

RENDERED: AUGUST 2, 2019; 10:00 A.M.  
NOT TO BE PUBLISHED

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

NO. 2017-CA-001170-MR

TERRY FARMER

APPELLANT

v. APPEAL FROM FRANKLIN CIRCUIT COURT  
HONORABLE THOMAS D. WINGATE, JUDGE  
ACTION NO. 17-CI-00561

KENTUCKY EXECUTIVE BRANCH  
ETHICS COMMISSION, KATHRYN H.  
GABHART, EXECUTIVE DIRECTOR

APPELLEE

OPINION  
AFFIRMING IN PART, VACATING IN PART,  
AND REMANDING

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BEFORE: NICKELL, TAYLOR, AND L. THOMPSON, JUDGES.

TAYLOR, JUDGE: Terry Farmer appeals from a Franklin Circuit Court order granting judgment on the pleadings to the Kentucky Executive Branch Ethics Commission, Kathryn H. Gabhart, Executive Director (Commission) regarding a petition it filed seeking to collect a \$10,000 fine owed by Farmer. After reviewing

the record and applicable law, we affirm the entry of judgment on the pleadings but vacate in part and remand with directions to modify the judgment to reflect two concessions made by the Commission in its brief.

This appeal is premised upon the same events which are the subject of two prior opinions by this Court. *Farmer v. Kentucky Transp. Cabinet*, No. 2012–CA–001505–MR, 2013 WL 5676831 (Ky. App. Oct. 18, 2013) (hereinafter referred to as “*Farmer I*”); *Farmer v. Kentucky Exec. Branch Ethics Comm’n*, No. 2015–CA–000541–MR, 2016 WL 3661893 (Ky. App. July 1, 2016) (hereinafter referred to as “*Farmer II*”). Farmer was formerly employed as an engineer for the Kentucky Transportation Cabinet (Cabinet). His employment was terminated in 2010 for intentionally misclassifying a culvert as a bridge on a farm jointly owned with his mother and his stepfather, to try to secure government funding to repair/replace the culvert.<sup>1</sup> In *Farmer I*, we held that “Farmer’s termination was neither excessive nor erroneous, was taken with just cause, and was supported by substantial evidence . . . .” 2013 WL 5676831, at \*1.

Meanwhile, in 2010 the Commission initiated proceedings seeking to impose civil penalties upon Farmer, alleging first that he “violated Kentucky Revised Statutes (KRS) 11A.020(1) by using his official position in an attempt to improperly influence the maintenance, repair, or replacement of a culvert which

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<sup>1</sup> Terry Farmer resided on the farm with his mother and stepfather in Leslie County, Kentucky.

provides drainage to property in which he and his mother have a personal and financial interest”<sup>2</sup> and second that he “violated KRS 11A.040(1) by providing confidential agency documents, either directly or through his mother, to a law firm to be used in litigation against the state.”<sup>3</sup> *Farmer II*, 2016 WL 3661893, at \*1 (quotation marks omitted). By final order issued on July 30, 2013, the Commission ordered Farmer to pay a \$10,000 civil penalty--\$5,000 for each violation. Farmer appealed the Commission’s final order and the Franklin Circuit Court affirmed the Commission. This Court affirmed the Franklin Circuit Court in *Farmer II* in an Opinion rendered on July 1, 2016.

On February 9, 2017, the Kentucky Supreme Court denied discretionary review of this Court’s decision in *Farmer II*. On March 2, 2017, the Commission sent Farmer a letter asking him to pay the \$10,000 civil penalty.

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<sup>2</sup> Kentucky Revised Statutes (KRS) 11A.020(1) provides:

- No public servant, by himself or through others, shall knowingly:
- (a) Use or attempt to use his influence in any matter which involves a substantial conflict between his personal or private interest and his duties in the public interest;
  - (b) Use or attempt to use any means to influence a public agency in derogation of the state at large;
  - (c) Use his official position or office to obtain financial gain for himself or any members of the public servant’s family; or
  - (d) Use or attempt to use his official position to secure or create privileges, exemptions, advantages, or treatment for himself or others in derogation of the public interest at large.

