RENDERED: FEBRUARY 20, 2020
NOT TO BE PUBLISHED

Supreme Court of Kentucky

2019-SC-000625-I

GEOFFREY M. YOUNG — APPELLANT

V.

ON REVIEW FROM COURT OF APPEALS
CASE NO. 2019-CA-001266-MR
FAYETTE CIRCUIT COURT NO. 19-CI-01349
JUDGE JOHN E. REYNOLDS

ADAM EDELEN, — APPELLEES
BEN SELF, STEVE BESHEAR,
SANNIE OVERLY, ALLISON LUNDERGAN GRIMES,
JACK CONWAY, AMY MCGRATH, PATRICK HUGHES,
GEORGE MILLS, CLINT MORRIS, ANDREA EWEN,
CHARLOTTE FLANARY, KATHY HINKLE,
KENTUCKY DEMOCRATIC PARTY,
FAYETTE COUNTY DEMOCRATIC PARTY,
CAMPBELL COUNTY DEMOCRATIC PARTY,
KENTON COUNTY DEMOCRATIC PARTY,
KENTUCKY YOUNG DEMOCRATS,
COLLEGE DEMOCRATS OF KENTUCKY,
DEMOCRATIC WOMAN'S CLUB OF KENTUCKY,
JOSH HICKS, JARED SMITH, ANDY BESHEAR,
ERIK JARBOE, MATT JONES, MIKE KERBER,
BLUEGRASS ACTIVIST ALLIANCE, LLC,
KENTUCKY AUTHORITY FOR EDUCATIONAL TELEVISION,
TODD PICCIRILLI, DONNA MOORE CAMPBELL,
THE WOMEN'S NETWORK OF KENTUCKY,
DR. TRENT GARRISON, AND MICHAEL K. SCHUGART

MEMORANDUM OPINION AND ORDER DENYING INTERLOCUTORY RELIEF

AND ORDERING SHOW CAUSE

Proceeding *pro se*, Geoffrey Young comes before this Court asking it to vacate a Court of Appeals order denying him interlocutory relief under CR[1] 65.07. Respondents request that this motion be denied and further request that this Court impose sanctions against Young under CR 73.02(4). For the reasons that follow, we affirm the Court of Appeals and grant the Respondents' request for sanctions.

I. FACTUAL AND PROCEDURAL BACKGROUND

In April 2019, Geoffrey Young filed suit in Fayette Circuit Court against thirty-three people and organizations alleging a civil conspiracy to rig the Democratic primary election in Kentucky against him and violate Young's constitutional rights.

Pertinent to this appeal, Young named the Kentucky Authority for Educational Television (KET); Todd Piccirilli, KET's director of marketing and communications; and Donna Moore Campbell, one of KET's board members (collectively, the KET defendants) as parties to his claim. The KET defendants promptly moved the circuit court to dismiss the claims against them under CR 12.02 for failure to state a claim, and for the imposition of sanctions against Young in accordance with CR 11.

Following briefing and a hearing, in May 2019, the circuit court granted the KET defendants' motion to dismiss and approved sanctions against Young in the form of attorney's fees. The circuit court's order dismissing found that

[1] Kentucky Rule of Civil Procedure.

the foundation for Young's claim against the KET defendants was KET's requirement that candidates for governor receive $50,000 in campaign contributions before being invited to participate in KET's candidate forum.[2] The order then states that Young admitted his complaint did not state a constitutional challenge to the $50,000 requirement. Young's complaint also failed to state a viable discrimination complaint, as it did not identify a viewpoint KET was attempting to exclude. Finally, Young's complaint did not allege the facts necessary to support a viable civil conspiracy claim. Regarding CR 11 sanctions, the circuit court found that

> KET's motion for sanctions is warranted given that this is at least the fourth lawsuit that Young has filed alleging a vast conspiracy to 'fix an election' that is not well grounded in fact nor warranted by existing law. Considering that Young's prior lawsuits have all been dismissed, and Young has been previously sanctioned and specifically warned not to file baseless conspiracy claims such as the ones he filed against the KET defendants in this case, sanctions are now appropriate and necessary.

The order stated that it was "final and appealable with no just reason for delay."

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[2] We note that it is well within KET's discretion to have said requirement. *See Libertarian National Committee, Inc. v. Holiday*, 907 F.3d 941 (6th Cir. 2018) (upholding as constitutional KET's requirement that candidates for U.S. Senate must collect $100,000 in campaign contributions to be featured on its general election debate).

Young then filed a motion to vacate. After briefing and a hearing, the court denied Young's motion to vacate. The order denying the motion stated that it was "a final and appealable order with no just reason for delay."

The KET defendants later timely filed an affidavit of attorney's fees and costs. Young did not challenge the amount contained in the affidavit: $23,425.36.

