

RENDERED: November 7, 1997; 10:00 a.m.
NOT TO BE PUBLISHED

NO. 97-CA-000228-MR

TONY GRAVES

APPELLANT

v. APPEAL FROM MONROE CIRCUIT COURT
HONORABLE PAUL BARRY JONES, JUDGE
ACTION NO. 96-CI-00099

TOMPKINSVILLE CITY POLICE DEPARTMENT

APPELLEE

AND

NO. 97-CA-000229-MR

TONY GRAVES

APPELLANT

v. APPEAL FROM MONROE CIRCUIT COURT
HONORABLE PAUL BARRY JONES, JUDGE
ACTION NO. 96-CI-00091

MONROE COUNTY SHERIFF'S DEPARTMENT

APPELLEE

OPINION
AFFIRMING

* * * * *

BEFORE: EMBERTON, HUDDLESTON and MILLER, Judges.

EMBERTON, JUDGE. This opinion addresses two appeals by Tony Graves from orders of Monroe Circuit Court denying his request for declaratory judgment.¹ Appellant seeks a declaration that the Tompkinsville City Police Department willfully and blatantly disregarded the statutory provisions of the Open Records Act, injunctive relief requiring a proper response to appellant's open records request, and monetary awards as provided under Ky. Rev. Stat. (KRS) 61.882(5). We affirm.

On May 30, 1996, appellant made a request under the Open Records Act, KRS 61.870 to 61.884, requesting that the Tompkinsville City Police Department provide him with copies of various records relating to arrests and convictions of Alex Tooley. Under KRS 61.880(1) appellee was under a duty to respond to the request within three days; however, it failed to do so. Appellant then requested, pursuant to KRS 61.880, that the Attorney General's office review and intervene in the matter. On June 18, 1996, the Attorney General's office contacted appellee concerning its failure to respond to the open records request. Subsequently, appellee issued a letter stating that the requested records were not in its possession and identifying the actual custodian of the records as the Monroe County Circuit Court Clerk. On July 18, 1996, the Attorney General issued an Open

¹ Appellant filed two petitions in circuit court requesting substantially identical relief. The motions were docketed as two separate cases, 96-CI-00091 and 96-CI-00099. Inasmuch as the issues raised are identical, this opinion addresses the appeals together.

Records Decision wherein it found that although appellee's response to the open records request was procedurally deficient, it was substantively correct. On July 29, 1996, and on August 7, 1996, appellant filed petitions for declaratory relief in Monroe Circuit Court. On January 8, 1997, the trial court issued orders separately denying the two petitions. Graves separately appealed these orders.

Graves requests a declaration that the Tompkinsville Police Department "willfully and blatantly disregarded the statutory provisions as set forth in KRS 61.972." In its orders denying appellant's petitions, the trial court states,

the court agrees with the decision of the Attorney General that [appellee] did act in a 'substantively correct' manner and did not act in 'blatant disregard' of the Open Records Act. Consequently, this Court will not issue any declaration to the effect that the [appellee] 'willfully and blatantly' disregarded the provisions of the Open Records Act . . . since [appellee] did not willfully withhold any records in its possession.

Inasmuch as the trial court's order constitutes findings of fact with respect to the alleged willful and blatant conduct of appellee, such findings of fact should be reviewed pursuant to the "clearly erroneous" standard found in CR 52.01. Beckham v. Board of Educ. of Jefferson County, Ky., 873 S.W.2d 575, 579 (1994). The trial court's findings that appellee did not engage in willful and blatant conduct by failing to timely respond to appellant's open records request was not clearly

erroneous and we accordingly affirm that finding.

Appellant next requests injunctive relief requiring that appellee properly respond to his open records request. It is apparent that appellee, though its response was not timely, has otherwise properly responded to appellant's request. KRS 61.872(3) provides that "if the person to whom the application is directed does not have custody or control of the public record requested, such person shall so notify the applicant and shall furnish the name and location of the custodian of the public record, if such facts are known to him." In its letter dated June 25, 1996, appellee stated that it was not the custodian of the records being requested and identified the Monroe County Circuit Court as the custodian of the records sought by appellant. A public agency properly responds to a request for inspection if it truthfully states it does not have the requested records. The trial court concluded that there is no evidence in the record to prove that the Tompkinsville Police Department's response was untruthful. This finding was not clearly erroneous. CR 52.01. The appellee having properly responded to appellant's request, appellant's prayer for injunctive relief is without merit.

Last, pursuant to KRS 61.882, appellant requests an award of \$25.00 per day for each day he was denied the right to inspect or copy the requested records. However, to qualify for such award, the statute requires a "finding that the records were

willfully withheld." KRS 61.882(5). The trial court specifically found that appellee did not act willfully.

The trial court's orders are affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Tony Graves, pro se
Marion Adjustment Center
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BRIEF FOR APPELLEE
IN 97-CA-0228-MR:

A. Thomas Davis
Tompkinsville, Kentucky

NO BRIEF FILED FOR APPELLEE
IN 97-CA-0229-MR