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NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2014-CA-000842-MR

CLINTON BREWER-EL — APPELLANT

v.

APPEAL FROM FRANKLIN CIRCUIT COURT
HONORABLE PHILLIP SHEPERD, JUDGE
ACTION NO. 13-CI-00083

GARY BECKSTROM;
SARAH POTTER; AND
JOHN DUNN — APPELLEES

OPINION
AFFIRMING

** ** ** ** **

BEFORE: KRAMER, CHIEF JUDGE; DIXON AND TAYLOR, JUDGES.

KRAMER, CHIEF JUDGE: Clinton Brewer-EL brings this *pro se* appeal of an order of the Franklin Circuit Court dismissing his petition for a declaration of rights. He argues that the court abused its discretion when it found that he had failed to exhaust his administrative remedies. Because we hold that Brewer-EL did

fail to exhaust his administrative remedies, he had an adequate remedy under the law. Therefore, his claim fails on the merits, we affirm.

Relevant Facts

The facts of this case were provided the first time that this case was appealed to this Court:

> Appellant is currently incarcerated at the Eastern Kentucky Correctional Complex (EKCC). In 2013, he filed various administrative grievances at EKCC under the name "Clinton Brewer–EL." EKCC prison officials rejected the grievances because Appellant appended the "EL" suffix to his last name. The rejections informed Appellant that the prison would not "accept or process a grievance with 'EL'" after an inmate's last name unless the inmate had a "court ordered name change" on file with the prison. Since Appellant had no such order on file, the EKCC officials instructed Appellant to resubmit his grievances without the "EL" suffix.
>
> Instead of resubmitting the prior grievances without the suffix, Appellant filed a new grievance complaining that the prison's policy and rejection of his prior grievances violated his right to freely practice his religion under the First Amendment.[1] The prison also rejected this grievance on the basis that Appellant appended the "EL" suffix to his last name.
>
> Appellant then filed a writ of mandamus with the Franklin Circuit Court. He argued that the prison's policy violated his right to freely exercise his religion under the First Amendment. On April 2, 2013, the Kentucky Department of Corrections ("KDOC") moved the circuit court to dismiss Appellant's action for failure

[1] According to Appellant, he is part of the Moorish Science Temple of America, which dictates the use of the suffixes "EL or Bey" and forbids members from going to court to change their names accordingly. Appellant submitted documentation to substantiate his allegations in this regard.

> to comply with KRS[2] 454.415(2)-(3), which requires prisoners to exhaust their administrative remedies and to provide proof of exhaustion prior to seeking redress from the courts. On April 10, 2013, before Appellant's response time elapsed, the circuit court entered an order summarily dismissing the case….

Brewer-El v. Beckstrom, No. 2013-CA-000858-MR, 2014 WL 1536444, at *1 (Ky. App. Apr. 18, 2014). On appeal, this Court reversed and remanded the matter back to the circuit to issue an order specifically stating the reason why it dismissed Brewer–EL's case. The circuit court has since issued an order stating that it had dismissed Brewer–EL's case because he had failed to exhaust his administrative remedies under KRS 454.415. This appeal follows.

Analysis

Under KRS 454.415(1)(d), Brewer–EL was required to exhaust his administrative remedies before filing his petition for a declaration of rights concerning his conditions-of-confinement issue. Under KRS 454.415(3), he was required to "attach to any complaint filed documents verifying that administrative remedies have been exhausted." Brewer-EL failed to comply with this requirement. Compliance with KRS 454.415 is mandatory. *See Thrasher v. Commonwealth*, 386 S.W.3d 132, 134 (Ky. App. 2012) (affirming the trial court's dismissal of an inmate's declaration of rights petition for the failure to exhaust administrative remedies under KRS 454.415). Because Brewer-EL failed to exhaust his administrative remedies, the circuit court did not err in dismissing his petition.

