

RENDERED: APRIL 8, 2011; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2010-CA-000519-MR

WILLIE JAMES STEWART

APPELLANT

v.

APPEAL FROM FRANKLIN CIRCUIT COURT
HONORABLE PHILLIP J. SHEPHERD, JUDGE
ACTION NO. 09-CI-01363

LADONNA THOMPSON;
STEVE HANEY; AND
BECKY W. PANCAKE

APPELLEES

OPINION
AFFIRMING

** ** * ** * ** *

BEFORE: TAYLOR, CHIEF JUDGE; ACREE AND COMBS, JUDGES.

TAYLOR, CHIEF JUDGE: Willie James Stewart brings this appeal from a February 9, 2010, Order of the Franklin Circuit Court dismissing Stewart's petition for declaration of rights against LaDonna H. Thompson, Commissioner of the

Department of Corrections, Steve Haney, Warden, and Becky W. Pancake, Warden (collectively referred to as appellees). We affirm.

On September 2, 2009, Stewart filed a petition for declaration of rights in the Franklin Circuit Court alleging that his constitutional rights were violated while he was incarcerated at Northpoint Training Facility. Specifically, Stewart alleged that \$200 that he had received from a family member and deposited into his inmate financial account was improperly seized by Northpoint prison to repay the cost of previous copies and other litigation expenses incurred by him. Appellees subsequently filed a motion to dismiss Stewart's complaint. The Franklin Circuit Court granted appellees' motion to dismiss and dismissed Stewart's action by order entered February 9, 2010. This appeal follows.

Stewart contends that the circuit court erred by dismissing his petition for declaration of rights. Stewart specifically asserts that as an "indigent inmate," he was entitled to free legal supplies, postage, and copies per Kentucky Corrections Policy and Procedure (CPP) 15.7. Stewart asserts that Northpoint prison officials violated CPP 15.7 by requiring him to pay for the costs of copies.

We begin our analysis with a review of two relevant Corrections' policies. CPP 14.4, entitled "Legal Services Program," provides in relevant part:

- E. Upon request, an indigent may receive reasonable amounts of legal supplies, postage and copying services as necessary.
- F. An inmate who can demonstrate by court order or court rules a definite deadline shall be allowed to have copies and postage upon signing a cash pay order

(CPO) even if their cash accounts are inadequate to pay the expense.

CPP 14.4(E) clearly states that inmates may receive reasonable amounts of legal supplies, postage, and copying services. Subsection (F) provides that such copies and postage shall be provided to an inmate who is under a deadline pursuant to court rule, regardless of whether the inmate has adequate funds to cover the expense. CPP 14.4 does not address whether such amount will be charged to the inmate's account; rather, it merely states that under certain circumstances copies and postage shall be provided.

CPP 15.7 is entitled "Inmate Account Restriction" and addresses the policy and procedure to be followed for handling an inmate's personal financial account. In relevant part, CPP 15.7 provides:¹

If an inmate owes restitution as well as other charges for legal postage, copy work, medical co-pays, or other expenses, **incoming funds** to the inmate's account shall be fully applied to any outstanding authorizations. (Emphasis added.)

CPP 15.7 clearly contemplates that an inmate may incur charges for legal postage, copy costs, or other expenses when the funds in his inmate account are insufficient to cover the costs incurred. Under CPP 15.7, funds that are deposited into the inmate's account after such costs have been incurred "shall be fully applied to any outstanding authorizations." When taken together, CPP 14.4 and CPP 15.7 clearly provide that an indigent inmate may receive reasonable amounts of legal supplies,

¹ This is the version of Corrections Policies & Procedures 15.7 in effect in January 2009, when the \$200 was deposited into Willie James Stewart's inmate account.

postage and copying. Moreover, if the inmate's account has funds deposited therein after legal expenses have been incurred, such funds may be applied to repay the Department of Corrections. And, regardless of the inmate's account balance, an inmate shall be provided copies and postage if under a definitive court deadline. The record in this case reflects that the appellees followed applicable policies of the Department of Corrections and there otherwise exists no legal basis or controversy to support a petition for declaration of rights in this action.

Kentucky Revised Statutes (KRS) 418.040; KRS 418.045 As such, we do not believe the circuit court erred by dismissing Stewart's action for declaration of rights.

For the foregoing reasons, the Order of the Franklin Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Willie James Stewart, *Pro Se*
St. Mary, Kentucky

BRIEF FOR APPELLEE:

Wesley W. Duke
Department of Corrections
Frankfort, Kentucky