<sup>3</sup> KRS 11A.040(1) provides that “[a] public servant, in order to further his own economic interests, or those of any other person, shall not knowingly disclose or use confidential information acquired in the course of his official duties.”

Farmer alleges he did not receive the letter. In May 2017, the Commission filed a petition in the Franklin Circuit Court seeking an order to obtain a judgment on the penalty to aid in collection. On July 3, 2017, the circuit court granted judgment on the pleadings to the Commission, ordering Farmer to pay the \$10,000 fine, plus prejudgment and postjudgment interest at 12 percent per annum, and the Commission's "court costs herein expended." July 3, 2017, order at 1. The order required Farmer to pay the penalty by July 14, 2017, and provided "failure to do so may result in orders of wage garnishment, tax refund garnishment, judgment liens against real or personal property, orders of forced sale, or injunctions." *Id.* Farmer then filed this appeal.

The bulk of Farmer's *pro se* brief is devoted to reiterating already-rejected arguments that his employment termination and/or the administrative fine was improper. However, we have previously affirmed both his employment termination (in *Farmer I*) and the administrative penalty (in *Farmer II*). "The rule that issues which have been once litigated cannot be the subject matter of a later action is not only salutary, but necessary to the speedy and efficient administration of justice." *Yeoman v. Commonwealth, Health Policy Bd.*, 983 S.W.2d 459, 465 (Ky. 1998). Thus, we vigilantly adhere to the doctrine of claim preclusion (sometimes referred to as *res judicata*), which "prohibits the relitigation of claims that were litigated or could have been litigated between the same parties in a prior

action.” *Miller v. Admin. Office of Courts*, 361 S.W.3d 867, 871 (Ky. 2011). We consequently decline to address any arguments regarding the merits of Farmer’s employment termination or the assessment of the administrative penalty.

Under Kentucky Rules of Civil Procedure 12.03, a judgment on the pleadings should be granted if it appears the movant, beyond doubt, has established that the nonmoving party cannot prove any set of facts that would entitle him or her to relief. *Scott v. Forcht Bank, NA*, 521 S.W.3d 591, 594 (Ky. App. 2017). Because a judgment on the pleadings involves pure questions of law, our review is *de novo*. *Id.*

At the outset we note that Farmer has cited to no precedent, instead relying on a website purporting to explain various garnishment laws across the United States. We are duty bound to follow only applicable Kentucky law. Therefore, we give no weight to an unofficial, nongovernmental website.

Farmer’s initial argument is that the trial court must be reversed because he did not receive some pleadings that were served after the petition was filed, alleging they were sent to his physical address “and mail is not delivered to street addresses where the Appellant lives.” Farmer’s Brief at 5. This argument is a repeat of Farmer’s motion for interim order filed with this Court in August 2017, which we summarily denied in January 2018.

The certificates of service on the pleadings at issue do show they were sent to a physical address, not a post office box. However, Farmer does not argue that the physical address does not reflect his residence. Moreover, he has not cited or attached any documents or other evidence to support his sweeping argument that he cannot receive mail at his residence. Ironically, he was served by certified mail at this exact address, with the petition which initiated this case. And, of course, Farmer filed a response to the petition. Additionally, the Commission responds in its brief that it “is aware of Mr. Farmer’s preference for his post office box” but “since Mr. Farmer accepted service at his home address for the Petition, the Commission continued to leave the home address on the certificate of service *although it also began sending courtesy copies to Mr. Farmer’s Post Office Box.*” Commission’s Brief at 4 (emphasis added). Finally, the Commission responds that no documents addressed to Farmer’s physical address were ever returned as undeliverable or unclaimed.

