

Commonwealth Of Kentucky

Court Of Appeals

NO. 1999-CA-001493-MR

ROBERT NEAL PETTIT

APPELLANT

v.

APPEAL FROM ROWAN CIRCUIT COURT
HONORABLE WILLIAM B. MAINS, JUDGE
ACTION NO. 98-CI-90176

BETTY CUTTS

APPELLEE

OPINION
AFFIRMING
** ** * * * * *

BEFORE: GUDGEL, CHIEF JUDGE; COMBS AND MILLER, JUDGES.

MILLER, JUDGE: Robert Neal Pettit brings this *pro se* appeal from a May 13, 1999 Order of the Rowan Circuit Court. We affirm.

On July 30, 1998, appellant filed a *pro se* civil complaint against appellee. Therein, he complained that appellee in her role as Court Appointed Special Advocate acted outside and beyond the scope of her authority and acted with prejudice, malice intent, and gross negligence.

On March 16, 1999, appellee filed motion to dismiss claiming immunity under Kentucky Revised Statutes (KRS) 411.200. On May 13, 1999, the circuit court entered an order dismissing the action with prejudice and ordering each party to bear its own

costs. On May 22, 1999, appellant entered a motion to vacate judgment claiming:

3. Plaintiff was granted by Court Order of Feb. 19th, 1999 thirty (30) days to respond to Defendant's motion when filed. Counsel for Defendant filed a motion to dismiss on March 15th, and a hearing was noticed therein for 16th April 1999.

5. Plaintiff was notified by Defendant's counsel prior to the expiration of Plaintiff's 30 days that Defendant was informed by the Court that the hearing of April 16th would not be held nor motions heard, and so informed Plaintiff. Plaintiff was not informed by the Court as to the reason why motions were not to be heard nor a hearing held and so did not file response within the 30 days granted Plaintiff by Court Order of Feb. 19th. . . .

On May 25, 1999, the circuit court entered an order denying appellant's motion to vacate. This appeal follows.

Appellant's sole contention is that the circuit court committed error by dismissing his action. He states that he was granted thirty days to respond to appellee's motion to dismiss by a February 19, 1999 scheduling order. Appellee counters that a specific order was entered dealing with the motion for summary judgment which allowed appellee thirty days to file same and appellant twenty days to respond. We view this argument as irrelevant.

The record reveals that the motion to dismiss was filed March 16, 1999. The order dismissing the action was not entered until May 13, 1999, some sixty days later. After the filing of the motion to dismiss and before the entry of the order of dismissal, the record indicates that appellant never attempted to file a response or to file a motion for extension of time to file

a response. Thus, even if appellant was granted thirty days in which to respond, he failed to do so. Appellant's only response came on May 22, 1999 as a motion to vacate judgment, some eight days after the order of dismissal was entered. Appellant asserts he did not file a response to appellee's motion to dismiss because the circuit court's office told him and his mother that he had only twenty days to file a response and the response time had run. Such evidence, however, does not appear in the record in the form of an affidavit or otherwise. Upon the whole, we are of the opinion that the circuit court did not commit reversible error by dismissing appellant's action.

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

ALL CONCUR.

PRO SE BRIEFS FOR APPELLANT:

Robert Neal Pettit
Morehead, Kentucky

BRIEF FOR APPELLEE:

Kenneth W. Smith
Lexington, Kentucky