

Commonwealth Of Kentucky

Court of Appeals

NO. 2002-CA-001825-MR

BUSTER CHANDLER

APPELLANT

v. APPEAL FROM LYON CIRCUIT COURT
HONORABLE BILL CUNNINGHAM, JUDGE
ACTION NO. 01-CI-00093

KENTUCKY DEPARTMENT OF CORRECTIONS

APPELLEE

OPINION
REVERSING AND REMANDING

** ** * * *

BEFORE: BARBER, SCHRODER AND TAYLOR, JUDGES.

TAYLOR, JUDGE: Buster Chandler brings this *pro se* appeal from a August 12, 2002 order of the Lyon Circuit Court. We reverse and remand.

On May 8, 2001, appellant filed a "Complaint for Violation of The Civil Rights Statute of 42 U.S.C.A. 1983 With The Request for Declaratory and Injunctive Relief and Jury trial Demand." Therein, appellant specifically alleged that prison officials improperly denied him access to two magazines- U.S.

Calvary, Inc. and Soldier of Fortune. On June 12, 2002, appellant filed a "Motion to Recusal of Bill Cunningham Judge, Lyon Circuit Court Pursuant to K.R.S 26.A.020 and SCR.4.300." Appellant attached thereto an affidavit stating, *inter alia*, that Judge Cunningham would not afford him a fair and impartial hearing because of his "close and personal relationship with the staff of the Kentucky State Penitentiary". He further stated that Judge Cunningham "has shown bias against blacks" and has unfairly given harsher sentences to black defendants. Subsequently, the court, *sua sponte*, entered an order directing appellant to show cause why he should not be sanctioned under Ky. R. Civ. P. (CR) 11 and why his pleadings should not be stricken under CR 12.06. On August 12, 2002, the circuit court entered an order striking appellant's pleadings and sanctioning appellant under CR 11 by prohibiting him from filing any actions in the Lyon Circuit Court for a period of five years. This appeal follows.

Appellant essentially argues that the circuit court committed error by striking his pleadings under CR 12.06 and by imposing sanctions under CR 11. We are compelled to agree.

Under Kentucky Revised Statutes 26A.020, a party may file a motion seeking disqualification of a judge with supporting affidavit. Once the motion and affidavit has been filed, the circuit court must stay the proceedings pending a

determination of the challenge by the Chief Justice of the Supreme Court. See Jackson v. Commonwealth, Ky., 806 S.W.2d 643 (1991). Although we harbor grave doubt as to the veracity of the allegations contained in appellant's affidavit, the circuit court is, nonetheless, without jurisdiction to proceed in the action until the Chief Justice renders an opinion upon disqualification. See id.

The record is clear that appellant filed the motion for recusal and accompanying affidavit before the circuit court entered its order. As such, we are of the opinion the circuit court was without jurisdiction to enter the August 12, 2002, order striking appellant's pleadings and imposing sanctions.

For the foregoing reasons, the order of the Lyon Circuit Court is reversed and this cause is remanded for proceedings consistent with this opinion.

ALL CONCUR.

BRIEF FOR APPELLANT:

Buster Chandler, *Pro Se*
Eddyville, Kentucky

BRIEF FOR APPELLEE:

John T. Damron
Frankfort, Kentucky