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TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2010-CA-001165-MR

SHARON TRAVIS

APPELLANT

v. APPEAL FROM FRANKLIN CIRCUIT COURT
HONORABLE THOMAS D. WINGATE, JUDGE
ACTION NO. 10-CI-00513

ADMINISTRATIVE OFFICE
OF THE COURTS

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: KELLER AND LAMBERT, JUDGES; SHAKE,¹ SENIOR JUDGE.

SHAKE, SENIOR JUDGE: Sharon Travis appeals from the May 20, 2010, order of the Franklin Circuit Court dismissing Travis's wrongful termination action against the Administrative Office of the Courts ("AOC") for lack of subject matter jurisdiction. We affirm.

¹ Senior Judge Ann O'Malley Shake sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

Travis was previously employed as a Family Court Administrator for Judge William Mitchell Nance, Family Court Judge for the 43rd judicial circuit of Kentucky. On March 29, 2009, Travis was terminated by the AOC. On March 24, 2010, Judge Nance filed a petition for writ of prohibition with the Kentucky Supreme Court, arguing unlawful interference with his powers as the appointing authority for employees within his office. *See Nance v. Kentucky Administrative Office of the Courts*, 336 S.W.3d 70 (Ky. 2011). The specific facts and circumstances surrounding Travis’s termination are an essential element of this appeal, as they form the basis for the trial court’s dismissal of her action. We adopt the Kentucky Supreme Court’s statement of the facts as conveyed in *Nance*, which reads, in relevant part:

In this case, the Court Administrator at issue had been the subject of a complaint made to the AOC Personnel Department during an exit interview of another employee. This complaint led to an investigation by an outside, neutral attorney. In her report, the investigator found that the Court Administrator had violated confidentiality principles relating to confidential matters and had created a hostile work environment, or “an atmosphere of fear.” Recommendations regarding her future employment were made, which were presented to the local official who refused to follow the recommendations and terminate her employment. No formal complaint was initiated under the Court of Justice harassment policy.

At that point, the Director of AOC entered the dispute. . . .

. . . .

Acting on the impartial report, former AOC Director Jason Nemes first asked Judge Nance to discharge the Administrator. Judge Nance had refused to participate in the investigation, and refused to discharge her when asked to do so.

At this point, three written communications become important to the analysis of this case. In a letter dated March 26, 2009, then-Director Jason Nemes wrote the Administrator to terminate her employment. The letter specifically states that “pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 27A.020(1), I am hereby terminating you as Family Court Administrator for the Barren Family Court.” Later in the letter he said, “I have concluded that your actions may place Judge Nance and the Court of Justice at risk for personal and professional liability.”

....

. . . In a letter to Judge Nance dated April 10, 2009, Chief Justice John Minton stated that he had delegated supervisory control to the Director, and that the Director had the authority to terminate the Administrator. In the second letter dated June 30, 2009, written after a meeting with Judge Nance in Frankfort, followed by a letter from the judge, Chief Justice Minton stated that after “further review of the facts of this case, the Kentucky Court of Justice Personnel Policies, and Kentucky statutes, I remain resolute in the conclusion that Ms. Travis’s termination was an appropriate and necessary measure.” In both letters, the Chief Justice referred to the investigative findings listing the conduct of the Administrator that led to her termination. . . .

Nance, 336 S.W.3d at 72-74.

The Supreme Court held that the Chief Justice holds the authority to terminate, or delegate termination of, Court of Justice employees and Nance’s petition was therefore denied. *Id.* On March 26, 2010, Travis filed a wrongful

termination action with the Franklin Circuit Court. That action was dismissed by the trial court for lack of subject matter jurisdiction. This appeal followed.

Jurisdictional issues are generally a question of law and therefore reviewed *de novo*. See *Grange Mutual Insurance Co. v. Trude*, 151 S.W.3d 803, 810 (Ky. 2004). On appeal, Travis argues that the trial court has subject matter jurisdiction to hear her complaint and therefore improperly dismissed her action. We disagree.

