS and Dr. Keith Bird in his capacity as chancellor of KCTCS (collectively referred to hereinafter as McCall) in the Franklin Circuit Court claiming McCall and the Board abused their discretion and violated his rights to due process and equal protection. Along with his complaint, Ludwig filed an *ex parte* motion for a temporary restraining order (TRO) asking the circuit court to restrain

McCall and KCTCS from refusing to place his name on the KCTCS website and ballots. The circuit court issued the TRO; however, McCall filed a motion to dissolve the TRO. After a hearing, the circuit court granted McCall's motion, dissolved the TRO, and denied Ludwig's contemporaneous motion for a temporary injunction. The election was held without Ludwig's name being placed on either the KCTCS website or its ballots.

The parties then filed cross motions for summary judgment, along with supporting memoranda. Citing Chevron v. Natural Resources Defense Council, 467 U.S. 837, 104 S. Ct. 2778, 81 L. Ed. 2d 694 (1984), the circuit court denied Ludwig's motion for summary judgment and granted the motion of KCTCS and McCall, stating that it "must defer to an agency's interpretation of a statute when the legislature delegates to the agency the responsibility of administering the statute." This appeal followed.

Our standard of review of a summary judgment is "whether the trial court correctly found that there was no genuine issue as to any material fact and that the moving party was entitled to judgment as a matter of law." Turner v. Pendennis Club, Ky. App., 19 S.W.3d 117, 119 (2000). "The record must be viewed 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 Service Center, Inc., Ky., 807 S.W.2d 476, 480 (1991). However, when the factual findings are not in dispute, we are not required to defer to the trial court. Murphy v. Second Street Corporation and Coyotes,

Inc., Ky. App., 48 S.W.3d 571 (2001), citing Goldsmith v. Allied Building Components, Inc., Ky., 833 S.W.2d 378, 381 (1992).

Ludwig argues that the circuit court erred in deciding the motions for summary judgment because KCTCS faculty who teach at the correctional institutions, pursuant to a KCTCS/DOC memorandum of agreement, teach at a "technical institution" as defined in KRS 164.001(11) and (21); therefore, as a faculty member of a "technical institution," he is eligible to serve on the Board. Ludwig argues that the circuit court erred since the Board abused its discretion granted by KRS 164.321 and that the election procedures it devised are, thus, invalid. Furthermore, Ludwig argues the circuit court erred because it was not required to defer to the Board's interpretation of KRS 164.321(6)(b). We disagree.

Both Ludwig and McCall agree that the facts in this case are not in dispute. The question before us is whether the circuit court was correct to defer to the Board's construction and implementation of KRS 164.321(6)(b), which mandated that the Board establish a procedure to elect faculty representatives to KCTCS's Board of Regents. We find that the circuit court was correct.

The United States Supreme Court succintly stated that it "shows great deference to the interpretation given the statute by the officers or agency charged with its administration." Udall v. Tallman, et al., 380 U.S. 1, 16, 85 S. Ct. 792, 801, 13 L. Ed. 2d 616, 625 (1965). Further, in Chevron, the Supreme Court stated that when the administration of a statute has been

entrusted to an executive agency, that agency's construction of the statute should be accorded "considerable weight" and should not be disturbed if it is reasonable and not contrary to legislative intent. Chevron, 467 U.S. at 844-45. The circuit court was not required to find that the Board's construction of KRS 164.321 is the only reasonable one, or even that the court would have reached the same conclusion and implemented the same procedures as the Board. Udall v. Tallman, et al., 380 U.S. at 16. The circuit court only had to determine that the Board's construction and implementation of KRS 164.321 was not unreasonable, arbitrary or capricious. Chevron v. Natural Resources Defense Council, supra. The facts included in the record support the circuit court's finding.

The circuit court correctly deferred to the Board's construction of KRS 164.321 and refused to substitute its judgment for that of the Board. We will not second guess the circuit court, and we likewise refuse to substitute our judgment for that of the KCTCS Board of Regents.

The judgment of the Franklin Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Steven G. Bolton
Frankfort, Kentucky

BRIEF FOR APPELLEES:

Sheryl G. Snyder
Griffin Terry Sumner
Louisville, Kentucky