Farmer has presented only a bare, unsupported assertion that he cannot receive mail at his physical address. Farmer signed a return receipt for the petition upon service of the same and there is no evidence that later correspondence was returned to the Commission. And, it is un rebutted that the Commission sent courtesy copies of documents to Farmer’s post office box. In short, Farmer has not shown an entitlement to relief. *See, e.g., Haven Point*

*Enters., Inc. v. United Kentucky Bank, Inc.*, 690 S.W.2d 393, 395 (Ky. 1985)

(“There is always a presumption that a communication that was properly stamped, addressed and deposited in the mail was received by the addressee. Once the fact of address, stamp and deposit is proven, the burden shifts to the addressee to prove that he has never received the letter.”) (Citation omitted).

Farmer also is not entitled to relief based on his allegation that paragraph five of the petition has a typographical error. KRS 11A.100(3)(e), not section (5), is the statutory subsection which authorizes the Commission to impose penalties of up to \$5,000 per violation.<sup>4</sup> Cognizant of the typographical error in the petition, the Commission issued a “notice of scrivener’s error” in June 2017, less than a month after filing the petition, acknowledging the petition “cited the wrong subparagraph of KRS 11A.100. The intention was to cite KRS 11A.100(3)(e) rather than KRS 11A.100(5).” Record at 70. Absolutely no prejudice accrued to Farmer from this typographical error as the penalties had already been adjudicated. Thus, we must conclude that Farmer’s argument that citing the wrong statutory

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<sup>4</sup> KRS 11A.100(3)(e) provides that “[t]he commission, upon a finding pursuant to an administrative hearing that there has been clear and convincing proof of a violation of this chapter, may . . . [i]ssue an order requiring the violator to pay a civil penalty of not more than five thousand dollars (\$5,000) for each violation of this chapter.”

subsection somehow invalidates the penalties is totally without legal merit and borderline frivolous.<sup>5</sup>

We likewise find no validity in Farmer's argument that the language set forth in the circuit court's order listing possible court remedies if the penalties are not paid, was in error. This argument is also borderline frivolous.<sup>6</sup> The court order simply states that if the penalties are not paid, there are available statutory and procedural remedies to collect judgments in Kentucky, which could be utilized in this case. We find no error by the circuit court regarding this issue.

However, the Commission, in its brief, has conceded the issue raised by Farmer regarding the prejudgment interest and the postjudgment interest rate assessed by the circuit court. The circuit court ordered Farmer to pay prejudgment interest and postjudgment interest, each at 12 percent per annum. However, KRS 360.040 was amended effective June 29, 2017—before the date the trial court granted judgment on the pleadings to the Commission—to reduce the default legal judgment interest rate from 12 percent per annum to 6 percent per annum. In its brief, the Commission concedes that “[r]ather than litigate which interest [rate]

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<sup>5</sup> We have already affirmed the imposition of the penalties in *Farmer II* and decline to address Farmer's arguments that the penalties are excessive.

<sup>6</sup> Farmer has also cited no authority as to why the Commonwealth, as a prevailing party, is not entitled to recover its costs pursuant to, *e.g.*, KRS 453.040(1)(a) and Kentucky Rules of Civil Procedure 54.04(1). And, of course, the amount of costs can only be known with precision once the action is concluded.



should apply, the Appellee, for simplicity[’s] sake, accepts the lower rate.”

Commission’s Brief at 7 n.3. The Commission has withdrawn its request for prejudgment interest. *Id.* at 7. Therefore, pursuant to the Commission’s concessions and the recent amendment to KRS 360.040, the judgment is vacated and remanded with instructions to issue a new judgment which omits prejudgment interest and requires Farmer to pay 6 percent per annum postjudgment interest from July 3, 2017 (the date the judgment was entered). *See also* KRS 360.040(1) (requiring interest to be “compounded annually from the date the judgment is entered.”).

For the foregoing reasons, the Franklin Circuit Court’s decision to grant judgment on the pleadings to the Commission is affirmed, but the judgment is vacated in part and remanded with instructions to issue a new judgment consistent with this opinion.

ALL CONCUR.

BRIEFS FOR APPELLANT:

Terry Farmer, *Pro Se*  
Hyden, Kentucky

BRIEF FOR APPELLEE:

Michael W. Board  
Executive Branch Ethics Commission  
Frankfort, Kentucky