

RENDERED: November 26, 1997; 2:00 p.m.
NOT TO BE PUBLISHED

97-CA-0542-MR

URIAH MARQUIS PASHA
a.k.a. KENNETH URIAH ROSS

APPELLANT

v. APPEAL FROM LYON CIRCUIT COURT
HONORABLE BILL CUNNINGHAM, JUDGE
ACTION NO. 97-CI-00001

JERRY PHELPS

APPELLEE

OPINION
VACATING AND REMANDING

* * * * *

BEFORE: WILHOIT¹, Chief Judge; EMBERTON and GUIDUGLI, Judges.

WILHOIT, CHIEF JUDGE: This appeal is from a sua sponte order dismissing for failure to state a cause of action the appellant's pro se petition for a declaratory judgment. No motion to dismiss was filed by the appellee, and it does not appear that the appellant was notified in advance of the court's intention to dismiss his petition. While we cannot substantively fault the court, minimal procedures were not followed and must be effectuated to ensure due process. See Gall v. Scroggy, Ky. App., 725 S.W.2d 867 (1987).

¹ This opinion was prepared and concurred in prior to Chief Judge Wilhoit's retirement on November 15, 1997. Release of the opinion was delayed by normal administrative handling.

The order of the circuit court is vacated and this matter is remanded for further proceedings consistent with this opinion.

ALL CONCUR.

BRIEF FOR APPELLANT:

No Brief For Appellee

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