

RENDERED: JANUARY 14, 2011; 10:00 A.M.  
NOT TO BE PUBLISHED

**Commonwealth of Kentucky  
Court of Appeals**

NO. 2008-CA-001847-MR

JAMES MCMILLEN

APPELLANT

v. APPEAL FROM MARION CIRCUIT COURT  
HONORABLE DOUGHLAS M. GEORGE, JUDGE  
ACTION NO. 08-CI-00362

CORRECTCARE INTEGRATED

APPELLEE

AND

NO. 2009-CA-000087-MR

JAMES MCMILLEN

APPELLANT

v. APPEAL FROM MARION CIRCUIT COURT  
HONORABLE DOUGHLAS M. GEORGE, JUDGE  
ACTION NO. 08-CI-00380

AVRIL CHAPMAN<sup>1</sup>

APPELLEE

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<sup>1</sup> This appellee's name is misspelled in the notice of appeal; it should be Arvil Chapman.

OPINION  
AFFIRMING

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BEFORE: LAMBERT AND STUMBO, JUDGES; SHAKE,<sup>2</sup> SENIOR JUDGE.

STUMBO, JUDGE: In this consolidated appeal, James McMillen contends that the Marion Circuit Court erred in dismissing for lack of jurisdiction his Petition for Declaration of Rights filed against Correctcare Integrated and Department of Corrections Commissioner, LaDonna Thompson. He also argues that a second Petition filed against Thompson and various corrections officers was improperly dismissed as moot. We must conclude that each Petition was properly dismissed, and accordingly affirm.

In January, 2008, McMillen – who was a prisoner at the Marion County Adjustment Center – was charged by way of a prison disciplinary report with making disrespectful language, gestures or actions. The charge arose from McMillen’s conduct at a shock probation hearing earlier that month, where McMillen told a pregnant prosecuting attorney that he “hoped her baby dies in her stomach.” When a transporting officer told him to be quiet and warned him that he would be placed in segregation, McMillen said “I don’t give a f\*\*\* about segregation.”

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<sup>2</sup> 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 Kentucky Revised Statutes (KRS) 21.580.

The matter proceeded before the Adjustment Committee, which found McMillen guilty of the violation and imposed a penalty of 15 days in segregation, suspended for 60 days. McMillen was informed of his privilege of appealing the disciplinary penalty to the Warden within 15 days. McMillen signed a document indicating that he received the notice and that he wished to appeal. However, no appeal was made within the 15-day period.

On September 2, 2008, McMillen filed a Petition for Declaration of Rights in Marion Circuit Court. The Petition, which listed Correctcare Integrated and LaDonna Thompson as Respondants, alleged that Correctcare failed to provide adequate medical care to McMillen. Though inartfully drafted, the Petition indicated that McMillen was then confined at the Little Sandy Correctional Complex (LSCC), and it mentions treatment at the emergency room of the St. Claire Regional Medical Center. LSCC is in Elliott County, Kentucky, and St. Claire Regional Medical Center is located in Rowan County, Kentucky.

The matter proceeded in Marion Circuit Court. On September 15, 2008, and before Correctcare had been served with the Petition or entered an appearance, the Marion Circuit Court dismissed the Petition by way of a handwritten Order on the docket sheet stating that the alleged incident of inadequate medical care did not occur in Marion County, Kentucky.

On September 28, 2008, McMillen filed a second Petition for Declaration of Rights in Marion Circuit Court. Several corrections employees were set out as Respondents on the Petition. As a basis for this Petition, McMillen

alleged that he was denied Due Process and a fair disciplinary hearing. The Petition also alleged that while McMillen was being transferred back to the detention center after the shock probation hearing, and for some time thereafter, prison employees improperly restrained him resulting in injury. He also alleged that correction officers made inappropriate statements to him, delayed or denied his access to medication and otherwise retaliated against him.

On December 31, 2008, the Marion Circuit Court rendered an Order dismissing McMillen's second Petition for failing to state a claim upon which relief could be granted. The court noted that the Disciplinary Committee's report upon which McMillen based his Petition set out a penalty of 15 days in segregation, probated for 60 days. As the 60-day probationary period had long since passed, the court determined that no actual controversy remained for adjudication. Accordingly, it dismissed McMillen's second Petition.

In this consolidated appeal, McMillen, *pro se*, argues that the Marion Circuit Court erred in dismissing each of his Petitions. He maintains that the court erred in failing to conclude that he was "recklessly handled, tortured and abused" by corrections employees while being transported to and from court, and during a later, unspecified transfer which apparently includes his transport to the St. Claire Regional Medical Center. He goes on to claim that Correctcare denied him medical attention, improperly released him into the general prison population when his physical and mental health was in decline, and that the circuit court erred in

failing to so rule. He seeks an Order reversing the circuit court's Orders dismissing his Petitions.

We find no error. We must first note that each of the respondents to McMillen's Petitions - other than Correctcare and Avril Chapman - have been dismissed from this appeal based on McMillen's failure to specify each appellee by name in his Notice of Appeal. CR 73.02(1). As such, only McMillen, Correctcare and Chapman are properly before us.

McMillen's first Petition alleged that Correctcare failed to provide him proper medical attention. As best we can tell from McMillen's Petition and supportive documentation, he appears to contend that the events at issue occurred while he was at LSCC and the St. Claire Regional Medical Center. These facilities are in Elliott County, Kentucky and Rowan County, Kentucky, respectively. McMillen filed the Petition in Marion Circuit Court, which dismissed the Petition for lack of jurisdiction before Correctcare was served or entered an appearance. Irrespective of McMillen's written argument, we are compelled to characterize the issue before us as whether the dismissal for lack of jurisdiction was proper. We must answer this question in the affirmative. The territorial boundaries of a circuit court are akin to subject matter jurisdiction. *Wolfenbarger v. Commonwealth*, 936 S.W.2d 770 (Ky. App. 1996). That is to say, the circuit court is without jurisdiction to adjudicate matters not occurring within its territorial jurisdiction. *Id.*; SCR 1.040. McMillen's first Petition did not allege a controversy subject to

the jurisdiction of the Marion Circuit Court, and accordingly we find no error on this issue.

McMillen's second Petition, which set out the individual corrections employees as respondents, was dismissed on December 31, 2008, based on McMillen's failure to assert an actual controversy. The Disciplinary Committee report on which the Petition was based recorded a penalty of 15 days in segregation, which was probated for 60 days. This 60-day period expired months before McMillen filed his second Petition on September 25, 2008. We find no basis for concluding that the circuit court erred in determining that no actual controversy remained for adjudication, and accordingly find no error in its December 31, 2008 Order dismissing McMillen's second Petition.

For the foregoing reasons, we affirm the Orders of the Marion Circuit Court dismissing McMillen's Petitions for Declarations of Rights.

ALL CONCUR.

BRIEF FOR APPELLANT:

James McMillen, *pro se*  
Sandy Hook, Kentucky

BRIEF FOR APPELLEES,  
ARVIL CHAPMAN, OFFICER  
SPURLING, AND OFFICER PONSE:

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C. Mike Moulton  
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BRIEF FOR APPELLEE,  
LADONNA THOMPSON:

Amy V. Barker  
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