

RENDERED: MARCH 29, 2019; 10:00 A.M.  
NOT TO BE PUBLISHED

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

NO. 2018-CA-000827-MR

DAVID THOMAS COHRON

APPELLANT

v. APPEAL FROM FRANKLIN CIRCUIT COURT  
HONORABLE PHILLIP J. SHEPHERD, JUDGE  
ACTION NO. 18-CI-00179

DEPARTMENT OF CORRECTIONS

APPELLEE

OPINION  
AFFIRMING

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BEFORE: MAZE, NICKELL, AND K. THOMPSON, JUDGES.

NICKELL, JUDGE: David Thomas Cohron, *pro se*, has appealed from the Franklin Circuit Court's dismissal of his petition for declaratory judgment against the Department of Corrections. We affirm.

In his petition to the Franklin Circuit Court, Cohron claimed entitlement to expungement of a disciplinary report from his inmate institutional

record. Cohron included a prayer for reimbursement of costs and fees associated with bringing the action. Subsequent to filing the petition, Kentucky State Reformatory Warden Aaron Smith received additional information regarding Cohron's claims. Pursuant to the authority granted under Corrections Policy and Procedure 15.6 (II)(F)(8), the Warden vacated the disciplinary action and restored Cohron's good time credit which had been forfeited due to the infraction. The Department of Corrections moved to dismiss the declaratory judgment action as moot. The trial court agreed after noting the Warden's actions and removal of the disciplinary report from Cohron's inmate institutional record. The order dismissing is silent on the matter of costs. Cohron now appeals, challenging only the trial court's failure to address his request for reimbursement of the costs of bringing the action.

KRS<sup>1</sup> 453.040(1)(a) provides, in pertinent part, "[t]he successful party in any action shall recover his costs, unless otherwise provided by law." CR<sup>2</sup> 54.04(1) similarly states "[c]osts shall be allowed as of course to the prevailing party . . .; but costs against the Commonwealth, its officers and agencies shall be imposed only to the extent permitted by law." Cohron's action was dismissed as

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

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

moot. Clearly, he was not the successful or prevailing party such that he would be entitled to an award of costs. Further, Cohron's assertion he "prevailed" because the disciplinary report was vacated and removed from his record by the Warden is wholly without merit, warranting no discussion. Thus, the trial court did not err in omitting mention of costs in its order of dismissal.

For the foregoing reasons, the judgment of the Franklin Circuit Court is AFFIRMED.

ALL CONCUR.

BRIEFS FOR APPELLANT:

David Thomas Cohron, *pro se*  
LaGrange, Kentucky

BRIEF FOR APPELLEE:

Angela T. Dunham  
Frankfort, Kentucky