

Commonwealth of Kentucky
Court of Appeals

NO. 2011-CA-002068-MR

COMMONWEALTH OF KENTUCKY,
JUSTICE AND PUBLIC SAFETY CABINET,
DEPARTMENT OF CORRECTIONS

APPELLANT

v.

APPEAL FROM FRANKLIN CIRCUIT COURT
HONORABLE PHILLIP J. SHEPHERD, JUDGE
ACTION NO. 10-CI-00807

JOHN MURRAY AND
THE KENTUCKY BOARD OF CLAIMS

APPELLEES

OPINION
REVERSING

** ** * ** * ** *

BEFORE: MOORE, NICKELL, AND TAYLOR, JUDGES.

TAYLOR, JUDGE: Commonwealth of Kentucky, Justice and Public Safety
Cabinet, Department of Corrections brings this appeal from an October 13, 2011,
Opinion and Order of the Franklin Circuit Court granting summary judgment to

John Murray and remanding to the Kentucky Board of Claims for further proceedings. We reverse.

Murray has been convicted of numerous criminal offenses in five separate indictments.¹ A dispute arose between Murray and the Department of Corrections concerning the proper calculation of his total sentence of imprisonment. Murray maintained that his total sentence was fifteen years' imprisonment; conversely, the Department of Corrections calculated the total sentence to be sixteen years' imprisonment. The dispute centered upon whether certain sentences of imprisonment should be concurrently or consecutively calculated under Kentucky Revised Statutes (KRS) 533.060(2).

On September 24, 2008, Murray filed a declaration of rights action (08-CI-001586) in the Franklin Circuit Court challenging the Department of Corrections' calculation of his sentence of imprisonment. By Opinion and Order entered April 3, 2009, the Franklin Circuit Court held that the relevant sentences should run concurrently resulting in a total fifteen-year sentence of imprisonment. The Department of Corrections filed a Kentucky Rules of Civil Procedure (CR) 59 motion to vacate, but no action was taken on the motion at the time.

Then, on January 22, 2010, Murray filed a claim (No. 2010-00059) against the Department of Corrections in the Board of Claims. KRS Chapter 44. Therein, Murray asserted that the Department of Corrections negligently calculated his sentences of imprisonment and negligently incarcerated him for a total of

¹ The indictments were in Nelson Circuit Court and are 98-CR-00004, 03-CR-00052, 03-CR-00073, 04-CR-00398, and 07-CR-00130.

sixteen years. Murray maintained that his total sentence was only fifteen years' imprisonment, as set forth in the April 3, 2009, order of the Franklin Circuit Court in Action No. 08-CI-001586. On April 15, 2010, the Board of Claims dismissed Murray's negligence claim. The Board of Claims concluded that Murray failed to demonstrate that the Department of Corrections owed him a duty and/or breached such a duty. On May 17, 2010, Murray sought judicial review of the Board of Claims dismissal in the Franklin Circuit Court (Action No. 10-CI-00807). Murray argued that the Board of Claims erroneously dismissed his negligence claim against the Department of Corrections.

Then, approximately one year later on May 2, 2011, the Department of Corrections filed a Notice of Hearing upon its CR 59 motion to vacate the April 3, 2009, order in Action No. 08-CI-001586. The CR 59 motion had been pending since 2009. By order entered September 21, 2011, the circuit court granted the CR 59 motion, vacated its April 3, 2009, order, and upheld the Department of Corrections' calculation of Murray's sentence of imprisonment resulting in a sixteen-year sentence of imprisonment.²

Shortly thereafter, on October 13, 2011, the circuit court rendered summary judgment in Action No. 10-CI-00807 and concluded that the Board of Claims improperly dismissed Murray's negligence claim against the Department of Corrections. While acknowledging that the Department of Corrections' calculation

² John Murray directly appealed the September 21, 2011, order to the Court of Appeals in Appeal No. 2011-CA-001955-MR. By Order entered July 23, 2012, the Court of Appeals dismissed the appeal as untimely, and Murray's motion for discretionary review was denied by March 13, 2013, order of the Kentucky Supreme Court.

