

Commonwealth Of Kentucky

Court Of Appeals

NO. 2000-CA-002463-MR

MICHAEL CRAIG

APPELLANT

v.

APPEAL FROM FRANKLIN CIRCUIT COURT
HONORABLE WILLIAM L. GRAHAM, JUDGE
ACTION NO. 00-CI-01085

GEORGE MILLION

APPELLEE

OPINION
VACATING AND REMANDING

** ** * * * **

BEFORE: HUDDLESTON, KNOPF, and TACKETT, Judges.

KNOPF, Judge: Michael Craig appeals from an order of the Franklin Circuit Court dismissing his petition for declaration of rights because of a lack of venue. Based on KRS 452.105, we vacate and remand the case for transfer of the action to the court with proper venue.

Craig is an inmate at the Eastern Kentucky Correctional Complex (EKCC) in West Liberty, Morgan County, Kentucky. In May and June 2000, he was charged with and found guilty by the prison Adjustment Committee of two violations of the Corrections Policies and Procedures 15.2, Category IV-5 (smuggling of

contraband into, out of, or within the institution), involving cigarette tobacco. The Adjustment Committee imposed consecutive penalties of 45 days disciplinary segregation and 60 days' forfeiture of good time for each offense. The prison warden concurred with the decision of the Adjustment Committee on each occasion.

On September 19, 2000, Craig filed a petition in the Franklin Circuit Court for declaration of rights pursuant to KRS 418.040, challenging the disciplinary action. The respondents included the prison warden, the chairman of the Adjustment Committee, the Commissioner of the Department of Corrections, and John Damron, a staff attorney for the Department of Corrections. More specifically, he alleged that the prison officials violated his constitutional right to due process under the 14th Amendment by not following certain procedures and finding him guilty without sufficient evidence. Craig maintained that the mandatory language in the Corrections Policies and Procedures established procedures that were required to be followed in order to satisfy due process. He alleged also that John Damron had improperly advised prison officials that the prison policies and procedures did not create due process rights. Craig asked the circuit court to invalidate the disciplinary penalties, award him monetary damages, and issue an order and opinion declaring that the Corrections Policies and Procedures create due process procedural rights that must be strictly complied with by prison officials.¹

¹ Craig attached to his petition an April 2000 letter from John Damron to an EKCC official expressing his opinion that the
(continued...)

On October 4, 2000, the Department of Corrections, on behalf of the respondents, filed a motion to dismiss for lack of proper venue. It stated that according to KRS 452.405(2), actions against public officials for official acts must be brought in the county where the cause of action arose. The Department of Corrections asserted that because all of the agency actions occurred in Morgan County, venue in Franklin County was improper.

On October 9, 2000, Craig mailed a response that was officially filed by the clerk on October 10, 2000, in which he asked the circuit court to deny the motion to dismiss or in the alternative to transfer the case to the proper court. He argued that venue was proper in Franklin County because the petition involved a complaint that Department of Corrections officials incorrectly advised prison personnel concerning their duties under the Corrections Policies and Procedures. He also contended that venue was proper because the prison policies and procedures at the center of the action were promulgated from the Department of Corrections office in Frankfort.

On October 9, 2000, the circuit court summarily dismissed the petition for lack of proper venue. This appeal followed.

On appeal, Craig appears to admit that his petition was filed in the wrong court but contends that the circuit court

¹(...continued)
Corrections Policies and Procedures do not create due process rights.

should have transferred the case to the proper court.² He also asserts that as a pro se plaintiff, his pleadings should be liberally construed.

First, we note that the circuit court correctly concluded that proper venue did not reside in Franklin County. KRS 452.405(2) provides that actions “[a]gainst a public officer for an act done by him in virtue or under color of his office, or for a neglect of official duty” shall be brought “in the county where the cause of action, or some part thereof, arose.” As the court noted, all of the operative facts involving the CPP violations and disciplinary hearing occurred in Morgan County where the prison is located. In Fisher v. State Board of Elections, Ky., 847 S.W.2d 718 (1993), the court construed KRS 452.405(2) to place venue for suits challenging actions by government officials in the county where the alleged injury or harm to a particular individual occurs. In Fisher, the pro se plaintiff filed suit in Campbell County challenging the 1991 Reapportionment Act. The court held that venue was proper in Campbell County, rather than Franklin County, where the legislature had enacted the statute. The court stated, “Appreciable harm arises only when the statute directly affects the individual by denying him a right or imposing upon him an obligation.” Id. at 721.

In the case sub judice, Craig alleged that the actions of the various corrections personnel violated his rights under

² The Department of Corrections failed to file an appellate brief so this Court has not been provided with a response to Craig’s arguments on appeal.

both the prison policies and procedures and the constitutional provisions guaranteeing due process of law. Even though the Corrections Policies and Procedures were promulgated in Franklin County, the injury or harm to Craig occurred in Morgan County.

The fact that proper venue was in Morgan County, however, does not resolve the matter. The circuit court apparently did not consider a recent statute dealing with the transfer of civil cases because of improper venue that became effective on July 14, 2000. In 2000, the General Assembly enacted KRS 452.105, which states:

In civil actions, when the judge of the court in which the case was filed determines that the court lacks venue to try the case due to an improper venue, the judge, upon motion of a party, shall transfer the case to the court with the proper venue.

The mandatory language³ in this statute obligates the trial judge to transfer a case upon request when there is a defect because of venue.

In the current case, the Department of Corrections filed its motion to dismiss for lack of venue on October 4, 2000. The trial court granted the motion on October 9, 2000. The record indicates that Craig mailed his response on October 9, but it was not received by the Franklin Circuit Clerk until the next day, after the trial court had already entered its order granting the motion to dismiss. Although Craig failed to file a formal

³ See KRS 446.010(20) (word "shall" in statute is mandatory). Cf. KRS 452.010(2) (giving court discretion for change venue in civil action based on undue influence of party or circumstances creating risk of unfair trial); Alexander v. S & M Motors, Inc., Ky., 28 S.W.3d 303 (2000) (noting word "shall" in statute is mandatory and "may" is permissive).

post-judgment motion to alter, amend or vacate the judgment or motion to transfer, he did request transfer of the case in his response. We believe that given his pro se status and the time sequence involved, Craig's response should have been treated as a motion to transfer for purposes of KRS 452.105, and the trial court should have transferred the case to the court with proper venue in Morgan County. We note that this statute is of very recent origin and neither party specifically raised it before the trial court. Nevertheless, we feel Craig was entitled to have his case transferred, rather than dismissed.⁴

For the foregoing reasons, we vacate the order of the Franklin Circuit Court and remand the case with directions that the court enter an order transferring the case to Morgan Circuit Court.

ALL CONCUR.

BRIEF FOR APPELLANT:

No Brief for Appellee

Michael Craig
West Liberty, Kentucky

⁴ Given our decision to vacate and remand the case, we need not address the merits of Craig's petition.