

COMMONWEALTH OF KENTUCKY
ANDERSON CIRCUIT COURT
CIVIL ACTION NUMBER 21-CI-00010

CHARLES MARTIN TERRY

PLAINTIFF

**OPINION AND ORDER OVERRULING
DEFENDANT’S MOTION TO DISMISS**

ANDERSON COUNTY FIRE
PROTECTION DISTRICT

DEFENDANT

** ** * *

This matter having come before the Court on Defendant’s Motion to Dismiss, having reviewed the record, having heard arguments of the parties, and the Court being otherwise sufficiently advised;

The Plaintiff filed a Motion to Amend his original complaint on March 7, 2023. Count II Paragraph 42 of the Amended Complaint states, “The Plaintiff is exercising his right under KRS 75.140(1) to appeal the February 16, 2023 decision of the Defendant.”

The Defendant has made a motion to dismiss, alleging the Court does not have jurisdiction as the Plaintiff did not file a timely Notice of Appeal pursuant to KRS 75.130. The Plaintiff contends that their filing of their Amended Complaint represents a timely notice of appeal under KRS 75.130, under the “substantial compliance doctrine”.

It is undisputed that the Defendant’s filing date of their Amended Complaint, happened within 30 days of the February 16, 2023, hearing, pursuant to KRS 75.140(1). Although the filing is not titled, “Notice of Appeal”, it clearly states that the Plaintiff is exercising his right under KRS 140(1) to appeal the February 16, 2023, decision of the Anderson County Fire Protection District. It is obvious to this Court that the Plaintiff is appealing the Hearing Decision of February 16, 2023. The Defendant asserts that because the Amended Complaint does not name the

individual members of the Board of Trustees of the Anderson County Fire Protection District, there exists another defect that is fatal to the Plaintiff's appeal. They acknowledge that the "Anderson County Fire Department" was named. The Court is convinced that naming the "Anderson County Fire Department" provides the Defendant fair notice that the Plaintiff is appealing their disciplinary hearing. Under Kentucky law, the policy of substantial compliance dictates that dismissing the Plaintiff's appeal based on these issues is not warranted.

The due process hearing at issue relevant to this stage of the proceedings, was conducted on February 16, 2023. The most glaring issue raised is that this hearing was conducted and a board member that participated in the deliberation of the Plaintiff's occupational fate, was an adversarial witness against the Plaintiff just moments before joining the other board member in a decision finding the Plaintiff guilty of charges warranting discipline and demotion. Any notion of due process would dictate that the board member providing evidence to the Board as a witness, supporting discipline for the employee's poor behavior should have abstained from participating in a discipline decision made by the Board, on the very employee that was the subject of the hearing. Although the vote was unanimous and Mr. Terry would have likely suffered the same disciplinary fate, he was entitled to an impartial decision maker.

1. **IT IS HEREBY ORDERED AND ADJUDGED** by the Court that Defendant's Motion to Dismiss is hereby **OVERRRULED**.
2. This matter is again remanded to the Anderson County Fire Protection District for a hearing required by statute.

SO ORDERED, this the 19th day of February 2024.



Melanie H. Brummer
By HON. MELANIE BRUMMER
electronically signed
2/19/2024 10:35:34 AM ET

MELANIE H. BRUMMER, JUDGE

CLERK'S CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that a true and correct copy of the foregoing has

been mailed on this the ____ day of February 2024, to the following:

Stephen G. Bolton
305 Ann Street, Suite 102
Frankfort, Kentucky 40601

Edward E. Dove
201 West Short Street, Ste. 300
Lexington, Kentucky 40507

ANDERSON CIRCUIT CLERK

By _____ D.C.

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