

RONALD LEE LYONS)
)
 Plaintiff/Appellant,)
)
 VS.)
)
 DONAL CAMPBELL, COMMISSIONER,)
 TENNESSEE DEPARTMENT OF)
 CORRECTION, et al.,)
)
 Defendants/Appellees.)

Davidson Chancery
No. 95-2484-III

Appeal No.
01A01-9604-CH-00189

FILED
August 14, 1996
Cecil W. Crowson
Appellate Court Clerk

IN THE COURT OF APPEALS OF TENNESSEE
MIDDLE SECTION AT NASHVILLE

APPEAL FROM THE DAVIDSON CHANCERY COURT
AT NASHVILLE, TENNESSEE

HONORABLE ROBERT S. BRANDT, CHANCELLOR

Ronald Lee Lyons #72450
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AFFIRMED AND REMANDED.

HENRY F. TODD
PRESIDING JUDGE, MIDDLE SECTION

CONCUR:

SAMUEL L. LEWIS, JUDGE
BEN H. CANTRELL, JUDGE

RONALD LEE LYONS)	
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Plaintiff/Appellant,)	
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OPINION

The Plaintiff, Ronald Lee Lyons, has appealed from a judgment dismissing his petition for a declaratory judgment regarding the computation of the time of his incarceration in the custody of Tennessee Department of Correction.

Plaintiff presents the following issues for review:

1. Whether the Chancery Court in granting the Motion to dismiss the Plaintiff’s Declaratory Judgment Suit, improperly decided disputed factual issues based upon an affidavit by the Defendant’s personnel, rather than by reaching the merits of the factual disputed issues.
2. Whether the Chancery Court erred and should have appointed Counsel to represent the pro. se. petitioner in light of the complexity of the issues and/or should have permitted oral argument so that a clear understanding of the issues could be presented before the Court.
3. Whether the Chancery Court’s Judgment in the case at bar properly denotes a clear finding of fact and legal conclusion to both issues that were presented to the Court for Judicial Review. i.e.; (1) Proper sentence calculation and (2) Commencement on service of Dickson County sentences.

The record reflects that the Defendants moved to dismiss for failure to state a claim for which relief can be granted and that the Trial Court sustained the motion.

The complaint asserts that the Department of Correction has incorrectly computed the time of Plaintiff's incarceration and prays that the Trial Court issue a declaratory order as to petitioner's rights. Exhibited to the petition is a petition to the Department of Correction requesting similar relief, but the petition filed in the Trial Court contains no allegation that the petition to the Department was ever presented to the Department or that the Department failed or refused to consider the petition or took any action thereon.

T.C.A. § 4-5-223 controls declarative orders by administrative agencies.

T.C.A. § 4-5-223 provides jurisdiction of Chancery Courts to enter declaratory judgments as to administrative matters, but also provides:

(b) A declaratory judgment shall not be rendered concerning the validity or applicability of a statute, rule or order unless the complainant has petitioned the agency for a declaratory order and the agency has refused to issue a declaratory order.

Since the petition does not allege a compliance with § 4-5-224 (b), it fails to show that the Chancery Court has jurisdiction to entertain this suit for declaratory judgment. The petition therefore fails to state a claim for which relief can be granted.

For this reason the petition was properly dismissed.

The judgment of the Trial Court is affirmed. Costs of this appeal are taxed to the Plaintiff. The cause is remanded to the Trial Court for any necessary further proceedings.

AFFIRMED AND REMANDED

HENRY F. TODD
PRESIDING JUDGE, MIDDLE SECTION

CONCUR:

SAMUEL L. LEWIS, JUDGE

BEN H. CANTRELL, JUDGE