

Commonwealth Of Kentucky

Court of Appeals

NO. 2003-CA-001785-MR

JERRY W. LEONARD

APPELLANT

v. APPEAL FROM BULLITT CIRCUIT COURT
HONORABLE THOMAS L. WALLER, JUDGE
ACTION NO. 03-CI-00660

CITY OF LEBANON JUNCTION, KENTUCKY; AND
COMMONWEALTH OF KENTUCKY, WORKFORCE
DEVELOPMENT CABINET, DEPARTMENT FOR EMPLOYMENT
SERVICES, KENTUCKY UNEMPLOYMENT INSURANCE
COMMISSION; FRANKFORT, KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: COMBS, CHIEF JUDGE; BUCKINGHAM AND TACKETT, JUDGES.

TACKETT, JUDGE: Jerry W. Leonard appeals from the dismissal of his action against the Commonwealth of Kentucky, Cabinet for Workforce Development and the City of Lebanon Junction. The Bullitt Circuit Court held that it had no subject matter jurisdiction, as Leonard sought money damages against an immune entity. Leonard argues on appeal that the Commonwealth is not entitled to sovereign immunity. We affirm.

Leonard's claim arises from a rejected claim for unemployment benefits, originally filed on April 1, 2001. On February 14, 2003, the Division of Unemployment Insurance held that Leonard had knowingly made false statements to establish the right to or the amount of benefits, and denied the claim accordingly. Leonard appealed that order, and a referee conducted an evidentiary hearing on March 13, 2003. The referee affirmed the original decision, and Leonard appealed that decision to the Kentucky Unemployment Insurance Commission. On April 30, 2003, the Commission ordered a new hearing before a different referee, because the tape recording of the hearing was blank.

Leonard did not attend the new hearing, and the Commission states in its brief that he did not attend because he was not furnished a copy of the blank tape. Leonard filed a notice on the day of the hearing stating that he would not participate in the scheduled hearing. The Commission states that the referee tried to contact Leonard three times unsuccessfully. Since the second hearing was not conducted, the Commission affirmed the original referee.

Rather than file a motion for reconsideration, Leonard filed this action in Bullitt Circuit Court, claiming damages for "wrongful and negligent acts" of the Commission and the City related to the handling of the unemployment claim. The circuit

court dismissed the action after the defendants asserted sovereign immunity. This appeal followed.

Leonard makes a rather tortured, incoherent argument against sovereign immunity. Since the doctrine of sovereign immunity evolved from the notion that "the King can do no wrong," and since the state constitution forbids the grant of any title of nobility, Leonard asserts that therefore, there is no such thing as sovereign immunity because there is no king. Particularly, Leonard argues that municipalities are not entitled to immunities at all; likewise, he claims that state agencies, not being governments in themselves, are not entitled to immunity. He also contends that the case of Yanero v. Davis, Ky., 65 S.W.3d 510 (2001) stands for the proposition that the Board of Claims statute is not a creation of immunity, but a waiver of immunity to the extent that immunity exists. He asserts that the requirement that he bring any action before the Board of Claims is unconstitutional.

Leonard also insists that his action is an original action and not an appeal, nor is it an attempt at judicial review of the decision of the Commission. Leonard maintained in the circuit court that the defendants did not understand this distinction when the defendants argued that Kentucky Revised Statute (KRS) 341.450 et seq. established a procedure for obtaining judicial review of a decision of the Commission, with

which Leonard failed to comply. According to Leonard, that statute does not limit the court's subject matter jurisdiction, since this action purports to be an action for damages for negligence in the performance of the agency's "ministerial functions".

Leonard fails to understand that the doctrine of sovereign immunity is not an "antiquated privilege" but is very much alive and well in Kentucky. As the Commission correctly points out, a government acts through its agencies, and those agencies are entitled to immunity when performing non-ministerial functions. Naturally, Leonard claims that the defendants were negligent in performing their ministerial functions, but a "ministerial" act is one in which the agency has no discretion; non-ministerial, or discretionary, acts cannot be a basis for recovery under the Board of Claims Act. Collins v. Commonwealth of Kentucky, Natural Resources and Environmental Protection Cabinet, Ky., 10 S.W.3d 122, 125 (2000).

Likewise, a state agency has absolute immunity when exercising a quasi-judicial power. "Quasi-judicial" power is the power of an administrative body to adjudicate the rights of persons before it; here, the Commission was acting in a quasi-judicial capacity in hearing Leonard's claim for unemployment benefits. Accordingly, it is entitled to absolute immunity for

any actions taken in the exercise of that power. Leonard claims that his action arises from the "publication" of notice that it was conducting a fraud investigation against him. This, too, is a discretionary function of the agency, and therefore the agency is entitled to immunity. Further, the acts Leonard complains of are the very acts that could have been reviewed had Leonard followed the statutory process outlined in KRS 341.450(1); having failed to exhaust his remedies, he cannot complain that he was falsely accused of making false statements in his application for unemployment benefits through a collateral attack on the agency's decision which purports to be an original action for defamation. Leonard's failure to conform to the statute, despite his assertions to the contrary, is fatal to his action against both the agency and his former employer.

We will not address the question of whether the Bullitt Circuit Court was the proper venue for the action, as our decision affirms the dismissal of the action for lack of subject matter jurisdiction. Leonard cannot maintain an action in any circuit court, so whether venue was proper is a moot point.

For the foregoing reasons, the judgment of the Bullitt Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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Ekron, Kentucky

BRIEF FOR APPELLEE: CITY OF
LEBANON JUNCTION, KENTUCKY

Mark E. Edison
Shepherdsville, Kentucky

BRIEF FOR APPELLEES:
COMMONWEALTH OF KENTUCKY,
WORKFORCE DEVELOPMENT CABINET,
DEPARTMENT FOR EMPLOYMENT
SERVICES, KENTUCKY
UNEMPLOYMENT INSURANCE
COMMISSION; FRANKFORT,
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