

Commonwealth Of Kentucky

Court Of Appeals

NO. 2002-CA-000447-MR

DONNELL FLIPPIN

APPELLANT

v. APPEAL FROM LYON CIRCUIT COURT
HONORABLE BILL CUNNINGHAM, JUDGE
ACTION NO. 01-CI-00201

WILLIAM HENDERSON, DEPUTY WARDEN;
LOIS LYLE, SERGEANT;
JOE O'CULL, CHAPLAIN

APPELLEES

OPINION
AFFIRMING
** ** * * * * *

BEFORE: BARBER, BUCKINGHAM AND HUDDLESTON, JUDGES.

BARBER, JUDGE: Donnell Flippin ("Flippin") appeals from an order of the Lyon Circuit Court dismissing his motion for declaratory judgment and injunctive relief. We affirm.

Flippin is an inmate at the Kentucky State Penitentiary in Eddyville, Kentucky. On November 7, 2001, Flippin filed a motion for declaratory judgment and injunctive relief against deputy Warden, William Henderson ("Henderson"), Corrections Sergeant, Lois Lyle ("Lyle"), and Chaplain, Joe O'Cull ("O'Cull"), asking the circuit court to restrain these officials from interfering with his rights to religious freedom and privacy. More specifically, Flippin sought declaratory judgment so that he may wear a hairnet, which Flippin claims is "religious

headgear," in contravention of the prison's dress code for inmates. Further, Flippin requested the circuit court declare that O'Cull violated his right to privacy by reviewing Flippin's medical files. Flippin's motion also requested compensatory and punitive damages.

The facts of this matter are as follows. Flippin, a self-proclaimed Nazarite, asserts that his religion prohibits him from shaving his head.¹ Flippin alleges that he suffers from male pattern baldness and, as such, he wears a hairnet as a symbolic means of maintaining long hair. Wearing this hairnet, Flippin contends, allows him to stay in conformity with the Nazarite doctrine.²

On March 29, 2000, Warden Philip Parker informed Flippin by memorandum that he could wear his hairnet except when entering the cellhouse. According to Warden Parker's memorandum, wearing headgear was prohibited when entering the cellhouse so that prison personnel could easily identify the incoming inmates.

On March 15, 2001, pursuant to instructions from Henderson, Sergeant J.R. Jones informed Flippin that he was not permitted to wear the hairnet. Flippin immediately filed a

¹ Flippin cites Judges 13:5 (King James) as authority for this aspect of the Nazarite faith.

² The appellees point out that Flippin has previously sought legal redress against certain officers of the Kentucky State Penitentiary for their refusal to allow him to wear a hairnet for medical purposes. The United States District Court, Eastern District of Kentucky, ruled against Flippin on his medical necessity and First Amendment claims on December 11, 1998. The United States Court of Appeals for the Sixth Circuit affirmed the district court's judgment in an unpublished opinion on December 16, 1999.

grievance with the prison claiming that forcing him to remove his hairnet violated his right to practice the Nazarite faith.

Chaplain O'Cull responded to Flippin's grievance by contacting the prison's medical department to determine if Flippin suffered from male pattern baldness. After consulting with the prison's medical department, O'Cull informed Flippin that a diagnosis for male pattern baldness was not found within his medical files.

Additionally, O'Cull advised Flippin that he was not aware that the Nazarite religion required its followers to wear a hairnet.

On October 29, 2001, Lyle informed Flippin that a newly adopted dress code superceded Warden Parker's memorandum. Flippin protested by again alleging that his religion requires the use of the hairnet. Lyle informed Flippin that, unless he produces evidence that the Nazarite religion requires its members to wear a hairnet, he is violating the inmate dress code and will be disciplined. At this point, Flippin removed the hairnet.

The record is silent as to whether Flippin pursued this matter through any grievance process established by the penitentiary. Nevertheless, Flippin filed this action with the Lyon Circuit Court. The trial court dismissed the motion. This appeal followed.

Flippin brings forward three assertions of error for our review. First, Flippin argues that the trial court erred by failing to serve summons upon the appellees before their attorney answered his motion; failing to notify the parties of its intent to dismiss his motion; failing to provide him the opportunity to amend his motion; and by failing to state a reason for dismissing

this motion. We have reviewed all of these assertions and find that each of these claims are completely without merit.

The record's case history clearly reflects that each appellee received a summons. Further, the trial court, in its February 4, 2002 order, informed the parties of its intention to dismiss this action. Further, Flippin, in opposing the appellees' motion to dismiss this matter, did not request an opportunity to amend his motion prior to the trial court's ruling. Finally, Flippin's argument that the trial court erred by failing to state its reason for dismissing his motion is erroneous. The trial court, when ruling upon motions, is under no obligation to provide findings of facts or conclusions of law. CR 52.01; Clay v. Clay, Ky., 424 S.W.2d 583, 584 (1968).

