

RENDERED: JANUARY 20, 2012; 10:00 A.M.  
NOT TO BE PUBLISHED

# Commonwealth of Kentucky

## Court of Appeals

NO. 2011-CA-000378-MR

STEPHEN DERRICK HILL

APPELLANT

v. APPEAL FROM BULLITT CIRCUIT COURT  
HONORABLE RODNEY D. BURRESS, JUDGE  
ACTION NO. 09-CI-00341

CITY OF MT. WASHINGTON

APPELLEE

OPINION  
AFFIRMING

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BEFORE: MOORE, NICKELL, AND THOMPSON, JUDGES.

MOORE, JUDGE: Appellant, Stephen Derrick Hill, is a police officer with the City of Mt. Washington. As a result of an internal departmental investigation, Hill was disciplined for insubordination on November 10, 2008. Rather than contesting his discipline through his department's grievance procedures, Hill requested an administrative hearing pursuant to Kentucky Revised Statute (KRS) 15.520. After

Hill's request was denied, he filed an original action in Bullitt Circuit Court against the City of Mt. Washington requesting a declaration of his rights with regard to whether KRS 15.520 applied to his disciplinary action.

In granting summary judgment in favor of Mt. Washington, the circuit court held that KRS 15.520 applies only to allegations of misconduct stemming from complaints against police officers made by citizens of the Commonwealth, and that it was therefore inapplicable to Hill's situation. Furthermore, the circuit court held that Hill was precluded from contesting the disciplinary action the department had taken against him because he had failed to make a timely request for a hearing pursuant to his department's grievance procedures and had thus failed to exhaust his available administrative remedies. This appeal followed and, after careful review, we affirm the circuit court's judgment.

The focus of this appeal is the circuit court's construction of a statute, which we review *de novo*. *Commonwealth v. Garnett*, 8 S.W.3d 573, 575 (Ky. App. 1999). Frequently referred to as the "Police Officer Bill of Rights," KRS 15.520 delineates a number of administrative due process rights afforded to police officers who are faced with allegations of misconduct. Here, the sole question presented is whether KRS 15.520 applies to departmental disciplinary actions against police officers that are not triggered by citizen complaints. Hill claims that the statute applies to him, and that reversal is required because the Department failed to comply with it.

However, in the recent case of *Pearce v. University of Louisville ex rel. its Bd. of Trustees*, --S.W.3d--, 2011 WL 5599540 (Ky. App. Nov. 18, 2011), a panel of this Court considered each of the arguments that Hill offers in this appeal (appearing below) and rejected the proposition that KRS 15.520 applies to departmental disciplinary actions against police officers that are not triggered by citizen complaints.<sup>1</sup> *Pearce* is currently pending discretionary review, but we agree with its reasoning and reach the same result.

The purpose of this statute is stated in KRS 15.520(1); that subsection explains that the statute was enacted “[i]n order to establish a minimum system of professional conduct of the police officers of local units of government of this Commonwealth” by creating standards of conduct “to deal fairly and set administrative due process rights for police officers . . . and at the same time providing a means of redress by the citizens of the Commonwealth for wrongs allegedly done to them by police officers. . . .”<sup>2</sup> This language suggests that the purpose of the statute is to provide procedural due process to police officers who are accused of wrongdoing by citizens.

Further suggesting this purpose, KRS 15.520(1)(a) addresses itself to “[a]ny complaint taken from any individual alleging misconduct on the part of any

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<sup>1</sup> The attorneys who represented the appellant in *Pearce* also represent the appellant in this matter. This appears to explain why the arguments offered in this appeal are duplicative of the arguments offered in *Pearce*.

<sup>2</sup> KRS 15.520 is generally applicable to Mt. Washington police officers because its department receives funding via the Kentucky Law Enforcement Foundation Program Fund (KLEFPF). See KRS 15.520(4).

police officer” and sets the procedures to be followed in cases involving allegations of criminal activity, abuse of official authority, or a violation of rules and regulations of the department. KRS 15.520(1)(a)(1)-(3). KRS 15.520(1)(a)(4) also explicitly provides that “[n]othing in this section shall preclude a department from investigating and charging an officer both criminally and administratively.” From these provisions, there seems no doubt that police departments may initiate their own disciplinary proceedings, in the absence of a citizen complaint, outside of the scope of KRS 15.520. Because Hill’s discipline was based on an internal departmental investigation, the requisites of KRS 15.520 appear inapplicable.