of sixteen years' imprisonment was legally proper, the circuit court, nevertheless, held that the Department of Corrections possessed a duty to obey the April 3, 2009, order and breached that duty by incarcerating Murray for sixteen years. In so doing, the circuit court concluded that the Department of Corrections:

[I]s not vested with the power to impose a sentence on a defendant, nor is it vested with the discretion to alter a sentence imposed on a defendant, nor is it vested with the discretion to alter a sentence imposed by a court of law. In this case, it usurped the power of the trial court, and unilaterally altered the sentence imposed. This violates the separation of powers mandated in Section 27 and 28 of the Kentucky Constitution. The petitioner is entitled to compensation for the state's negligence in failing to comply with the mandatory duty imposed by the sentencing court in this case. (Citation omitted.)

....

The Court finds that the Department of Corrections owed the petitioner a duty to comply with the mandatory court order regarding the sentence of Mr. Murray.

Corrections breached this duty by negligently performing the ministerial act of application of the court ordered sentence. . . .

This appeal follows.

The Department of Corrections contends that the circuit court erred by granting summary judgment in favor of Murray and remanding Murray's negligence claim to the Board of Claims. The Department of Corrections argues that the circuit court improperly made findings of fact and improperly determined

that it breached a duty owed to Murray. The Department of Corrections also questions the “jurisdiction” of the Board of Claims. Murray’s Brief at 12.

To begin, summary judgment is proper where there exists no material issue of fact and movant is entitled to judgment as a matter of law. CR 56; *Steelvest, Inc. v. Scansteel Service Center, Inc.*, 807 S.W.2d 476 (Ky. 1991). When rendering summary judgment, the circuit court must view the facts and inferences therefrom in a light most favorable to the nonmoving party. *Id.* Our review proceeds accordingly.

A dispute existed between Murray and the Department of Corrections concerning the proper calculation of Murray’s total sentence of imprisonment. To resolve the dispute, Murray filed a Petition for Declaration of Rights (08-CI-001586) in the Franklin Circuit Court. Initially, by order entered April 3, 2009, the circuit court agreed with Murray that his total sentence of imprisonment was only fifteen years, and then by order entered September 21, 2011, the circuit court vacated the April 3, 2009, order and concluded that the Department of Corrections had properly calculated the sentence of imprisonment at sixteen years. The September 21, 2011, order is now final, and it appears that Murray was incarcerated, at most, for a total of sixteen years.

To prove negligence, it was incumbent upon Murray to demonstrate duty, breach of duty, causation, and injury. *See Pathways, Inc. v. Hammons*, 113 S.W.3d 85 (Ky. 2003). We agree with the circuit court that the Department of Corrections has a constitutional duty to comply with judicial orders and judgments,

including specifically the April 3, 2009, order. And, we also agree that the Department of Corrections arguably breached that duty by failing to comply with the April 3, 2009, order and incarcerating Murray for sixteen years. However, we do not believe that Murray can prove his claim of negligence because he cannot demonstrate injury. Based upon the unique facts herein, Murray was ultimately incarcerated for the legally permissible time period (sixteen years) as adjudicated by the September 21, 2011, order in Action No. 08-CI-001586. The September 21, 2011, order vacated the April 3, 2009, order and represents a final adjudication of the issue upon dismissal of Murray's appeal. As Murray was incarcerated for the legally proper time period, we conclude that he is unable to demonstrate a claim for negligence as he suffered no cognizable injury. Hence, we are of the opinion that the circuit court erroneously rendered summary judgment in favor of Murray.

We view the Department of Corrections remaining contentions as moot.

Accordingly, we reverse the circuit court's Opinion and Order and hold that the Board of Corrections properly dismissed Murray's negligence claim.

For the foregoing reasons, the Opinion and Order of the Franklin Circuit Court is reversed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Amy V. Barker
Justice and Public Safety Cabinet
Office of Legal Services
Frankfort, Kentucky

BRIEF FOR APPELLEE JOHN
MURRAY:

Jason P. Floyd
Bardstown, Kentucky