In support of its decision to dismiss Travis's action, the trial court stated:

[w]hile the Franklin Circuit Court can review administrative decisions of the AOC after *Jones*, it cannot review a decision made by [the] Chief Justice of the Kentucky Supreme Court. In this instance, the Chief Justice was informed about the results of the investigation and he made a decision to terminate Ms. Travis. Consequently, this Court would not be reviewing an AOC decision, but a decision made by the Chief Justice. Thus, this Court lacks subject matter jurisdiction and the case must be dismissed.

(emphasis in original).

We agree that the circuit court does not have the jurisdiction to review the Chief Justice's *authority* to perform certain administrative actions. It does, however, have the jurisdiction to review AOC personnel actions, whether ordered by the Chief Justice directly or by means of delegation, to the extent permitted by KRS 13B.140 as indicated by *Jones v. Commonwealth, Administrative Office of the Courts*, 171 S.W.3d 53, 55 (Ky. 2005). See also *Nance*, 336 S.W.3d at 74 (holding that the Chief Justice has power to terminate court administrator, both directly and by way of delegation). This distinction is pivotal. A review of

Travis's circuit court complaint reveals that her allegations are identical to those brought by Judge Nance in his petition to the Supreme Court.² The Supreme Court held:

At the heart of this matter is the question of whether the Chief Justice can terminate the employment of an employee working in a circuit judge's office, and if he has the authority, can it be delegated? *Such disputes are properly brought in this Court.*

Nance, 336 S.W.3d at 71 (emphasis added). The law is clear that challenges of the Chief Justice's authority are appropriately presented to the Supreme Court.

Regardless of the circuit court's wording, its judgment nevertheless rendered the appropriate outcome in this action.

Travis argues that the case of *Jones v. Commonwealth*, 171 S.W.3d 53, which held that the circuit court was the appropriate court to review personnel decisions of the AOC, is controlling. However, *Jones* is easily distinguishable from the case *sub judice*. *Jones* involved an appeal of an AOC personnel action, whereas *Nance* resolves the authority of the Chief Justice to unilaterally terminate an AOC employee as an administrative function. *Jones*, 171 S.W.3d 53; *Nance*, 336 S.W.3d 70. The party in *Jones* was a former tenured employee continuing his formal appeal process. *Jones*, 171 S.W.3d 53. Jones had previously requested an

² Although Travis's arguments appear identical to those brought by Judge Nance, this Court will refrain from adjudicating the effect of the Supreme Court's ruling in *Nance* upon the merits of Travis's action. As this opinion indicates, such a task is reserved solely for the Supreme Court. Further, because Travis's action is subject to potential restoration after the rendering of this opinion, she suffers no prejudice by our failure to address the merits of her action. *See* KRS 413.270; *see also* *Cherry v. Augustus*, 245 S.W.3d 766, 775 (Ky. App. 2006) (holding that the 90-day period under the savings statute begins to run upon the final appellate ruling that determines the disputed issue of jurisdiction).

informal meeting with the general manager of his division, directly appealed his official notification of intent to dismiss to the AOC, appealed to the Court of Justice Employee Grievance and Appeal Committee, and only then filed a timely appeal to the circuit court. *Id.* at 54. Conversely, Travis is a former *non-tenured* employee who never began an appeal process with the AOC but instead instituted a lawsuit directly against it. As a non-tenured employee, Travis concedes that she does not possess the grievance and appeal rights that the former employee in *Jones* held. Therefore, the facts pertaining to Travis's complaint are wholly dissimilar to those of *Jones*, making it inapplicable to her action.³

For the forgoing reasons, the Franklin Circuit Court's May 20, 2010, order dismissing is affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

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³ We note that Travis did not allege her termination to be a violation of Title VII, ADA, ADEA, or the United States or Kentucky Constitutions. Obviously, such claims would be subject to review, regardless of employee status.