

RENDERED: SEPTEMBER 6, 2019; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2018-CA-001548-MR

MARK CROSSLAND

APPELLANT

APPEAL FROM LYON CIRCUIT COURT
v. HONORABLE CLARENCE A. WOODALL, III, JUDGE
ACTION NO. 18-CI-00071

KENTUCKY DEPARTMENT
OF CORRECTIONS; JAMES ERWIN,
COMMISSIONER; RANDY WHITE,
WARDEN (KSP); C.H. VINCENT, CORRECTION
LT.; MELISSA BENDLER CRICK, PROP. OFC. OF
KENTUCKY STATE PENITENTIARY

APPELLEES

OPINION
AFFIRMING

** ** * ** * **

BEFORE: GOODWINE, NICKELL, AND SPALDING, JUDGES.

NICKELL, JUDGE: Mark Crossland, *pro se*, has appealed from the September 27, 2018, order of the Lyon Circuit Court dismissing his action against the Kentucky Department of Corrections (“DOC”), its commissioner, and several

employees of the Kentucky State Penitentiary (“KSP”). Following a careful review, we affirm.

Crossland is an inmate housed at KSP. In June 2017, Crossland was placed in the Restricted Housing Unit (“RHU”) following a disciplinary infraction. When he was released from the RHU to general population, Crossland believed several items of personal property were not returned to him. After filing multiple unsuccessful grievances and a theft report seeking return of or reimbursement for the missing items, receiving an unfavorable decision from the prison grievance committee which was upheld on appeal to the warden, and unsuccessfully appealing to the commissioner of the DOC, Crossland filed the instant action in Lyon Circuit Court.

Crossland asserted KSP staff members lost or stole his property with a value of \$212.60. His prayer for relief sought reimbursement of the value of the items plus fees and costs. Although Crossland styled his action as a petition for declaration of rights pursuant to KRS¹ 418.040, he did not seek a declaratory judgment of any kind. On September 27, 2018, the Lyon Circuit Court dismissed Crossland’s action for failure to state a claim pursuant to CR² 12.02(f) upon

¹ Kentucky Revised Statutes.

² Kentucky Rules of Civil Procedure.

concluding Crossland's sole claim did not meet the jurisdictional threshold for actions brought in circuit court. This appeal followed.

Crossland presents substantially different arguments to this Court than he made below. While consistently reciting his version of facts and events, Crossland attempts to interpose new legal theories in his effort to obtain reversal and remand for trial. This is plainly improper. "Our jurisprudence will not permit an appellant to feed one kettle of fish to the trial judge and another to the appellate court." *Owens v. Commonwealth*, 512 S.W.3d 1, 15 (Ky. App. 2017) (citing *Elery v. Commonwealth*, 368 S.W.3d 78, 97 (Ky. 2012) (citing *Kennedy v. Commonwealth*, 544 S.W.2d 219, 222 (Ky. 1976))). "[A]n appellant preserves for appellate review only those issues fairly brought to the attention of the trial court." *Id.* (quoting *Kennedy*, 544 S.W.2d at 222). "It goes without saying that errors to be considered for appellate review must be precisely preserved and identified in the lower court." *Elwell v. Stone*, 799 S.W.2d 46, 48 (Ky. App. 1990) (citation omitted). "[P]rocedural requirements generally do not exist for the mere sake of form and style. They are lights and buoys to mark the channels of safe passage and assure an expeditious voyage to the right destination. Their importance simply cannot be disdained or denigrated." *Brown v. Commonwealth*, 551 S.W.2d 557, 559 (Ky. 1977).

Further, as below, Crossland’s claims are vague and unsupported, consisting primarily of recitations of standards or theories of law, many of which have no application to the issues at bar. In contravention of CR 76.12(4)(c)(v) his brief makes no “reference to the record showing whether the issue was properly preserved for review and, if so, in what manner.” Crossland’s brief also fails to cite to the record on appeal as required by CR 76.12(4)(c)(iv). His rambling method of presentation of the issues causes difficulty for this Court—as well as opposing counsel—in construing Crossland’s pleadings liberally and deciphering the legitimate legal arguments, if any, from the general prose. Nevertheless, and despite these deficiencies, because of the leniency afforded *pro se* litigants and because the record on appeal is not large, we have reviewed the applicable portions of the record and discern no error.

In ruling on a motion to dismiss for failure to state a claim under CR 12.02(f), the trial court should take all of the allegations in the complaint as true. *Morgan v. Bird*, 289 S.W.3d 222, 226 (Ky. App. 2009). “[A] court should not dismiss an action for failure to state a claim unless the pleading party appears not to be entitled to relief under any set of facts which could be proven in support of his claim.” *Id.* The trial court is not required to make any findings of fact, and the question is purely a matter of law. *Fox v. Grayson*, 317 S.W.3d 1 (Ky. 2010). “Accordingly, the trial court’s decision will be reviewed *de novo*[.]” *Morgan*, 289 S.W.3d at 226.

Marshall v. Montplast of North America, Inc., 575 S.W.3d 650, 651 (Ky. 2019).

Crossland essentially contends because he styled his action as one seeking a declaration of rights, the Lyon Circuit Court had jurisdiction to grant him relief and therefore, dismissal for lack of jurisdiction was improper. Clearly, Crossland's argument is without merit. Even a cursory review of the pleadings reveals Crossland made no demand for a declaration of any right, an obvious prerequisite for filing an action under KRS 418.040. While he generally referenced his "property rights" and "constitutional rights," nowhere in his pleadings did he request a declaration of those rights.

The sole claim presented requested damages in the amount of \$212.60 as reimbursement for his allegedly lost or stolen property. As the trial court correctly found, Crossland's claim was insufficient to invoke the jurisdiction of a circuit court. Kentucky Constitution § 112(5) states: "[t]he Circuit Court shall have original jurisdiction of all justiciable causes not vested in some other court. It shall have such appellate jurisdiction as may be provided by law." *See also* KRS 23A.010. KRS 24A.120(1) provides district courts have exclusive jurisdiction over "[c]ivil cases in which the amount in controversy does not exceed five thousand dollars (\$5,000), exclusive of interest and costs[.]" Circuit courts clearly lack jurisdiction over any case wherein claims total less than this amount. *See Dalton v. First National Bank of Grayson*, 712 S.W.2d 954, 959 (Ky. App. 1986). Based on the strength of these authorities, we conclude the Lyon Circuit Court

correctly refused to exercise jurisdiction over Crossland's claims and dismissal was proper.

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

ALL CONCUR.

BRIEFS FOR APPELLANT:

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BRIEF FOR APPELLEE:

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