On August 9, 2019, the circuit court entered an order directing Young to pay $23,425.36 to the KET defendants pursuant to CR 11. Young did not make payment, post a supersedeas bond, or file a notice of appeal within thirty days. On August 20, the KET defendants initiated a non-wage garnishment against Young's account at his credit union and placed a judgment lien on Young's real property in Fayette County.[3] Young never sought to exempt his funds from garnishment.

On August 26, 2019, Young filed a "Motion for Interlocutory Relief Prior to Final Judgment" in the Court of Appeals invoking CR 65.07. The Court of Appeals denied his motion, and this appeal followed.

Additional facts are discussed below as necessary.

II. ANALYSIS

A. Interlocutory relief

[3] After the non-wage garnishment satisfied the full payment of Young's debt to the KET defendants, the KET defendants released the judgment lien.

This Court reviews a lower court's ruling on a request for injunctive relief for abuse of discretion.[4] A court abuses its discretion when it acts in a way that is arbitrary, unreasonable, unfair, or unsupported by sound legal principles.[5]

We note first that "[a]s a prerequisite for obtaining interlocutory relief from an order of the circuit court under CR 65.07 or CR 65.09 the order at issue must be an injunction."[6] Young argued to the Court of Appeals that the circuit court had not entered a final judgment against him yet because it had not entered a final, appealable order that addressed all of the claims, rights, and responsibilities of all the parties to the case. The Court of Appeals denied Young's motion for interlocutory relief, holding that *Chesley v. Abbott* was on point and controlling.

In *Chesley*, the trial court entered a $42 million judgment against a lawyer on numerous breach of fiduciary duty claims by several former clients related to fen-phen litigation.[7] The trial court ordered Chesley to direct all payments relative to his interest in his former law firm payable to his former clients via their counsel.[8] Chesley argued to the Court of Appeals that the

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[4] *See Chesley v. Abbott*, 503 S.W.3d 148, 152 (Ky. 2016).

[5] *Commonwealth v. English*, 993 S.W.2d 941, 945 (Ky. 1999).

[6] *Chesley*, 503 S.W.3d at 152.; *see also* CR 65.07 ("When a circuit court by interlocutory order has granted, denied, modified, or dissolved a temporary injunction, a party adversely affected may within 20 days after the entry thereof move the Court of Appeals for relief from such order.").

[7] *Id.* at 151.

[8] *Id.* at 152.

"order granted mandatory injunctive relief and was entered prior to the adjudication of all outstanding claims," and therefore the order was subject to appellate review under CR 65.07 and CR 65.09.[9] This Court affirmed the Court of Appeals' determination that the order was not a temporary injunction, and therefore Chesley was not entitled to interlocutory relief under CR 65.07 or CR 65.09.[10]

Specifically, this Court held that, although there were other claims pending against Chesley, the circuit court entered a final judgment against him regarding the breach of fiduciary duty claims:

> the circuit court under CR 54.02 entered a final judgment on Respondents' breach of fiduciary duty claims. The circuit court was empowered to enter a valid final judgment on the breach of fiduciary duty claims despite the fact that there were other collateral claims outstanding. The circuit court's order did not concern those issues and they remain to be adjudicated. Rather, the circuit court by entering a final judgment under CR 54.02, permitted the judgment on the central issue to be appealed to avoid unnecessary delay. As such, there was a final judgment regarding the breach of fiduciary duty claims upon the entry of the circuit court's [order].[11]

Here, Young similarly asserts that, because there are still pending claims against other defendants in the case, the circuit court's orders dismissing his

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[9] *Id.*

[10] *Id.* at 154.

[11] *Id.* at 153.

claims against the KET defendants and ordering him to pay attorney's fees are interlocutory.[12] This is clearly incorrect, as CR 54.02(1) directs:

> [w]hen more than one claim for relief is presented in an action, whether as a claim, counterclaim, cross-claim, or third-party claim, or when multiple parties are involved, the court may grant a final judgment upon one or more but less than all of the claims or parties only upon a determination that there is no just reason for delay. The judgment shall recite such determination and shall recite that the judgment is final.

The circuit court's orders in this case were final and noted that they were final and appealable without reason for delay. Accordingly, we cannot and do not hold that the Court of Appeals abused its discretion in dismissing Young's motion for interlocutory relief, as he was not entitled to it. We therefore affirm that ruling.

B. The KET defendants' motion for sanctions and to enjoin Young

In its response to this Court, the KET defendants request that, in addition to denying Young's motion, we sanction him in accordance with CR 73.02(4):

> If an appellate court determines that an appeal or motion is frivolous, it may award just damages and single or double costs to the appellee or respondent. An appeal or motion is frivolous if the court finds that it is so totally lacking in merit that it appears to have been taken in bad faith.

[12] Young makes several other claims to support his motion, some of which are frankly nonsensical. We will only address the claim that is dispositive of this motion.

The KET defendants further request that we enjoin Young from filing any further conspiracy-related lawsuits or proceeding with any related appeals against KET, and/or any of its employees or representatives, in any Kentucky court without prior court approval.