[2] Kentucky Revised Statutes

We also agree with the Cabinet that Brewer-EL failed to satisfy the requirements for a writ of mandamus. "Mandamus is an extraordinary remedy which compels the performance of a ministerial act or mandatory duty where there is a clear legal right or no adequate remedy at law." *Mischler v. Thompson*, 436 S.W.3d 498, 502 (Ky. 2014). Brewer-EL did have an adequate remedy at law, in the form of a declaratory judgment. "A petition for declaratory judgment pursuant to KRS 418.040 has become the vehicle, whenever Habeas Corpus proceedings are inappropriate, whereby inmates may seek review of their disputes with the Corrections Department." *Million v. Raymer*, 139 S.W.3d 914, 918 (Ky. 2004) (quoting *Smith v. O'Dea*, 939 S.W.2d 353, 355 (Ky. App. 1997)).

Regardless, the merits of this exact issue were recently decided by this Court in an unpublished decision:

> Purely for the purpose of [a strict scrutiny analysis in the context of the free exercise of religion], this Court will assume the first prong has been met, and the regulation substantially burdens the Appellant's exercise of his faith.
>
> The requirement that inmates use their legal names on official documents serves a governmental interest. It ensures accurate record keeping, which would include having an institutional knowledge of which inmates are housed together, their disciplinary histories, and any medical or nutritional needs. This knowledge, in turn, affects both inmate safety and institutional security. Inmate safety and institutional security are unquestionably the paramount goals of the Department. Indeed, safely and securely housing convicted prisoners during the service of their terms is the very purpose of the Department. The governmental interest at stake here is therefore compelling.

> The next prong of the statutory strict scrutiny analysis is whether the regulation is the least restrictive means to achieve that compelling government interest. The Appellant contends that inmates are known primarily by their inmate identification numbers, and for that reason the name used or signature are irrelevant for identification purposes. Following his argument to its logical conclusion, his position is that the least restrictive means to meet the compelling government interest would be to eliminate the regulation entirely, and to allow any inmate to assume and sign any name imaginable in official documents as long as it was paired with an appropriate identification number.
>
> This Court finds the Appellant's proposed solution impracticable, as it would hinder the compelling government interests noted above. Identifying an inmate by both name and number serves a legitimate purpose. The redundancy, which the Appellant argues against, in fact enables the Department to trace errors when a digit in an inmate's identification number is transposed, or other typographical or scrivener's error occurs. Requiring an inmate to consistently use his legal name in official documents is the least restrictive means to accomplish the compelling goal of accuracy in record keeping.
>
> Even applying strict scrutiny, the most stringent standard of review available in civil rights cases, and affording the Appellant the benefit of an assumption that the first element is satisfied, the regulation still passes constitutional muster. It is the least restrictive means to accomplishing a compelling government interest.

Moorish Sci. Temple of Am., Inc. v. Thompson, No. 2014-CA-001080-MR, 2016 WL 1403495, at *4 (Ky. App. Apr. 8, 2016).[3] Although nonbinding, we find the

[3] Under CR 76.28(4)(c), "Opinions that are not to be published shall not be cited or used as binding precedent in any other case in any court of this state" unless "there is no published opinion that would adequately address the issue before the court." There is no published opinion in Kentucky that addresses this issue.

reasoning in that case persuasive. Because Brewer-EL has failed to exhaust his administrative remedies, he had an adequate remedy at law and his claim fails on the merits, the circuit court did not err in dismissing his petition for a declaration of rights.

Conclusion

In sum, we hold that the circuit court did not err when it found that Brewer-EL had failed to exhaust his administrative remedies because he failed to include documentation stating that he had exhausted his administrative remedies. We also hold that Brewer-EL had an adequate remedy at law, and that his claim fails on the merits.

The Franklin Circuit Court's order dismissing Brewer-EL's petition is therefore affirmed.

DIXON, JUDGE, CONCURS.

TAYLOR, JUDGE, CONCURS IN RESULT ONLY.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

Angela T. Dunham
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