

RENDERED: FEBRUARY 26, 2010; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2008-CA-002263-MR

LARRY E. WATKINS - EL

APPELLANT

v.

APPEAL FROM FRANKLIN CIRCUIT COURT
HONORABLE THOMAS D. WINGATE, JUDGE
ACTION NO. 08-CI-01087

LADONNA THOMPSON; STEVE HANEY;
C/O SHEEN

APPELLEES

OPINION
AFFIRMING IN PART, AND REMANDING IN PART
FOR FURTHER PROCEEDINGS

** ** * ** * ** *

BEFORE: ACREE AND LAMBERT, JUDGES; HARRIS,¹ SENIOR JUDGE.

ACREE, JUDGE: Larry Watkins-El appeals from the dismissal of his petition for writ of mandamus by the Franklin Circuit Court. Watkins-El asked the court to

¹ Senior Judge William R. Harris sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statute(s) 21.580.

restrain administrators at Northpoint Training Center (NTC) from charging his inmate account for the costs of postage, supplies, and copying, which he has elected to incur. We affirm the dismissal of the petition for writ of mandamus but remand to the circuit court the issue of how Watkins-El's account is to be charged under the court's previous order.

NTC Policy 14-01-01 § E(2) provides that an "indigent inmate shall be furnished with the following free supplies *as necessary*[".]” (Emphasis supplied). Specifically, this included legal correspondence materials, postage, and copies. In a 2004 memorandum, NTC's Warden determined that "as necessary" was limited to two postage stamps and two legal copies per week, unless an inmate can show an actual deadline imposed by court order, or the Kentucky Rules of Civil Procedure (CR) compels an exemption. Policy 14-01-01 § E(3) further states that "an inmate meeting the indigent status required shall not be charged." Watkins-El exceeded the limit as defined by the memorandum, and his account was frozen for charges of \$600.

Appellant filed a petition for writ of mandamus against NTC, seeking to have his account cleared of all charges for legal correspondence materials, postage, and copies. The court dismissed his petition and directed NTC's administrators to freeze Watkins-El's account to an amount not exceeding 50

percent until the total amount which he owed to NTC was paid. This appeal followed.

A writ of mandamus is an “extraordinary remedy which compels the performance of a ministerial act or mandatory duty where there is a clear legal right or no adequate legal remedy at law.” *County of Harlan v. Appalachian Regional Healthcare*, 85 S.W.3d 607, 613 (Ky. 2002). We review a decision to deny the writ for abuse of discretion. *Newell Enterprises, Inc. v. Bowling*, 158 S.W.3d 750, 754 (Ky. 2005).

The legal right Watkins-El seeks to protect by means of the writ of mandamus is his right of access to the courts. In order to exercise that right, he needs to be supplied with necessary materials, such as postage and legal copies. Watkins-El does not argue that he should be entitled to an unlimited supply of resources. Instead, he contends that all of the supplies that he used were necessary, yet he was still charged.

As the trial court correctly noted, a determination of what materials are “necessary” is left to NTC because they have the discretion to allocate the institution’s limited resources among all its constituents. NTC defined “necessary” in the 2004 memorandum as described above.² Watkins-El did not provide evidence to NTC that would compel an exemption, so the materials he used were

² In *Chandler v. Parker*, 2003 WL 21242594, the court determined that in order to prevail on a claim that an inmate’s rights have been violated, he must show that a correctional institution’s photocopy policy actually hindered his efforts to pursue a non-frivolous lawsuit. If an inmate satisfies the exception defined in the memorandum, he would also fulfill the requirement of actual injury that is required to grant a writ of mandamus, in the case that NTC still demanded that he pay for costs incurred.

not “necessary” for purposes of the policy. Therefore, the trial court did not abuse its discretion by denying the petition for writ of mandamus and ordering that Watkins-El be charged for costs incurred.

The trial court also directed NTC to freeze Watkins-El’s account to an amount not exceeding 50 percent of Watkins-El’s account balance. We believe this is a correct interpretation of another NTC policy, Number 15.7, which restricts NTC’s ability to levy on Watkins-El’s account balance. Under the policy, NTC cannot withdraw more than 50 percent of Watkins-El’s account balance at any one time to offset all or part of the \$600 in costs he incurred.

Watkins-El has included in his appendix material that was not a part of the record. This material is an account statement from the Blackburn Correctional Complex indicating NTC deposited into Watkins-El’s account \$19.50, identified as “State Pay Earned,” then proceeded to withdraw all but \$0.04 for copier usage. The inclusion of this information in the brief violates CR 76.12(4)(c)(vii) which states that “materials and documents not included in the record shall not be introduced or used as exhibits in support of briefs.” Therefore, we will not consider it except to emphasize the circuit court’s admonition related to Policy Number 15.7.

For the foregoing reasons, we affirm the Franklin Circuit Court’s order dismissing Watkins-El’s petition for writ of mandamus. We remand this case to the Franklin Circuit Court, however, for further proceedings consistent with

this opinion relative to the issue of how the inmate account of Watkins-El is to be charged.

ALL CONCUR.

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