The KET defendants note eight cases filed by Young from 2014 to 2019 of a similar ilk that were all dismissed at the trial stage, including a Jefferson Circuit case wherein the court-imposed sanctions against Young under CR 11. Of particular note, is *Young v. Overly*,[13] a case filed by Young in Federal District Court for the Eastern District of Kentucky. In that case, as in this case, Young made several assertions against the Kentucky Democratic Party in relation to an unsuccessful bid for governor.[14] Young also sought sanctions against the defendants and their counsel.[15] U. S. District Judge Gregory F. Van Tatenhove declined to impose sanctions and instead

> agree[d] with Defendants' argument that Young should be wary of being sanctioned himself. As Young is a pro se litigant and is without formal training in the law, the Court does feel compelled to extend a word of caution on filing claims in federal court when there are no factual circumstances to support the causes of action he alleges. It is simply not the case that anyone who pays the Court's filing fee may air any grievance in federal court, no matter how speculative or whether such grievances are grounded in fact. Federal substantive and procedural laws contain provisions that can cause plaintiffs alleging baseless claims to be sanctioned by the court or to be responsible for paying the attorney's fees of the adversary that was wrongfully

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[13] 2017 WL 4355561 (E.D. Ky. Sept. 29, 2017).

[14] *Id.* at *1.

[15] *Id.* at *4.

> hauled into court. It has been long recognized that Federal Rule of Civil Procedure 11 applies to pro se plaintiffs and permits sanctions by the Court when the asserted action is frivolous or without evidentiary support[.]
>
> The Court does not at this time make any findings that these provisions are applicable here and sua sponte assess sanctions or require fee shifting. However, the Court does alert Young that such consequences exist in the federal system and could be requested by current or future defendants or assessed by the Court if his claims are found to be unsupported by fact and frivolous. This warning is certainly not given to discourage Young from filing whatever meritorious claims that he might have, but to provide guidance going forward.[16]

This warning clearly fell on deaf ears, as Young filed the case at bar less than two years after it was issued.

The standard for determining whether an appeal is frivolous under CR 73.04(4) is if "the appeal is totally lacking in merit in that no reasonable attorney could assert such an argument."[17] While Young is proceeding *pro se* in this case, it would be disingenuous of this Court to allow that fact to shield him, considering his previously discussed history. That said, *Chesley* is so plainly on point, as was made abundantly clear by the Court of Appeals' opinion, that for Young to make the same argument to this court was blatantly frivolous.

In addition, the KET defendants' request that we enjoin Young from filing any claims against it in the future. Regarding that request

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[16] *Id.* at *5 (internal citations omitted).

[17] *Leasor v. Redmon*, 734 S.W.2d 462, 464 (Ky. 1987).

> the United States Supreme Court has explained that every paper filed in court exhausts some of the court's limited resources. Thus, to best utilize its resources, where a pro se litigant files repetitious and frivolous claims, a court may bar prospective filings to prevent the deleterious effect of such filings on scarce judicial resources.[18]

As already discussed, Young has wasted more than his fair share of judicial resources filing numerous complaints with no legal basis over the last five years. It would therefore be well within this Court's discretion to enjoin Young from filing any cases against KET, or any of its employees or representatives, in any Kentucky court without prior court approval.

Accordingly, the KET defendants are hereby ordered to file an affidavit in this Court regarding the amount of attorney's fees incurred in defending this action on appeal. The affidavit shall be filed within fifteen days of the rendering of this opinion. Thereafter, Young will have fifteen days following the filing of the KET defendants' affidavit to show cause why his appeal to the Court of Appeals and this Court should not be considered frivolous and subject to the aforementioned sanctions.[19]

III. CONCLUSION

For the foregoing reasons we affirm the Court of Appeals' denial of Young's motion for interlocutory relief. We further order that the KET

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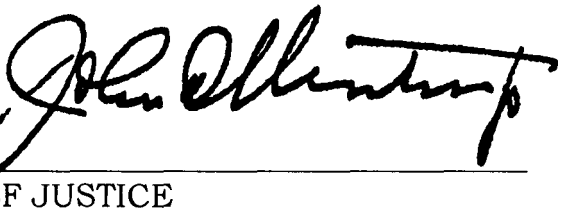
[18] *Cardwell v. Commonwealth*, 354 S.W.3d 582, 585 (Ky. App. 2011).

[19] *See Freeman v. Commonwealth*, 697 S.W.2d 133 (Ky. 1985).

defendants submit an affidavit as to attorney's fees incurred in defending this action on appeal. Young shall thereafter show cause as to why his appeal to the Court of Appeals and to this Court were not frivolous and why he should not be charged with paying all or part of the KET defendants' attorney's fees, and further why he should not be enjoined from filing any further any cases against KET, or any of its employees or representatives, in any Kentucky court without prior court approval.

All sitting. All concur.



CHIEF JUSTICE

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