

RENDERED: JANUARY 4, 2013; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2011-CA-001335-MR

DERRICK D'KEITH AKINS

APPELLANT

v. APPEAL FROM HARDIN CIRCUIT COURT
HONORABLE KEN M. HOWARD, JUDGE
ACTION NO. 09-CI-00568

CANDACE AMBER KILFOILE,
DET. MARK GILLINGHAM, AND
KENTUCKY STATE POLICE

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: CAPERTON, LAMBERT, AND VANMETER, JUDGES.

VANMETER, JUDGE: Derrick D'Keith Akins appeals from a Hardin Circuit Court order dismissing his civil suit for lack of prosecution.

On March 13, 2009, Akins, who was incarcerated at the Northpoint Training Center, filed a complaint against Candace Amber Kilfoile, the Kentucky State Police Post 4 and Detective Mark Gillingham, seeking damages in the

amount of \$3 million from each defendant. He alleged that the defendants had committed libel during the course of investigating him on charges of rape, kidnapping, felon in possession of a handgun and second-degree persistent felony offender. Akins was ultimately acquitted of the charges of rape and kidnapping. Akins filed numerous motions in the case through the following twelve months. After March 26, 2010, however, Akins ceased filing any motions or correspondence in the case. He was released on parole in July 2010, and moved to a halfway house in Louisville.

On April 7, 2011, the Hardin Circuit Court issued a sua sponte notice to dismiss for lack of prosecution pursuant to CR¹ 77.02(2). Akins responded that he had failed to pursue the case because he was incarcerated at the Northpoint Training Center, and because his legal materials were destroyed during a riot and fire that occurred there in August 2009.

The trial court found that these explanations did not constitute good cause for the long lapse in pretrial activity in the case. The trial court noted that Akins had initiated the action while he was in custody and had filed approximately two dozen pretrial motions and voluminous correspondence while incarcerated. The court further found that he had been released from custody more than nine months previously and had not made any pretrial steps during that time.

As for Akins's claim regarding the destruction of his files at Northpoint, the trial court observed that although Akins claimed the rioting and

¹ Kentucky Rules of Civil Procedure.

fires occurred on August 21, 2009, he was able to file a motion for summary judgment one month later, on September 21, 2009, and filed numerous other motions and responses over the course of the next six months.

The trial court concluded that Akins's incarceration and the destruction of his files were not a hindrance to his pursuit of the litigation during the relevant period. The trial court dismissed the action without prejudice, and this appeal by Akins followed.

CR 77.02(2) has been described as "a housekeeping rule, within the wide discretion of the trial court, intended to expedite the removal of stale cases from the court's docket." *Honeycutt v. Norfolk Southern Ry. Co.*, 336 S.W.3d 133, 135 (Ky.App. 2011) *citing Hertz Commercial Leasing Corp. v. Joseph*, 641 S.W.2d 753 (Ky.App.1982). It provides as follows:

At least once each year trial courts shall review all pending actions on their dockets. Notice shall be given to each attorney of record of every case in which no pretrial step has been taken within the last year, that the case will be dismissed in thirty days for want of prosecution except for good cause shown. The court shall enter an order dismissing without prejudice each case in which no answer or an insufficient answer to the notice is made.

Akins argues that the trial court abused its discretion in rejecting his explanation that the riot and fire at the Northpoint Training Center in August 2009 affected his ability to continue prosecuting his case. He contends that the fire destroyed his litigation records and the facility's law library, and that the prison administrators severely curtailed the inmates' activities during the investigation

that followed the riot. But the record shows that Akins continued to file documents from Northpoint after April 21, 2009, apparently unaffected by the riot and fire. These documents include a motion for summary judgment filed on September 21, 2009; a revised motion for summary judgment with a lengthy appendix filed on November 30, 2009; a response to the defendants' motion for extension of time filed on January 25, 2010; a motion for a default judgment on February 1, 2010; and an appeal of the trial court's order denying his motion for summary judgment on March 15, 2010. Under these circumstances, it was not an abuse of discretion for the trial court to conclude that the riot and fire did not significantly hamper Akins's ability to prosecute his case after March 2010.

Akins next argues that the trial court erred in stating that "Even if it [incarceration] presented difficulties in his pursuit of this case, Akins was released from custody more than 9 months ago and has not made a pretrial step in that time." Akins contends that he was not free to pursue his civil action upon his release from Northpoint, because he was paroled to a halfway house where he was without access to any legal materials or assistance. But Akins made no attempt to contact the court to explain this situation or request a continuance. Furthermore, as the appellees have pointed out, the halfway house is located in Louisville, which has numerous free, easily-accessible public libraries with computer facilities.

As part of the same argument, Akins contends that the nine months referred to by the trial court is not the one year required prior to dismissal under CR 77.02(2), and that the trial court's decision to dismiss the case was therefore

arbitrary and premature. But the trial court had already rejected Akins's argument that his incarceration at Northpoint in the months following the riot and fire presented an insuperable obstacle to continuing the litigation.

Akins further argues that the trial court intentionally ignored his motion for summary judgment in order to dismiss his case later on a technicality. The record shows otherwise. The trial court denied his motion for summary judgment in an order entered on March 2, 2010. Akins filed an appeal from the denial of the motion. The trial court denied his motions to proceed in forma pauperis and to compel the circuit clerk to comply with CR 73.08 relating to the notice of appeal on the ground that the order denying the motion was not a final and appealable order. Thus, the record indicates Akins was fully aware that his motion had been denied, and that the trial court certainly did not allow it to languish in order to dismiss the lawsuit later.

Akins contends that he should not be held to the same standard of pleading as legal counsel and that the rules are to be construed liberally in his favor. Nonetheless, “[w]hile pro se litigants are sometimes held to less stringent standards than lawyers in drafting formal pleadings . . . , Kentucky courts still require pro se litigants to follow the Kentucky Rules of Civil Procedure.” *Watkins v. Fannin*, 278 S.W.3d 637, 643 (Ky.App. 2009). In this case, the trial court's reasons for dismissing Akins's suit were fully supported by the evidence in the record. Its decision was neither “arbitrary, unreasonable, unfair, or unsupported by

sound legal principles.” *Wildcat Property Management, LLC v. Reuss*, 302 S.W.3d 89, 93 (Ky.App. 2009).

The order of dismissal is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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