

Commonwealth Of Kentucky

Court of Appeals

NO. 2003-CA-002615-MR

HERBERT R. SMITH

APPELLANT

v.

APPEAL FROM LYON CIRCUIT COURT
HONORABLE BILL CUNNINGHAM, JUDGE
ACTION NO. 03-CI-00112

VERTNER L. TAYLOR,
DEPARTMENT OF CORRECTIONS

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: COMBS, CHIEF JUDGE; GUIDUGLI AND KNOPF, JUDGES.

GUIDUGLI, JUDGE: Herbert R. Smith (hereinafter "Smith") appeals from an order of dismissal entered by the Lyon Circuit Court on August 6, 2003, which dismissed his sixty-one (61) page civil rights action. We affirm.

On May 29, 2003, Smith, who is an inmate at the Kentucky State Penitentiary in Eddyville, filed a civil rights action alleging numerous causes of action relative to his treatment while an inmate over the past several years. Named as defendants were Vertner L. Taylor, in his official capacity as

Commissioner of the Kentucky Department of Corrections, as well as numerous other individuals, such as the warden, prior prison employees, and doctors and nurses who had contact with Smith at the prison. In his sixty-one (61) page complaint, he alleges he has been injured due to the actions of these numerous individuals. For example, in paragraph number one of his civil rights action, he alleges:

This action contains both State (Kentucky) and Federal Law claims, seeks declaratory relief, and seeks monetary relief from the defendants individually and severally due to their narrow infallible beliefs and egregious, willful, malicious, unconscionable, intentional, harassment, and retaliation behavior, alone and in combination, that deprived the Plaintiff of the minimal civilized measure of life's necessities, in which, resulted in Plaintiff suffering injuries, extreme pains, extreme mental and emotional distress, and living a shorter life span, therefore, the defendants acts, policies and practices constituted medical, administrative, official, and officer malpractice, showed "denial and deliberate indifference" toward the necessities in life Plaintiff needed, treated Plaintiff unequally, and "imposed atypical and significant hardship upon the Plaintiff in relation to the ordinary incidents in prison life," thus, violating Plaintiff's rights secured under the Kentucky and United States Constitutions and Laws.

At the conclusion of his complaint, he claims:

82. Therefore, the Defendants have egregiously, willfully, maliciously, and unconscionably violated Plaintiff's rights secured under Sections 2,8,10,17,254 of the

Kentucky Constitution, the First, Fourth, Eighth, Thirteenth, and Fourteenth Amendments of the United States Constitution, as well as violating any rights Plaintiff may have under Kentucky Statutory Laws, under Kentucky Department of Corrections Regulations that have the force and effect of law, and under the general ruse(s) in Kentucky governing medical, administrative, official and officer malpractice.

In his request for relief, he seeks the following

relief:

WHEREFORE, the Plaintiff requests for the Court to:

1. Declare the acts, policies and practices of the Defendants as being extreme, outrageous, intentional, harassment, retaliation, that egregiously, willfully, maliciously, and unconscionably inflicted injuries and wanton and unnecessary pains upon the Plaintiff that caused Plaintiff to suffer extreme mental and emotional distress, and after examinations by competent practioners, resulted in the contribution to Plaintiff living a shorter life span.
2. Order Defendants Vertner L. Taylor and Glenn Haeberlin to immediately make "free of charge" to the Plaintiff, arrangements for the Plaintiff to be examined by any reasonably competent practitioner in order to conduct examinations of Plaintiff and give "opinions" as to whether or not the Plaintiff:
 - A. suffered any long-term injuries from a crushed chest on May 11, 2000;

- B. suffered any long-term injuries to his nasal passage on May 11, 2000;
- C. suffered any long-term injuries to his right testicle on May 11, 2000;
- D. has contracted cancer, and if so, the type of cancer and the approximate date the said cancer was contracted and if there existed a treatment to slow down or prevent the contraction of the said cancer;
- E. is a borderline diabetic (sic);
- F. is at high-risk of contracting diabetes (sic) or type 11 diabetes (sic);
- G. has contracted herpes, and the type of herpes contracted;
- H. has contracted a scalp disease, and the type of scalp disease contracted;
- I. has a high level of cholesterol; and
- J. any other medical or physical ailment Plaintiff has that may be discovered during the said examinations; and
- K. as to what may have caused the above A through J, and the recommended treatment for above A through J.

