

# Commonwealth Of Kentucky

## Court Of Appeals

NO. 2000-CA-002870-MR

BUSTER CHANDLER

APPELLANT

v.

APPEAL FROM LYON CIRCUIT COURT  
HONORABLE BILL CUNNINGHAM, JUDGE  
ACTION NO. 00-CI-00122

DOUG SAPP

APPELLEE

### OPINION AND ORDER DISMISSING APPEAL

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BEFORE: GUIDUGLI, MILLER AND JOHNSON, JUDGES.

GUIDUGLI, JUDGE. Buster Chandler (hereinafter "Chandler"), proceeding pro se, has appealed the Lyon Circuit Court's November 28, 2000, order denying his motion to strike. Having considered the parties' briefs and the applicable case law, and having concluded that the appeal was taken from a non-final and non-appealable order, the Court must dismiss the above-styled appeal.

On August 4, 2000, Chandler filed a complaint in Lyon Circuit Court naming the Commissioner of Corrections, the warden and programs director of Kentucky State Penitentiary, an ACLU attorney, and Lyon Circuit Court Judge Cunningham as respondents. He demanded a jury trial and monetary damages for alleged violations of his civil rights. Chandler claimed that he was not

provided with the necessary materials to allow him to exercise his right to access the courts. After the respondents filed their answer to the complaint, Chandler moved the circuit court to set a discovery schedule pursuant to CR 26.01 and 26.02(1). The respondents filed a response to Chandler's motion, stating that they did not object to discovery, but requested that the circuit court limit it to sixty days.

Chandler moved to strike the response pursuant to CR 12, arguing that the respondents were misleading the court regarding the staff at Kentucky State Penitentiary. The circuit court denied the motion to strike on November 28, 2000, noting that the motion was without legal basis. It is from this order that the present appeal was taken.

It is well settled in this Commonwealth that, with a few exceptions not applicable here, an appeal may only be taken from a final or appealable judgment. CR 54.01 defines a final or appealable judgment as "a final order adjudicating all the rights of the parties in an action or proceeding, or a judgment made final under Rule 54.02." Here, the order denying the motion to strike was clearly interlocutory. The circuit court merely denied a motion to strike; it did not decide the merits of the action or even rule on the pending motion to set a discovery schedule. Even if the necessary recitals had been included in the order, CR 54.02 would not have worked to make this purely interlocutory order final. Therefore, the order is not reviewable by this Court as a direct appeal at this time. Hook v. Hook, Ky., 563 S.W.2d 716 (1978). Once the circuit court has

issued a ruling finally adjudicating the merits of the action,  
Chandler will then be able to appeal any adverse result.

For the foregoing reasons, the above-styled appeal is  
ORDERED DISMISSED.

ALL CONCUR.

ENTERED: June 7, 2002

/s/ Daniel T. Guidugli  
JUDGE, COURT OF APPEALS

BRIEF FOR APPELLANT PRO SE:

Buster Chandler  
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BRIEF FOR APPELLEE:

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