In rebuttal, Hill argues that because KRS 15.520(1)(a)(4) expressly contemplates that a police department may investigate and charge an officer on its own initiative, KRS 15.520 is necessarily applicable on such occasions. However, as we read it, KRS 15.520(1)(a)(4) affirms that intradepartmental investigations are not precluded and that they differ from citizen complaint investigations.

Hill also relies upon KRS 15.520(1)(h)(3), which begins, “If any hearing is based upon a complaint of an individual, the individual shall be notified to appear . . .” and KRS 15.520(1)(c) which states that officers shall not be interrogated “**in a departmental matter involving alleged misconduct** on his or her part . . .” (Appellant’s emphasis). Hill argues that these sections could also demonstrate that all hearings, whether predicated on a complaint from a citizen or an internal investigation, must be subject to this statute.

However, this language gives only a bare hint of an expansive legislative intent, and we decline to construe the statute as such. Taking account of the entirety of the enactment, we conclude that it does not apply to disciplinary actions initiated by internal departmental concerns.

Finally, Hill argues that Kentucky precedent nevertheless favors his interpretation of KRS 15.520. To this effect, he points to *Howard v. City of Independence*, 199 S.W.3d 741 (Ky. App. 2005), where a police officer was charged with being an inefficient, ineffective, and insubordinate employee; it does not appear that those charges were initiated by a citizen complaint; and, this Court held that the officer “was entitled to the due process protections provided by KRS 15.520 in his disciplinary proceeding.” *Id.* at 743; *see also City of Madisonville v. Sisk*, 783 S.W.2d 885, 885-86 (Ky. App. 1990); *Stallins v. City of Madisonville*, 707 S.W.2d 349, 351 (Ky. App. 1986). Hill also points to *McDaniel v. Walp*, 747 S.W.2d 613 (Ky. App. 1987), where we indicated that we do “not believe a fair reading of KRS 78.445 and 15.520 requires that disciplinary proceedings must necessarily emanate from a citizen’s sworn complaint,” *Id.* at 614, and further noted that while “[i]t is true that disciplinary action may rest upon the sworn allegation of a complaining citizen,” this did not “preclude disciplinary action by departmental authority based upon initiation from within and upon any source of information.” *Id.*

Nevertheless, as this Court explained in *Pearce*, 2011 WL 5599540 at \*4, notes 7 and 8, it does not appear that the precise issue before us was raised in

those appeals to the extent it is here, and we therefore decline to rely on those decisions as mandatory authority. Moreover, in those cases where this issue has been explicitly presented, this Court has held that KRS 15.520 applied only to instances where citizen complaints had been filed against a police officer. *See, e.g., Moore v. City of New Haven*, No. 2010-CA-000019-MR, 2010 WL 4295588 (Ky. App. Oct. 29, 2010); *Ratliff v. Campbell County*, No. 2009-CA-000310-MR, 2010 WL 1815391 (Ky. App. May 7, 2010); *Marco v. University of Kentucky*, No. 2005-CA-001755-MR, 2006 WL 2520182 (Ky. App. Sept 1, 2006); *Leonard v. City of Lebanon Junction*, No. 2004-CA-000328-MR, 2005 WL 327153 (Ky. App. Feb. 11, 2005).<sup>3</sup>

As noted in *Pearce*, 2011 WL 5599540 at \*7, KRS 15.520, “is lacking in artful construction and irrefutable disclosure of legislative intent.” Nevertheless, as in *Pearce*, we have no doubt that the decision reached here, *i.e.*, that KRS 15.520 applies only to disciplinary actions initiated by a citizen’s complaint, is entirely consistent with the language used and purpose of the statute. For these reasons, the judgment of the Bullitt Circuit Court is hereby AFFIRMED.

ALL CONCUR.

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BRIEF FOR APPELLEE:

Charles D. Cole  
Patsey Ely Jacobs  
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<sup>3</sup> We find *Moore*, *Ratliff*, *Marco*, and *Leonard* to be persuasive authority in this case and proper to cite as they fulfill the criteria of Civil Rule (CR) 76.28(4).