For his second assertion of error, Flippin alleges that the trial court's order denied him his right, guaranteed by the First and Fourteenth Amendments to the United States Constitution, to practice and fully comply with the Nazarite religion. We disagree.

Flippin correctly asserts that prisoners must be afforded reasonable opportunities to freely exercise their religious beliefs. Cruz v. Beto, 405 U.S. 319, 92 S. Ct. 1079, 31 L. Ed. 2d 263 (1972). Congress has also passed legislation further defining when the government may interfere with a person's right to practice particular religious beliefs. The Religious Freedom Restoration Act of 1993 (RFRA), 42 U.S.C. § 2000bb-1, provides in part as follows:

(a) In general. Government shall not substantially burden a person's exercise of

religion even if the burden results from a rule of general applicability, except as provided in subsection (b).

(b) Exception. Government may substantially burden a person's exercise of religion only if it demonstrates that application of the burden to the person -

(1) is in furtherance of a compelling governmental interest; and

(2) is the least restrictive means of furthering that compelling governmental interest.

The RFRA fully applies to prisoners. Estep v. Dent, 914 F. Supp. 1462, 1466 (W.D. Ky. 1996). Congress, by passing RFRA, rejected the less rigorous standard applied in Employment Division, Dept. of Human Resources of Oregon v. Smith, 494 U.S. 872, 110 S. Ct. 1595, 108 L. Ed. 2d 876 (1990). In Smith, the Supreme Court held that a "valid and neutral law of general applicability" will be upheld if it is reasonably related to a legitimate governmental interest, even if the law places an incidental burden on the free exercise of religion. Id. In response to this narrow reading of the First Amendment, Congress enacted the RFRA and reinstated the compelling governmental interest test enunciated in Wisconsin v. Yoder, 406 U.S. 205, 92 S. Ct. 1526, 32 L. Ed. 2d 15 (1972), and Sherbert v. Verner, 374 U.S. 398, 83 S. Ct. 1790, 10 L. Ed. 2d 965 (1963). See 42 U.S.C. § 2000bb(b) (1).

Thus, under the RFRA, any substantial restriction on the religious liberties of inmates will fail unless the government can demonstrate that the restriction is in furtherance of a compelling governmental interest, and that the restriction

imposed is the least restrictive method of furthering that governmental interest. Estep, 914 F. Supp. at 1466. In other words, RFRA ensures that all claims of free exercise of religion are governed by the compelling interest standard rather than the lower reasonableness standard.

In order to succeed on his claim, this Court must first determine if Flippin has shown that he has a strong or substantial likelihood of probability of success on the merits. Flippin must initially show that his religious beliefs as a Nazarite are sincere. Flippin must also establish that the tenets of the Nazarite faith require him to wear a hairnet. Id. The determination of whether an individual is sincere in his beliefs is a factual one. The United States Supreme Court has cautioned that it "is not within the judicial ken to question the centrality of particular beliefs or practices to a faith, or the validity of particular litigants' interpretations of those creeds." Hernandez v. C.I.R., 490 U.S. 680, 699, 109 S. Ct. 2136, 2148, 104 L. Ed. 2d 766 (1989).

Upon review of this matter, there is no evidence in the record demonstrating that Flippin's Nazarite beliefs are truly sincere. Even if Flippin's beliefs are sincere, he can point to no religious text, doctrine, authority or scholarly interpretation proclaiming that wearing a hairnet is required practice for Nazarites suffering from male pattern baldness. Since Flippin produced no evidence supporting his belief that wearing a hairnet is recognized in the Nazarite faith as a symbolic representation of long hair, we believe that the

appellees did not substantially burden Flippin's exercise of religion by requiring adherence to the prison's dress code.

Finally, Flippin argues that Chaplain O'Cull's review of his medical records violated his constitutional right to privacy. Again, we disagree. Contrary to Flippin's argument, the federal constitution does not encompass a general right to non-disclosure of private information. Doe v. Wiggington, 21 F.3d 733, 740 (6th Cir. 1994). We believe that prison personnel, such as O'Cull, can access an inmate's medical information when acting in an official capacity. Flippin's own motion suggests that O'Cull accessed the medical records only to determine whether Flippin had a medical reason to wear a hairnet. Flippin produced no evidence that O'Cull failed to keep said medical records confidential, or that O'Cull accessed his medical records for another purpose. Thus, we hold that the trial court correctly dismissed Flippin's motion for declaratory judgment since Flippin's privacy rights were not violated by O'Cull's actions.

For the aforementioned reasons, the judgment of the Lyon Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT

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BRIEF FOR APPELLEES

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