

RENDERED: FEBRUARY 13, 2015; 10:00 A.M.  
NOT TO BE PUBLISHED

**Commonwealth of Kentucky**  
**Court of Appeals**

NO. 2013-CA-001711-MR

ERIC LLOYD HERMANSEN

APPELLANT

v. APPEAL FROM GALLATIN CIRCUIT COURT  
HONORABLE ANTHONY W. FROHLICH, JUDGE  
ACTION NO. 11-XX-00003

COMMONWEALTH OF KENTUCKY,  
JUSTICE AND PUBLIC SAFETY  
CABINET, DEPARTMENT OF  
CORRECTIONS; LADONNA  
THOMPSON; LAURA VESTAL;  
PAT RUSSELL; AND BOARD OF  
CLAIMS

APPELLEES

OPINION  
AFFIRMING

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BEFORE: ACREE, CHIEF JUDGE; J. LAMBERT AND VANMETER,  
JUDGES.

VANMETER, JUDGE: Eric Lloyd Hermansen appeals from the Gallatin Circuit  
Court order affirming the Kentucky Board of Claims' dismissal of Hermansen's

complaint against the Department of Corrections (“DOC”). After a review of the applicable law, we affirm.

Hermansen filed a complaint with the Board of Claims on July 14, 2011, alleging that the DOC’s negligence violated his jural rights and his right to due process of law. Hermansen alleged that the DOC’s failure to completely eradicate any mention of two wanton endangerment convictions that were ordered expunged from his criminal record caused him personal injury for which he is entitled to damages. The Board of Claims dismissed Hermansen’s claim on October 20, 2011, finding that it lacked jurisdiction to address the complaint since such a claim is not contemplated within the Board of Claims Act found at KRS<sup>1</sup> Chapter 44, and therefore, Hermansen had failed to state a claim upon which relief could be granted. This appeal follows.

Dismissal under CR<sup>2</sup> 12.02(f), or for failure to state a claim upon which relief can be granted, is not appropriate “unless it appears the pleading party would not be entitled to relief under any set of facts which could be proved in support of his claim.” *Pari-Mutuel Clerks’ Union of Kentucky v. Kentucky Jockey Club*, 551 S.W.2d 801, 803 (Ky. 1977). “Since a motion to dismiss for failure to state a claim upon which relief may be granted is a pure question of law, a reviewing court owes no deference to a trial court’s determination; instead, an appellate court reviews the issue de novo.” *Fox v. Grayson*, 317 S.W.3d 1, 7 (Ky. 2010).

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<sup>1</sup> Kentucky Revised Statutes.

<sup>2</sup> Kentucky Rules of Civil Procedure.

The Board of Claims is a statutorily created entity and may only exercise the powers granted to it by the legislature. The legislature has granted the Board of Claims a limited power, including:

authority to investigate, hear proof, and to compensate persons **for damages sustained to either person or property** as a proximate result of negligence on the part of the Commonwealth, any of its cabinets, departments, bureaus, or agencies, or any of its officers, agents, or employees while acting within the scope of their employment by the Commonwealth or any of its cabinets, departments, bureaus or agencies....

KRS 44.070(1) (emphasis added). KRS 44.070 waives the Commonwealth's sovereign immunity for the limited purpose of permitting suits involving claims of negligence resulting in damage to one's person or property by an agency or employee of the Commonwealth. Hermansen does not claim that either his person or his property has been injured by the DOC's alleged negligence. Thus, hearing such a claim was not within the Board of Claims' authority or the sovereign Commonwealth's waiver of immunity.

Hermansen argues that when construed with KRS 446.080(1), KRS 44.070(1) should be read to include injury to jural rights. KRS 446.080(1) demands a liberal interpretation of statutes, stating:

All statutes of this state shall be liberally construed with a view to promote their objects and carry out the intent of the legislature, and the rule that statutes in derogation of the common law are to be strictly construed shall not apply to the statutes of this state.

We find no evidence, and Hermansen points to none, that indicates legislative intent to waive the Commonwealth's sovereign immunity with respect to alleged violations of jural rights or due process rights. Thus, even when KRS 44.070(1) is construed liberally, it does not grant the Board of Claims authority to hear such claims.

For the above reasons, the order of the Gallatin Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Eric Lloyd Hermansen, Pro se  
Eddyville, Kentucky

BRIEF FOR APPELLEE:

Linda M. Keeton  
Frankfort, Kentucky