

RENDERED: March 5, 2004; 10:00 a.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2002-CA-002493-MR

LAWRENCE M. FROMAN

APPELLANT

v. APPEAL FROM HARDIN CIRCUIT COURT
HONORABLE PHIL PATTON, SPECIAL JUDGE
ACTION NO. 02-CI-01755

JANET P. COLEMAN, JUDGE

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: BARBER and BUCKINGHAM, JUDGES; and MILLER, SENIOR JUDGE.¹

BUCKINGHAM, JUDGE: Lawrence M. Froman appeals from an order of the Hardin Circuit Court dismissing his civil complaint against the appellee, Judge Janet P. Coleman, circuit court judge in Hardin County. We affirm.

Froman was convicted in 1985 in the Hardin Circuit Court of a sex crime. He was sentenced to 45 years in prison.

¹ Senior Judge John D. Miller sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

Judge Coleman, who was an assistant county attorney at the time, was the prosecutor in the case. Froman is now an inmate at the Kentucky State Reformatory in LaGrange, Kentucky. He acknowledges that he currently takes medication for psychological problems and sees a psychiatrist several times a year. He resides in the psychological dorm at the reformatory.

Since Froman was convicted and sentenced to prison, he has brought numerous law suits against various persons who were involved in his prosecution. Froman filed this case against Judge Coleman on August 19, 2002. Therein, he alleged a civil rights violation. Specifically, he alleged that Judge Coleman committed a crime against his son several years prior to prosecuting Froman and sending him to prison. Froman alleges that he did not know of the situation until he was informed by another inmate in 2002.

Judge Coleman and the other circuit judge in Hardin County obviously recused from the case. Judge Phil Patton, a circuit judge in a nearby county was appointed as a special judge. In an order entered on November 12, 2002, Judge Patton dismissed Froman's complaint. Judge Patton did not state his reasons for dismissing the complaint in his written order. This appeal by Froman followed.

Having reviewed the record, it is apparent that Froman's complaint was properly dismissed for several different

reasons. First, CR² 17.01 requires that a civil action be prosecuted by the real party in interest. While Froman claims he had the right to bring the action on behalf of his son since his son could not afford an attorney, we conclude otherwise. Froman's son was an adult and was the real party in interest. Thus, Froman had no standing to bring the action. See Combs v. Richards, Ky. App., 63 S.W.3d 193 (2001).

Also, Froman asserts that he suffered severe emotional distress due to the actions of Judge Coleman and that he was personally entitled to bring the action on his own behalf. Such a claim for emotional distress by a parent is not actionable. See Michals v. William T. Watkins Methodist Church, Ky. App., 873 S.W.2d 216, 218 (1994). Furthermore, KRS³ 454.405(5) prohibits this action by Froman. That statute prohibits an inmate from maintaining a civil action for monetary damages for mental or emotional injury without first showing a physical injury. Id.

Next, Froman's complaint, which he acknowledges is a violation of civil rights complaint, is barred by the applicable statutes of limitation. The applicable statute of limitation in Kentucky for a federal civil rights claim is one year. See KRS 413.140(1)(a); Leonard v. Corrections Cab., Ky. App., 828 S.W.2d

² Kentucky Rules of Civil Procedure.

³ Kentucky Revised Statutes.

668, 670 (1992). The applicable statute of limitation for a state civil rights claim is five years. KRS 413.120(2); Leonard, supra. While Froman contends that these statutes of limitation are not applicable to him because he did not find out about the alleged situation until 2002, he cites no authority that would hold that the discovery rule is applicable to these types of cases. Furthermore, we know of none. Thus, we conclude that his civil action against Judge Coleman was barred by the statutes of limitation and was properly dismissed for this additional reason.

Finally, Judge Coleman notes that the action against her was properly dismissed pursuant to KRS 454.405(1). That statute allows a court to dismiss a civil action brought by an inmate if it is satisfied that the action is malicious, harassing, legally without merit, or factually frivolous. While Judge Patton did not specifically state his reasons for dismissing this case, he certainly would have had the authority to do so under this statute.

The order of the Hardin Circuit Court dismissing Froman's complaint is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Lawrence H. Froman, *Pro Se*
LaGrange, Kentucky

BRIEF FOR APPELLEE:

Jerry M. Coleman
Elizabethtown, Kentucky