

RENDERED: JUNE 17, 2016; 10:00 A.M.

NOT TO BE PUBLISHED

**Commonwealth of Kentucky**

**Court of Appeals**

NO. 2015-CA-000534-MR

JONATHAN DYER

APPELLANT

v. APPEAL FROM LYON CIRCUIT COURT  
HONORABLE CLARENCE A. WOODALL, III, JUDGE  
ACTION NO. 14-CI-00082

DIONNE HARDIN; JAY JONES;  
MARK E. TOWERY; TAMI BAUER;  
BRITTANY M. PATTON; SUSAN  
R. KNIGHT; RANDY WHITE;  
JAMES ROYSTER; AMY ROBERTS;  
ROBERT F. BELEN; AND DENNIS  
YEAGER, KSP/KDOC PERSONNEL

APPELLEES

OPINION  
AFFIRMING

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BEFORE: CLAYTON, JONES, AND TAYLOR, JUDGES.

TAYLOR, JUDGE: Jonathan Dyer brings this *pro se* appeal from a March 19, 2015, order of the Lyon Circuit Court dismissing Dyer's complaint in its entirety. We affirm.

Dyer is an inmate at the Kentucky State Penitentiary (KSP) in Eddyville, Kentucky. Dyer is presently serving a 32-year sentence for murder and other offenses.

In April 2013, Dyer assaulted another inmate on the KSP grounds. Upon conducting disciplinary hearings in June and July 2013, the prison adjustment committee adjudicated Dyer to be guilty of assaulting the inmate at KSP. Dyer's punishment was ninety days loss of meritorious good-time credit, 180 days of disciplinary segregation and restitution of \$27,889.69 in medical expenses incurred by the injured inmate. Dyer appealed the adjudication to the Warden and the Warden upheld the committee's decision.

Thereafter, in 2014, Dyer filed a complaint in the Lyon Circuit Court against Dionne Hardin, Jay Jones, Mark E. Towery, Tami Bauer, Brittany M. Patton, Susan R. Knight, Randy White, James Royster, Amy Roberts, Robert F. Belen, and Dennis Yeager, KSP/KDOC Personnel (collectively referred to as appellees). Dyer alleged, *inter alia*, that appellees failed to follow Kentucky Corrections Policies and Procedures (CPP) in connection with the investigation and adjudication of his charge before the prison adjustment committee. Dyer claimed that the CPP sets forth ministerial duties and that appellees are liable in tort for breach of said duties.

The Commonwealth responded by filing a motion to dismiss for failure to state a claim upon which relief could be granted. Kentucky Rules of Civil Procedure (CR) 12.02(f). By order entered March 19, 2015, the circuit court granted the motion and dismissed the action under CR 12.02(f) without the necessity of an evidentiary hearing. This *pro se* appeal follows.

Dyer contends that the circuit court erred by dismissing his tort claims against appellees per CR 12.02(f). In particular, Dyer asserts that appellees breached ministerial duties imposed under CPP 15.6 and that Dyer suffered injury as a result. Citing to *Yanero v. Davis*, 65 S.W.3d 510 (Ky. 2001), Dyer maintains that appellees are not entitled to immunity in a tort action for their failure to perform ministerial duties as set forth in CPP 15.6. For the following reasons, we conclude that the circuit court properly dismissed Dyer's complaint.

Under CR 12.02(f), the circuit court may dismiss an action if the complaint fails to set forth a claim upon which plaintiff would be entitled to relief. The complaint should only be dismissed where plaintiff would not be entitled to relief upon any facts that could be proved to support the claim. *Upchurch v. Clinton Cnty.*, 330 S.W.2d 428 (Ky. 1959).

In this case, Dyer has not cited this Court to a single Kentucky case that recognizes a viable tort action against prison officials for violation of the CPP in connection with prison disciplinary hearings. Prison disciplinary hearings are hybrid proceedings combining both investigative and adjudicative functions. While certain regulations may give rise to duties in tort, we are unwilling to extend

such rule to cases involving prison disciplinary hearings. *See Stratton v. Com.*, 182 S.W.3d 516 (Ky. 2006).

Therefore, we agree with and adopt the thorough legal analysis of the circuit court that Dyer failed to set forth a claim upon which relief could be granted. We hold that the circuit court properly dismissed Dyer's complaint under CR 12.02(f).

For the forgoing reasons the Order of Dismissal entered by the Lyon Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Jonathan Dyer, *Pro Se*  
Eddyville, Kentucky

BRIEF FOR APPELLEE:

Charles D. Aaron, Jr.  
Justice and Public Safety Cabinet  
Frankfort, Kentucky