

Commonwealth of Kentucky

Court of Appeals

NO. 2009-CA-000703-MR

ANDRE DRAPER-EL

APPELLANT

v.

APPEAL FROM FRANKLIN CIRCUIT COURT
HONORABLE THOMAS D. WINGATE, JUDGE
ACTION NO. 09-CI-00043

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING IN PART,
REVERSING IN PART, AND REMANDING

** ** * ** * ** *

BEFORE: MOORE AND THOMPSON, JUDGES; WHITE,¹ SENIOR JUDGE.

MOORE, JUDGE: Andre Draper-El, proceeding *pro se*, appeals the Franklin Circuit Court's order dismissing his "Motion for Civil Tort Law Suit." After a careful review of the record, we affirm in part because Draper-El's negligence claims should have been brought in the Board of Claims, and we reverse in part

¹ Senior Judge Edwin M. White, sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

and remand because Draper-El's constitutional claims were not considered by the circuit court.

Draper-El filed a "Motion for Civil Tort Law Suit" in the circuit court, alleging claims of negligence, as well as various constitutional violations, against the following defendants: LaDonna H. Thompson, Commissioner of the Kentucky Department of Corrections; Becky Pancake, Warden; Debra Wicker, Inmate Accounts Office, Western Kentucky Correction Complex; Tom Daily, Warden; Donna Ader, Inmate Accounts Office, Lucker Luckett Correction Complex; Larry Chandler, Warden; and Janice M. Standey, Inmate Accounts Office, Kentucky State Correction Complex. Draper-El claimed that the defendants were negligent and violated his constitutional rights when they, *inter alia*, froze his inmate account, which resulted in his inability to purchase personal hygiene items for many months at a time.

The defendants filed their response to Draper-El's motion and moved to dismiss it on the basis that Draper-El "had previously brought the exact same claims in a Petition for Declaratory Judgment, which was dismissed by" the circuit court. The defendants stated that the circuit court had dismissed that petition because Draper-El had alleged claims of negligence, which should have been presented to the Board of Claims, pursuant to KRS 44.110, *et seq.*, rather than to the circuit court. In their response and motion to dismiss Draper-El's Motion for

Civil Tort Law Suit in the present case, the defendants alleged that Draper-El's present claims were barred by the doctrine of res judicata.

Draper-El moved for default judgment in the present action, alleging that the defendants filed their response too late. The circuit court did not enter a ruling on the motion for a default judgment. Rather, the circuit court entered an order granting the defendants' motion to dismiss. In doing so, the court stated that "the present case is no different from the earlier case," and that Draper-El had merely "increase[d] his claim for money damages from \$20.00 per day of delay that his inmate account was not restored, to \$100,000 in money damages, and another \$100,000 in punitive damages," from each defendant. The court reasoned that "these changes do not alter the true nature of his claim: a civil negligence suit against the Commonwealth and its officers acting within the scope of their employment." Therefore, the circuit court held that Draper-El had to bring his claims in the Board of Claims, pursuant to KRS 44.070 to 44.160.

Draper-El now appeals, raising the same claims he brought in the circuit court and alleging that the circuit court erred in dismissing his claims without making a sufficient inquiry into whether it had jurisdiction over his claims, which included allegations of constitutional violations.

Although KRS 44.070 vests the Board of Claims with exclusive jurisdiction over negligence claims brought against the Commonwealth and its agents in their official capacities, Draper-El also alleged various constitutional claims against the defendants in his Motion for Civil Tort Law Suit. The Board of

Claims does not have jurisdiction to review constitutional claims; rather, those claims must be brought and adjudicated in the trial court. Therefore, although Draper-El should have brought his negligence claims against the defendants in the Board of Claims, he did properly raise his constitutional claims in the circuit court. Consequently, to the extent the circuit court held that Draper-El's negligence claims should have been brought in the Board of Claims, the court's order is affirmed. However, the circuit court's order is reversed to the extent that the court failed to review Draper-El's constitutional claims.

Accordingly, the order of the Franklin Circuit Court is affirmed in part, regarding the dismissal of Draper-El's negligence claims. The Franklin Circuit Court's order is also reversed in part, regarding the dismissal of Draper-El's constitutional claims, and the case is remanded for further consideration of those constitutional claims.

ALL CONCUR.

BRIEF FOR APPELLANT:

Andre Draper-El, *Pro se*
Fredonia, Kentucky

BRIEF FOR APPELLEE:

J. Todd Henning
Frankfort, Kentucky