

Commonwealth Of Kentucky

Court Of Appeals

NO. 2000-CA-002496-MR

VINCENT CAISE

APPELLANT

v. APPEAL FROM BOYLE CIRCUIT COURT
HONORABLE DARREN W. PECKLER, JUDGE
ACTION NO. 00-CI-00187

LINDA FRANKS

APPELLEE

OPINION
AFFIRMING
** ** * * * * *

BEFORE: BUCKINGHAM, GUIDUGLI AND HUDDLESTON, JUDGES.

GUIDUGLI, JUDGE. Vincent Caise ("Caise") appeals from an order of the Boyle Circuit Court dismissing his action as time-barred. We affirm.

On November 23, 1999, Caise filed an action in Franklin Circuit Court seeking a declaratory judgment. He alleged, in relevant part, that he was improperly denied parole and other administrative entitlements in 1998 while incarcerated at the Northpoint Training Center ("NTC") in Boyle County, Kentucky. On January 6, 2000, the Franklin Circuit Court rendered an order dismissing the action for improper venue.

On April 17, 2000, Caise refiled the action in Boyle Circuit Court. Thereafter, the defendants, Linda Franks, et al., (hereinafter "Franks") moved to dismiss the action as time-barred as having been filed outside the one-year statute of limitations governing personal injuries. Upon considering the motion, the trial court rendered an opinion and order on August 29, 2000 dismissing the action as having been filed outside the statutory period. This appeal followed.

Caise now argues that the trial court abused its discretion and committed reversible error by limiting its order to the issue of the statute of limitations, and failing to address Franks' assertion that Caise had failed to state a claim upon which relief may be granted. He also argues that the claim sets forth a series of wrongful acts, and that the statute of limitation does not begin to run until the last of those acts has occurred. He seeks to have the matter reversed and remanded for further proceedings.

The corpus of Caise's claim of error is his apparent assertion that the trial court failed to consider his entire petition for relief, and in so doing improperly applied a one-year (KRS 413.140) rather than five-year (KRS 413.120) statute of limitations. In dismissing Caise's action as time-barred, the trial court relied on KRS 413.140. It states in relevant part, "(1) The following actions shall be commenced within one (1) year after the cause of action accrued: (a) An action for an injury to the person of the plaintiff" Though Caise's pro se argument does not clearly state the issue, the dispositive

question is whether the trial court properly concluded that Caise's claim is a personal injury claim, and is therefore governed by KRS 413.140.

The trial court opined that Caise's claim fell under the broad definition of personal injury, and this conclusion is presumptively correct. City of Louisville v. Allen, 385 S.W.2d 179 (1964). Our duty is not to examine the matter de novo to make a new determination of which statutory period applies, Id., but rather to determine if Caise has overcome the presumption that the ruling on appeal is correct. He has not. The trial court reasonably concluded that Caise's claim was properly characterized as a personal injury and therefor fell within the confines of KRS 413.140(1)(a). KRS 413.120 would apply in this context only as a "catch-all" provision for claims not otherwise addressed by statute. We have no basis for concluding that Caise's claim falls outside the confines of KRS 413.140, and accordingly find no error.

As to Caise's argument that he alleged a "continuing wrong" which delayed the tolling of the statutory period, we also find no error. The wrongful action of the defendants was alleged to have occurred on or before November 21, 1998, which was more than one year prior to the filing of the complaint in Boyle Circuit Court.¹

For the foregoing reasons, we affirm the opinion and order of the Boyle Circuit Court.

¹This calculation takes into account the 90 day extension provided Caise pursuant to KRS 413.270(1) for change of venue from a court or tribunal lacking jurisdiction.

ALL CONCUR.

BRIEF FOR APPELLANT, PRO SE:

Vincent Caise
Central City, KY

BRIEF FOR APPELLEE:

Rebecca Baylous
Department of Corrections
Frankfort, KY