

**Commonwealth of Kentucky**

**Court of Appeals**

NO. 2015-CA-001079-MR

TEDDY A. ALLMAN

APPELLANT

v. APPEAL FROM FRANKLIN CIRCUIT COURT  
HONORABLE THOMAS D. WINGATE, JUDGE  
ACTION NO. 13-CI-00748

KENTUCKY DEPARTMENT OF  
CORRECTIONS

APPELLEE

OPINION  
AFFIRMING

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BEFORE: J. LAMBERT, TAYLOR, AND THOMPSON, JUDGES.

TAYLOR, JUDGE: Teddy A. Allman brings this *pro se* appeal from a June 26, 2015, Opinion and Order of the Franklin Circuit Court denying his Kentucky Rules of Civil Procedure (CR) 60.02 motion. We affirm.

Teddy A. Allman was incarcerated at Luther Luckett Correctional Complex. On December 23, 2013, Allman filed a petition for declaratory

judgment seeking injunctive relief in the Franklin Circuit Court. Particularly, Allman was seeking an injunction directing the Kentucky Department of Corrections (Department) to provide him the toilet paper necessary to accommodate his irritable bowel syndrome (IBS). Attached to Allman's petition was a July 13, 2012, administrative decision by the Department's Medical Director stating he would allow Allman continued access to extra toilet paper to accommodate his medically diagnosed IBS.

By Opinion and Order entered August 1, 2014, (2014 Opinion and Order), the circuit court denied Allman's petition for injunctive relief. The circuit court specifically stated that Allman no longer resided "at one of the Department's adult correctional institutions." Rather, the court noted Allman was residing at a halfway house, and as such he was not in the Department's custody. Thus, the circuit court denied Allman's petition as moot.

Allman was subsequently reincarcerated and lodged at the Roederer Correctional Complex. On September 15, 2014, Allman filed a motion in the circuit court entitled "Motion to Compel/Belated Appeal." The circuit court treated the motion as one made pursuant to CR 60.02. Therein, Allman asserted that the 2014 Opinion and Order erroneously concluded he was no longer in the custody of the Department. Therefore, Allman argued his petition for injunctive relief was erroneously denied as moot.

In a June 26, 2015, Opinion and Order, the circuit court acknowledged it had incorrectly concluded Allman was not in the custody of the Department

while at the halfway house and that it had erroneously denied Allman's petition for injunctive relief as moot. The circuit court next concluded that Allman had not exhausted his administrative remedies as required by KRS 454.415 regarding his claim that adequate toilet paper was not supplied despite the directive of the Department's Medical Director in 2012. As Allman had not exhausted his administrative remedies the CR 60.02 motion was denied. This appeal follows.

Allman argues that the circuit court erroneously denied his CR 60.02 motion. In support thereof, Allman claims he was not supplied the toilet paper necessary to address his IBS condition and, thus, entitled to damages. The basis of Allman's claim is that the Department failed to supply him with the toilet paper that its Medical Director previously determined should be supplied for his IBS.

Pursuant to CR 60.02(a), a court may, upon motion, "relieve a party from its final judgment, order, or proceeding upon the following grounds: (a) mistake, . . . or (f) any other reason of an extraordinary nature justifying relief." And, CR 60.02 is an extraordinary remedy and is only available to prevent a substantial miscarriage of justice. *Gross v. Com.*, 648 S.W.2d 853 (Ky. 1983). CR 60.02 may only be utilized to raise issues that could not be raised by other proceedings. *McQueen v. Com.*, 948 S.W.2d 415 (Ky. 1997).

KRS 454.415 provides the proper procedure for inmates filing civil actions and provides:

- (1) No action shall be brought by or on behalf of an inmate, with respect to:

- (a) An inmate disciplinary proceeding;
- (b) Challenges to a sentence calculation;
- (c) Challenges to custody credit; or
- (d) A conditions-of-confinement issue;

until administrative remedies as set forth in the policies and procedures of the Department of Corrections, county jail, or other local or regional correctional facility are exhausted.

(2) Administrative remedies shall be exhausted even if the remedy the inmate seeks is unavailable.

(3) The inmate shall attach to any complaint filed documents verifying that administrative remedies have been exhausted.

(4) A court shall dismiss a civil action brought by an inmate for any of the reasons set out in subsection (1) of this section if the inmate has not exhausted administrative remedies, and may include as part of its order an assessment of court costs against the inmate as the court may deem reasonable and prudent. The correctional facility may enforce this assessment against the inmate's canteen account and against any other assets of the inmate through any other mechanism provided by law.

KRS 454.415 specifically states that an inmate challenging the conditions of their confinement is prevented from bringing a civil action unless his administrative remedies have been exhausted. And, a copy of any document verifying the exhaustion of those remedies shall be attached per KRS 454.415(3).

In the case *sub judice*, Allman has not demonstrated he exhausted his administrative remedies as to his claim that he was not supplied an adequate

amount of toilet paper. As Allman was challenging a condition of his confinement, it was necessary that he avail himself of the prison's administrative procedure before filing a judicial action. There is nothing in the record indicating that Allman sought the appropriate administrative remedies for the Department's failure to supply him with adequate extra toilet paper.<sup>1</sup> Allman did provide a July 13, 2012, decision from a healthcare grievance wherein the Department's Medical Director decided Allman should be provided "extra toilet paper as needed" due to his IBS. Thus, under the July 13, 2012, administrative decision Allman prevailed and was allowed access to extra toilet paper "as needed." If Allman is not being provided the toilet paper needed, his response is to pursue the appropriate administrative remedy.

Accordingly, we do not believe the circuit court erred by denying Allman's CR 60.02 motion as Allman has not demonstrated entitlement to such an extraordinary remedy. *See Gross v. Com.*, 648 S.W.2d 853 (Ky. 1983).

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

ALL CONCUR.

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<sup>1</sup> Teddy A. Allman did attach a February 19, 2015, decision of the Healthcare Grievance Committee to his Notice of Appeal filed on July 14, 2015. However, the document was not included in the record for the circuit court to consider before entry of its June 26, 2015, Opinion and Order denying Allman's Kentucky Rules of Civil Procedure 60.02 motion. As it was attached to the Notice of Appeal and not in the record for the circuit court to review, we will not consider the February 19, 2015, decision in this appeal. *See Lucas v. Lucas*, 720 S.W.2d 352 (Ky. App. 1986). Additionally, it would appear that the February 19, 2015, decision is the resolution of a separate and subsequent grievance filed after Allman's December 23, 2013, Petition for Declaration of Rights.

BRIEFS FOR APPELLANT:

Teddy Allman, *Pro Se*  
LaGrange, Kentucky

BRIEF FOR APPELLEE:

Linda M. Keeton  
Frankfort, Kentucky