

**Commonwealth of Kentucky**  
**Court of Appeals**

NO. 2014-CA-001548-MR

VALERIE DENT

APPELLANT

v. APPEAL FROM FRANKLIN CIRCUIT COURT  
HONORABLE PHILLIP J. SHEPHERD, JUDGE  
ACTION NO. 13-CI-00475

KENTUCKY STATE UNIVERSITY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: CLAYTON, KRAMER, AND STUMBO, JUDGES.

KRAMER, JUDGE: Valerie Dent was terminated from her employment with Kentucky State University (KSU) on April 21, 2008. On April 18, 2013, Dent filed a complaint in Franklin Circuit Court against KSU alleging race discrimination and hostile work environment under Kentucky Revised Statutes (KRS) 344 *et seq.*, the Kentucky Civil Rights Act, as well as public policy

wrongful discharge and intentional infliction of emotional distress. However, due to Dent’s error, a summons was served upon Charles H. Lambert of Kentucky State University Foundation, Inc., and not upon the correct party, Kentucky State University. The record indicates that Donald Lyons, the Executive Secretary of the Kentucky State University Foundation, Inc., filed a letter with the circuit court on April 26, 2013, noting the error of service of the complaint to the wrong party. Several months thereafter, on February 10, 2014, Dent then erroneously directed the circuit clerk to serve summons upon Kentucky Secretary of State Alison Lundergan Grimes. Finally, on March 17, 2014—eleven months after Dent had filed her complaint—Dent appropriately directed service upon Kentucky Attorney General Jack Conway.<sup>1</sup>

On April 7, 2014, 2014, KSU filed a motion to dismiss pursuant to Kentucky Civil Rule (CR) 12.02 or alternatively a motion for summary judgment pursuant to CR 56, based in part<sup>2</sup> upon the five-year statute of limitations that applied to each of the claims Dent asserted.<sup>3</sup> *See Leonard v. Corrections Cabinet,*

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<sup>1</sup> State institutions of higher education are agencies of the state. *See* KRS 44.073(1); *Autry v. Western Kentucky University*, 219 S.W.3d 713, 717 (Ky. 2007). CR 4.04(6) provides “Service shall be made upon the Commonwealth or any agency thereof by serving the Attorney-General or any assistant attorney-general.”

<sup>2</sup> A second basis of KSU’s motion and a second basis of the circuit court’s decision to dismiss was that Dent’s suit was precluded by the election of remedies doctrine and the prohibition against claim splitting. In light of how we have resolved this appeal, we need not address this point or the additional facts of this case relevant to it.

<sup>3</sup> *See Leonard v. Corrections Cabinet*, 828 S.W.2d 668, 670 (Ky. App. 1992) (5-year statute of limitations applies to claims asserted pursuant to KRS 344 *et seq.*); *Kentucky Bar Ass’n v. Thornton*, 392 S.W.3d 399, 402 (Ky. 2013) (“intentional infliction of emotional distress (IIED) . . . carries a limitations period of five years, KRS 413.120.”); *Bednarek v. United Food and Commercial Workers Intern. Union, Local Union 227*, 780 S.W.2d 630, 632 (Ky. App. 1989) (“the five-year statute of limitations set out in KRS 413.120 applies to the tort of wrongful discharge.”).

828 S.W.2d 668, 670 (Ky. App. 1992). Upon consideration of KSU's motion and Dent's response thereto, and after reciting the factual and procedural history of this matter noted above, the circuit court held in relevant part as follows:

Each of Ms. Dent's claims against KSU are dismissed due to her failure to commence this action within the statute of limitations. By statute, all of the claims alleged by Ms. Dent have a five-year limitation period in which the commencement of the action must take place. Here, the injuries alleged by Ms. Dent must have occurred during the time period of her employment with KSU which ended on April 21, 2008. Ms. Dent did timely file a complaint with this Court on April 18, 2013. However, the appropriate party to this action was not properly served until March 17, 2014, more than five years after the statute of limitations for the claims had run. Accordingly, the claims alleged by Ms. Dent against KSU are barred due to the untimely commencement of this proceeding.

Now on appeal, the entirety of Dent's argument regarding why the circuit court erred by dismissing her Kentucky Civil Rights claim against KSU on the basis of the statute of limitations is as follows:

"An action shall be deemed to commence on the date of the first summons or process issued in good faith from the court having jurisdiction of the cause of action." KRS 413.250. Thus, Appellant's lawsuit was commenced April 18, 2013—the date she filed her Complaint in Franklin Circuit Court and issued the first summons upon Appellee. The Franklin Circuit Court dismissed Appellant's claims against Appellee "due to [Appellant's] failure to commence this action within the statute of limitations." (ROA 81-83). Although Appellant filed her Complaint and issued the first summons within the statute of limitations, the Trial Court incorrectly concluded that Appellant's suit was not timely filed because Appellee was served outside the statute of limitations. (ROA 81-83). Pursuant to KRS

413.250, the date Appellant's action commenced is the date Appellant issued the first summons against Appellee, not the date Appellee was served with the summons. Because Appellant timely filed her lawsuit and issued the first summons within the statute of limitations, her claims were timely filed. The Trial Court erred in ruling that her claims are barred by the statute of limitations.

The problem with Dent's argument, however, begins with the language she has quoted from KRS 413.250. As she represents, the statute provides that "[a]n action shall be deemed to *commence* on the date of the first summons or process issued *in good faith* from the court having jurisdiction of the cause of action." (Emphasis added.) Here, the circuit court recognized in its order that Dent first filed her complaint and directed summons or process to be issued on April 18, 2013, a date within the applicable statute of limitations. Nevertheless, the circuit court concluded Dent had failed "to *commence* this action within the statute of limitations." (Emphasis added.) The clear implication of the circuit court's order is that the remaining requirement for the "commencement" of an action on that date was absent: *good faith*. See *Furlow v. Sturgeon*, 436 S.W.2d 485, 486 (Ky. 1969) (when interpreting a judgment, "effect must be given to that which is unavoidably and necessarily implied in a judgment, as well as that which is expressed in the most appropriate language." (Citation omitted)). Indeed, Dent's lack of good faith was the key issue KSU briefed below, and KSU has continued to raise the issue at this level.

For the purpose of limitations, defective service is not fatal to an action or otherwise indicative of bad faith where the record also demonstrates a diligent correction of any service deficiency. *See Transp. Cabinet v. Caudill*, 278 S.W.3d 643, 647 (Ky. App. 2009). However, the record before this Court offers no insight into why it took Dent eleven months to effect proper service upon KSU. This Court has previously held that an unexplained *seven*-month delay in properly effecting service following the expiration of a limitations period demonstrated a fatal lack of diligence. *See Steadman v. Gentry*, 314 S.W.3d 760, 762 (Ky. App. 2010). Moreover, Dent’s three-page appellate brief offers no argument, much less any citation to authority supporting, that her eleven-month-late correction could be considered diligent. As noted above, Dent merely asserts that her act of filing her complaint and issuing her first summons on April 18, 2013, in and of itself, was sufficient. As such, we find no error in the circuit court’s decision to dismiss on the basis of the statute of limitations. *See Osborne v. Payne*, 31 S.W.3d 911, 916 (Ky. 2000) (“Any part of a judgment appealed from that is not briefed is affirmed as being confessed.”). We therefore AFFIRM.

ALL CONCUR.

BRIEF FOR APPELLANT:

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