

RENDERED: March 13, 1998; 10:00 a.m.
NOT TO BE PUBLISHED

NO. 96-CA-2878-MR

MICHAEL K. PAULLEY

APPELLANT

v.

APPEAL FROM OLDHAM CIRCUIT COURT
HONORABLE DENNIS FRITZ, JUDGE
ACTION NO. 96-CI-00391

KENTUCKY STATE PAROLE BOARD MEMBERS

APPELLEE

OPINION
AFFIRMING

* * * * *

BEFORE: ABRAMSON, BUCKINGHAM, and EMBERTON, Judges.

ABRAMSON, JUDGE: Michael K. Paulley appeals from the trial court's dismissal of his petition for a declaratory judgment, in which he sought declaratory and injunctive relief against the members of the Kentucky Parole Board. Having reviewed the record and the applicable law, we affirm.

On February 8, 1996, a panel of the Kentucky Parole Board declined to place Paulley on parole. The Board's decision was based upon many grounds, two of which Paulley subsequently disputed: Paulley denied that he had a "misdemeanor record" and challenged the conclusion that "violence [was] involved in the crimes" for which he was convicted. On March 29, 1996, Paulley's

CR 60.03 motion in Jefferson Circuit Court to correct his presentence investigation report was denied for lack of jurisdiction.

On June 10, 1996, the Oldham Circuit Court dismissed an action (96-CI-00187) brought by Paulley against the Department of Probation and Parole, the Kentucky State Parole Board, and Jefferson Circuit Judge Kenneth Corey for a declaratory judgment that Paulley's presentence investigation report contained erroneous information. The trial court dismissed that claim for improper venue, stating that the claim properly belonged in Jefferson Circuit Court.

Finally, on August 8, 1996, Paulley filed this claim against the members of the Kentucky Parole Board for a declaratory judgment that the Parole Board had deprived him of due process when it denied parole to him based upon erroneous information. Five days later, the Oldham Circuit Court issued an order dismissing Paulley's petition because it was

identical to another declaratory judgment action which was filed on April 11, 1996, involving the same claims. That case, File No. 96-CI-00187, Michael K. Paulley v. Department of Probation and Parole, et al was dismissed on June 10, 1996 with a Finding that proper jurisdiction was within the Jefferson Circuit Court, since the Petitioner's sentence originated from Jefferson County and since his claims that his presentence investigation report, which was completed in Jefferson County, contained false information.

This Court, therefore finds that this action is identical to that previously filed and in accordance with KRS 454.405 the same BE AND IS HEREBY DISMISSED.

On August 19, 1996, Paulley filed a motion to

reconsider the trial court's August 13, 1996 order, arguing that the current case differed from the prior, dismissed case. In response to Paulley's motion, the trial court issued an order on October 1, 1996, reiterating the reasons it offered in its earlier order and adding that Belcher v. Kentucky Parole Board, Ky. App., 917 S.W.2d 584 (1996), rendered the members of the Kentucky Parole Board absolutely immune from suit. The trial court also required Paulley to "provide an answer to this Court within twenty (20) days why this matter should not be dismissed and why the Belcher case mentioned above does not apply to the present situation."

On October 10, 1996, Paulley filed his answer to the trial court's October 1, 1996 order. The trial court denied Paulley's petition for declaratory judgment a day later, finding that the type of relief sought by Paulley's petition was among the types of claims "sought to be avoided by the Belcher decision." From the order dismissing the petition, Paulley appeals.

As previously mentioned, the trial court based its initial dismissal in this case upon the authority of KRS 454.405, which became effective on July 15, 1996. KRS 454.405(1) provides in part that a court may dismiss an inmate's civil action "if satisfied that the action is malicious or harassing or if satisfied that the action is legally without merit or factually frivolous." KRS 454.405(3) requires the trial court dismissing

an inmate's civil action to "include as part of its order specific findings as to the reasons for the dismissal."

When the trial court dismissed Paulley's petition for declaratory relief on August 13, 1996, it cited the identical nature of that case to the earlier, dismissed Oldham Circuit petition for declaratory relief as the basis for its dismissal under KRS 454.405. While the petitions themselves were not identical, the gist of each was the same: Paulley challenged the February 8, 1996 denial of parole. We agree with the trial court. Pursuant to the trial court's supervisory authority to control its own docket, as well as KRS 454.405, the trial court properly dismissed Paulley's repetitious petition. Because we affirm the trial court's procedural dismissal of Paulley's petition, it is unnecessary for us to address the issue of whether the individual members of the Parole Board are immune from suits seeking declaratory relief.

For the reasons stated, we affirm the October 11, 1996 Order of Oldham Circuit Court.

ALL CONCUR.

BRIEF FOR APPELLANT
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BRIEF FOR APPELLEE
No brief filed