- 3. Award Plaintiff a total of five million dollars (\$5,000,000.00) in compensatory damages for injuries, pains, and extreme mental and emotional distress he has suffered from the Defendants unlawful acts, policies and practices, or in the alternative, award the Plaintiff as much compensatory damages as the laws will allow.
- 4. Award Plaintiff a total of ten million dollars (\$10,000,000.00) in punitive

damages because, such damages are proper due to the Defendants willful and malicious conduct as described on foregoing Pages 58 and 59 under numerals 81 and 82, SEE KRS 411.184 and KRS 411.186, and such said damages serves to deter the Defendants from continuing their willful and malicious conduct, and serves to deter others from similar behavior, or in the alternative, award the Plaintiff as much punitive damages as the laws will allow.

On July 17, 2003, counsel for the defendants¹ filed a motion to dismiss. In the motion the defendants requested that the pleadings be stricken and the claim dismissed. They alleged that Smith is a "frequent litigator" and that the "pleadings serve no legitimate purpose and it mocks the legal process." The motion stated that the events Smith complained of were from a period of time outside the applicable statute of limitations and that pursuant to KRS 454.405 an inmate's action can be dismissed if it is malicious, harassing or factually frivolous. Following Smith's response to the motion to dismiss, the Lyon Circuit Court entered its order of dismissal. The circuit court order stated:

The Court hereby dismisses Petitioner's claim under KRS 454.405, which allows courts to dismiss claims "if satisfied that the action is malicious or harassing or if satisfied that the action is legally without merit or factually frivolous."

¹ It should be noted that no appellee brief has been filed in this matter.

Petitioner has set forth claims against twenty (20) prison officials ("Respondents"), asserting mostly that Respondents have violated his civil rights by refusing to provide him with adequate medical care, which resulted in various personal injuries. Petitioner also claims that he has been unlawfully prevented from obtaining prison employment, and further has unlawfully been forced to work forty (40) hours of "extra duty" during his yard time. However, after reviewing Petitioner's twelve (12) causes of actions contained in his sixty-one (61) page complaint, the Court concludes that the overwhelming majority of Petitioner's claims have previously been barred by the statute of limitations in KRS 413.140.² The Court further finds that any other claims set forth by Petitioner fail to state a cause of action and should therefore be dismissed under Rule 12.02(f) of the Kentucky Rules of Civil Procedure.

The Court also notes that Petitioner has failed to adhere to CR 8.01, which states that parties should set forth short and plain statements of claims. The Court finds that the length of Petitioner's complaint serves no legitimate legal purpose in this matter, but rather is yet another means for Petitioner to harass Respondents, leaving them as well as this Court to "sift through [his] complaint like a minor (sic) panning for gold."

Based on all of the foregoing, **IT IS HEREBY ORDERED AND DIRECTED** that Petitioner's case is hereby **DISMISSED**.

This is a final and appealable order, and there is no just cause for delay.

² KRS 413.140 requires that all claims related to personal injury, malpractice, negligence, or arising from disciplinary proceedings at detention facilities must be filed within one (1) year of the injury. (Footnote in original).

We have thoroughly reviewed the record, Smith's arguments, both at the trial level and to this Court, and the applicable law and agree that Smith's civil rights action should have been dismissed. The majority of his claims are barred by the one-year statute of limitations provided for in KRS 413.140. The remaining allegations against prison personnel were properly disposed of pursuant to KRS 454.405 in that they were malicious, harassing, without legal merit and/or factually frivolous.

For the foregoing reasons, the order of dismissal entered by the Lyon Circuit Court is dismissed.

ALL CONCUR.

BRIEF FOR APPELLANT:

NO APPELLEE BRIEF FILED

Herbert R. Smith, *Pro Se*
Eddyville, KY