

Commonwealth Of Kentucky

Court Of Appeals

NO. 1998-CA-001283-MR

CHARLES TORAIN; and
DEBORAH TORAIN

APPELLANTS

v. APPEAL FROM FRANKLIN CIRCUIT COURT
HONORABLE WILLIAM L. GRAHAM, JUDGE
ACTION NO. 97-CI-01246

COMMONWEALTH OF KENTUCKY,
CABINET FOR FAMILIES AND CHILDREN

APPELLEE

OPINION
AFFIRMING
** **

BEFORE: KNOPF, KNOX, AND SCHRODER, JUDGES.

SCHRODER, JUDGE: This is an appeal from an order dismissing appellants' claim for benefits for special-needs adoptive parents retroactive to the date of the adoptions. Upon review of appellants' arguments in light of the record herein and the applicable law, we agree with the circuit court that appellants have waived their right to bring this claim.

In July of 1984, appellants adopted James and Shameika. In April of 1995, appellants sought payment of certain benefits as parents of adoptive children with special needs ("SNAP" benefits) pursuant to KRS 199.555. Appellants requested these

benefits retroactive to the date of the children's adoption. Although KRS 199.555 was in effect at the time appellants adopted the children, appellants never sought SNAP benefits prior to 1995. After a hearing on appellants' request, the Cabinet for Families and Children ("the Cabinet") awarded appellants post-adoptive benefits beginning in April 1995 pursuant to an agreement between the Cabinet and appellants. Appellants did not appeal this decision.

In February 1997, the Cabinet informed appellants that SNAP benefits would be terminated as of March 1, 1997 on their son James because he would be eighteen (18) years of age at that time. In June 1997, appellants requested a hearing on the Cabinet's denial of extended benefits for James and requested that the Cabinet issue an order regarding appellants' request for retroactive benefits. In a final order entered on June 12, 1997, the Cabinet denied appellants' request for extended SNAP benefits, but made no ruling concerning retroactive SNAP benefits.

On August 21, 1997, appellants filed an action in the Franklin Circuit Court seeking retroactive SNAP benefits on grounds that the Cabinet failed to notify appellants of their right to such benefits at the time they adopted the children. The court dismissed appellants' complaint due to the fact that the Cabinet had already disposed of the issue in 1995, the appellants failed to properly raise the issue before the Cabinet in 1997, and the appellants' failure to timely appeal the 1995 and 1997 orders. This appeal followed.

Appellants' sole argument on appeal is that the Franklin Circuit Court lacked jurisdiction to dismiss appellants' claim because the Cabinet had made no final decision or order regarding retroactive benefits. Appellants raised the retroactive benefits issue in their 1995 request for a hearing and again in 1997, although appellants apparently did not argue the retroactive benefits issue in the 1997 hearing before the Cabinet. While there has been no formal ruling by the Cabinet on the issue of retroactive benefits, the evidence is disputed as to whether the Cabinet informed appellants after the 1995 request that they were not entitled to retroactive benefits. The Cabinet claims and the circuit court found that the Cabinet did so inform appellants. Appellants maintain, however, that they were never so informed. The only record before us is the circuit court's record, which does not contain a record of any proceedings before the circuit court. Likewise, there is no record of the hearings before the Cabinet. The only evidence in the record pertaining to this issue is a copy of Social Services Policy #407.6 which states that SNAP benefits can be paid no earlier than the date of request for a hearing.

In our view, even if the Cabinet did not inform appellants of their ineligibility for retroactive SNAP benefits, appellants should have appealed the Cabinet's 1995 ruling which failed to address the retroactive benefits issue, as that issue was raised by appellants in their 1995 request. Where a statute prescribes the method for taking an appeal from an administrative action and the time in which the appeal must be taken, such

requirements are mandatory and must be met in order for a circuit court to obtain jurisdiction to hear the case. Frisby v. Board of Education of Boyle County, Ky. App., 707 S.W.2d 359 (1986). KRS 13B.140 provides that “[a] party shall institute an appeal by filing a petition in the Circuit Court ... within thirty (30) days after the final order of the agency is mailed or delivered by personal service.” By not appealing the Cabinet’s ruling, appellants waived their right to later, in a separate action, raise this issue before the circuit court. Similarly, appellants should have timely appealed the 1997 ruling wherein this same issue was raised by appellants.

Like the circuit court, we are perplexed by appellants’ argument that the circuit court lacked jurisdiction to dismiss the claim. Appellants were the ones who initiated the action asking the circuit court to exercise its jurisdiction and award them retroactive benefits. Moreover, the lack of jurisdiction was the very basis of the court’s ruling dismissing the claim because appellants failed to exhaust their administrative remedies by timely appealing the Cabinet’s decisions which should have addressed an issue raised by appellants.

For the reasons stated above, we affirm the order of the Franklin Circuit Court dismissing appellants’ action.

ALL CONCUR.

BRIEF FOR APPELLANTS:

Claud Porter
Owensboro, Kentucky

BRIEF FOR APPELLEE:

Karen V. Murphy
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