

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NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2018-CA-001173-MR

JOSHUA BOYD

APPELLANT

v.

APPEAL FROM FRANKLIN CIRCUIT COURT
HONORABLE PHILLIP J. SHEPHERD, JUDGE
ACTION NO. 14-CI-01124

CRIME VICTIMS COMPENSATION BOARD

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: CLAYTON, CHIEF JUDGE; JONES AND L. THOMPSON,
JUDGES.

THOMPSON, L., JUDGE: Joshua Boyd, *pro se*, (“Appellant”) appeals from an
order of the Franklin Circuit Court granting summary judgment in favor of Crime

Victims Compensation Board (“Appellee”).¹ Appellant argues that the Franklin Circuit Court abused its discretion and violated his constitutional rights when it determined that Appellee has the statutory authority to collect funds from Appellant as reimbursement for payments made to victims. We find no error, and AFFIRM the order on appeal.

Facts and Procedural History

In 2011, Appellant entered a guilty plea on charges of attempted murder, robbery, assault, fleeing/evading police, wanton endangerment, tampering with physical evidence, and carrying a concealed deadly weapon. A judgment was rendered reflecting the plea, and Appellant was sentenced to 15 years in prison.

As a result of the judgment, the victim of Appellant’s assault filed a claim with Appellee requesting payment of medical expenses. Appellee paid the claim, and subsequently informed Appellant by way of letter of its intent to pursue reimbursement from Appellant in the amount of \$10,388.26. Appellee advised Appellant that his inmate account would be garnished if he failed to contact Appellee. Appellant was also given the opportunity to be heard. Appellant did not respond to Appellee, and Appellee began deducting \$10 per month from Appellant’s inmate account.

¹ The functions of Crime Victims Compensation Board are now carried out by the Kentucky Claims Commission. An incorrect spelling of “Crime Victim Compensation Board” appears throughout the trial record.

Thereafter, Appellant filed the instant action in Franklin Circuit Court seeking declaratory and injunctive relief, as well as compensatory and punitive damages.² The matter proceeded in Franklin Circuit Court, and Appellee filed a motion for summary judgment. In support of the motion, Appellee argued that it had express statutory authority to receive money from Appellant's inmate account, that Appellant failed to prosecute the matter for approximately one year, and that Appellant's claims of constitutional violations were without merit. In response, Appellant argued that he was being forced "to pay a blind bill" in violation of his statutory and constitutional rights, that the debt could not be levied against him because he was previously found to be indigent, and that his right to due process was violated because the plea agreement made no reference to restitution.

On July 11, 2018, the Franklin Circuit Court rendered an order granting Appellee's motion for summary judgment. The Court determined that Appellee had the authority under Kentucky Revised Statute ("KRS") 49.370(3) to pay claims for victims' expenses, and that this created a debt owed to the Commonwealth by the offender which the Appellee could collect via KRS 49.470(1).³ This appeal followed.

² Appellant's co-petitioner in the Circuit Court proceeding, Phillip Johnson, is not a party to this appeal. "A final order of the commission may be appealed by filing a petition for judicial review in the county where the claim accrued or in Franklin Circuit Court in accordance with KRS Chapter 13B." KRS 49.340(8).

³ These provisions were previously codified in KRS Chapter 346.

Argument and Analysis

Appellant, *pro se*, raises due process, equal protection and separation of powers arguments in support of his contention that the Franklin Circuit Court erred in sustaining Appellee's motion for summary judgment. These arguments are grounded on his claims that the sentencing court never ordered him to pay restitution, that the statutory law does not dictate how funds are deducted from inmate accounts, and that the Department of Corrections was otherwise without authority to promulgate policies and procedures relating to the deduction of these funds. He contends that the legislature intended to seek restitution via Appellee only after the inmate's release, and that forced restitution while incarcerated is overly burdensome as it prevents inmates from purchasing necessary items. In sum, Appellant seeks an opinion reversing the order on appeal and remanding the matter for an evidentiary hearing with instructions that restitution commence only upon release.

The questions for our consideration are whether Appellee's payment of funds created a debt owed by Appellant, and whether Appellee's attempt to begin collection of the debt was carried out in conformity with the statutory scheme. Having closely examined the record and the law, we must answer these questions in the affirmative. The Kentucky Legislature has granted Appellee the authority to promulgate administrative regulations to carry out the provisions and

purposes of KRS 49.270 to 49.490, *i.e.*, to compensate certain crime victims and their families who cannot otherwise afford to pay medical and other costs associated with the crime. KRS 49.300. The record demonstrates that Appellee compensated Appellant's victim pursuant to his authority. "Any payment of benefits to or on behalf of a victim under KRS 49.270 to 49.490 creates a debt due and owing to the state by any person found to have committed such criminal act in either a civil or criminal court proceeding in which he is a party." KRS 49.470(1). Under this provision, the payment created a debt owed by Appellant, and the Franklin Circuit Court properly so found.

Appellant asserts that the debt at issue is restitution, which Appellee cannot properly collect without an order of the trial court. The debt is not restitution in the sense contemplated by KRS Chapter 532, however, as restitution is defined as compensation "paid by a convicted person to a victim[.]" KRS 532.350(1)(a). In the matter before us, Appellant has not paid compensation to a victim. Rather, the victim was compensated by Appellee, who then sought to collect that debt from Appellant. As such, the statutory provisions addressing restitution are not implicated. For the same reason, Department of Corrections Policies and Procedures ("CPP") 15.7(II)(c), which requires a court order for deducting restitution from inmate accounts, also does not apply to the facts before us. And finally, we find no deprivation of Appellant's due process or other

constitutional rights. Appellee properly sought collection of the debt within the statutory scheme and in accord with the supportive case law, and Appellant was given notice of the debt and an opportunity to be heard.

Summary judgment “shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, stipulations, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Kentucky Rule of Civil Procedure (CR) 56.03. “The record must be viewed in a light most favorable to the party opposing the motion for summary judgment and all doubts are to be resolved in his favor.” *Steelvest, Inc. v. Scansteel Service Center, Inc.*, 807 S.W.2d 476, 480 (Ky. 1991). Summary judgment should be granted only if it appears impossible that the nonmoving party will be able to produce evidence at trial warranting a judgment in his favor. *Id.* “Even though a trial court may believe the party opposing the motion may not succeed at trial, it should not render a summary judgment if there is any issue of material fact.” *Id.* Finally, “[t]he standard of review on appeal of a summary judgment is whether the trial court correctly found that there were no genuine issues as to any material fact and that the moving party was entitled to judgment as a matter of law.” *Scifres v. Kraft*, 916 S.W.2d 779, 781 (Ky. App. 1996).

Conclusion

When viewing the record in a light most favorable to Appellant and resolving all doubts in his favor, we conclude that the Franklin Circuit Court correctly determined that Appellee was entitled to a judgment as a matter of law. Appellee's collection of the debt was accomplished within the scope of its statutory authority, and Appellant's constitutional rights were not otherwise violated. We find no error.

For the foregoing reasons, we AFFIRM the order of the Franklin Circuit Court granting summary judgment in favor of Appellee.

ALL CONCUR.

BRIEFS FOR APPELLANT:

Joshua Boyd, *pro se*
LaGrange, Kentucky

BRIEF FOR APPELLEE:

G. Mitchell Mattingly
Frankfort, Kentucky