

Commonwealth of Kentucky
Court of Appeals

NO. 2009-CA-001020-MR

JAMES JACKSON

APPELLANT

APPEAL FROM LYON CIRCUIT COURT
v. HONORABLE CLARENCE A. WOODALL, III, JUDGE
ACTION NO. 08-CI-00212

CHRISTINA L. DOUGLAS;
JAMES A. HARRIS; AND
LEIGH A. DUNCAN

APPELLEES

OPINION AND ORDER
DISMISSING

** ** * ** * ** *

BEFORE: LAMBERT AND VANMETER, JUDGES; HENRY,¹ SENIOR
JUDGE.

HENRY, SENIOR JUDGE: James Jackson, proceeding *pro se*, appeals from a
judgment of the Lyon Circuit Court that dismissed his declaratory judgment action.

¹ Senior Judge Michael L. Henry 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.

Jackson was found guilty of inappropriate sexual behavior with another inmate in a prison disciplinary proceeding and was ordered to serve ninety days' disciplinary segregation. Jackson filed the declaratory judgment action in order to challenge that decision. After our review, we conclude that Jackson failed to name a necessary and indispensable party in his notice of appeal. Therefore, this appeal must be dismissed.

Jackson is an inmate at the Western Kentucky Correctional Complex in Fredonia, Kentucky. On October 3, 2008, while monitoring the prison's camera system, Lt. Don Sherrill and Sgt. Barry Dycus observed Jackson and another inmate standing together in the restroom showers. The inmate bent down in front of Jackson behind a shower wall, where he could not be seen. Sgt. Dycus subsequently called Officer Jacob Bruce and asked him to go the showers to investigate. Lt. Sherrill continued to monitor the camera system and observed Officer Bruce walk by a restroom window. At that point, the inmate stood up and turned on a shower faucet as Officer Bruce was entering the restroom. During an ensuing investigation of the incident, Lt. Sherrill indicated that he believed the two inmates were engaged in sexual activity. Jackson denied this accusation, but he was subsequently placed in administrative segregation, and a prison disciplinary hearing was scheduled for October 22, 2008.

Following this hearing, an adjustment committee found Jackson guilty of inappropriate sexual behavior with another person based upon testimony given

by the three officers who were involved in the subject incident. Jackson was consequently ordered to serve ninety days' disciplinary segregation. He appealed this decision to Warden Becky W. Pancake, arguing that he was denied an impartial tribunal because Christina L. Douglas, the chairwoman of the adjustment committee, was also the institutional duty officer at the time of the subject incident and had approved his initial administrative detention prior to the disciplinary hearing. Jackson also contended that the committee's decision was unsupported by the evidence. Warden Pancake denied Jackson's appeal.

Jackson subsequently filed a petition for a declaration of rights in Lyon Circuit Court on December 10, 2008, in order to challenge the disciplinary decision. He specifically sought a dismissal of the charged offense, to have his prison record expunged, and to be reinstated to the sex offender treatment program, from which he had been dismissed as a result of the subject incident. Jackson named as respondents only the three individual members of the adjustment committee: Douglas, James A. Harris, and Leigh A. Duncan. Importantly, Warden Pancake was not included as a respondent. A motion to dismiss was filed in response to Jackson's petition, and the circuit court ultimately granted the motion on April 27, 2009. This appeal followed.

On appeal, Jackson again argues that he was denied an impartial tribunal and that the adjustment committee's decision was not supported by sufficient evidence. However, we are instead compelled to focus our attention on a jurisdictional matter. In his declaratory judgment action below and in his notice of

appeal here, Jackson named as respondents/appellees only the three adjustment officers who conducted his prison disciplinary hearing. In doing so, Jackson failed to include Warden Pancake as a party to this action. This failure is fatal to his appeal for reasons set forth in this Court's recent decision in *Watkins v. Fannin*, 278 S.W.3d 637 (Ky. App. 2009).

As we recognized in *Watkins*, “[t]he bulk of the power and authority in the area of prisoner discipline has been properly delegated to the wardens of the various penal institutions of Kentucky.” *Id.* at 641. This includes “final authority” over questions regarding prisoner discipline and punishment, including forfeiture of good-time credit. *See id.* at 642. Ultimately, the only entities with the power to expunge a prisoner's prison record or to restore good-time credit are the warden of his correctional facility and the Kentucky Department of Corrections. *Id.* Adjustment officers, standing alone, do not have this authority because their efforts are “merely preliminary” in nature and essentially have no effect on prisoners without final say and approval by the warden. *See id.* at 642-43. Accordingly, because of their authority over prison disciplinary matters, we concluded in *Watkins* that wardens are necessary and indispensable parties for appeals such as the one before us. *See id.* at 640.

Because Jackson failed to name Warden Pancake – a necessary and indispensable party – as a respondent/appellee in this action, his appeal must be dismissed. The failure to name an indispensable party in a notice of appeal is considered a defect in jurisdiction resulting in the appellate court's inability to

proceed. *See City of Devondale v. Stallings*, 795 S.W.2d 954, 957 (Ky. 1990).

Thus, “failure to name an indispensable party in the notice of appeal results in dismissal of the appeal.” *Slone v. Casey*, 194 S.W.3d 336, 337 (Ky. App. 2006).²

This harsh result cannot be mitigated by the fact that Jackson is proceeding *pro se*, since *pro se* litigants are still required to follow the Kentucky Rules of Civil Procedure. *Watkins*, 278 S.W.3d at 643. Therefore, it is imperative for prisoners seeking relief from a prison disciplinary determination via a declaratory judgment action to include their wardens as respondents to their petitions and, subsequently, as named appellees in their notices of appeal.³ In the absence of such inclusion, their efforts are ultimately doomed.

This appeal is hereby dismissed for failure to name a necessary and indispensable party.

ALL CONCUR.

ENTERED: _____

SENIOR JUDGE, COURT OF APPEALS

² The fact that this issue was only raised for the first time on appeal is irrelevant, as an appellate court may not acquire jurisdiction through waiver. *Wilson v. Russell*, 162 S.W.3d 911, 913 (Ky. 2005).

³ With this said, we note that *Watkins* also insinuated that had the appellant there simply named the Kentucky Department of Corrections as a respondent/appellee, that appeal ultimately could have been considered on the merits. *Watkins*, 278 S.W.3d at 642 n.6. While we stand by this statement, we urge prisoners in these situations to name their wardens as parties in order to ensure that their appeals may be fully considered.

BRIEF FOR APPELLANTS:

James Jackson, *pro se*
Fredonia, Kentucky

BRIEF FOR APPELLEES:

J. Todd Henning
Justice & Public Safety Cabinet
Office of Legal Services
Frankfort, Kentucky