

RENDERED: June 19, 1998; 10:00 a.m.
NOT TO BE PUBLISHED

NO. 97-CA-0616-MR
AND
NO. 97-CA-1564-MR

MARK L. DYER

APPELLANT

v.

APPEAL FROM BOYD CIRCUIT COURT
HONORABLE KELLEY R. ASBURY, JUDGE
ACTION NO. 96-CI-939

BOYD COUNTY DETENTION CENTER;
BOB STEVENS, JAILER

APPELLEES

* * * * *

OPINION AFFIRMING IN PART

REVERSING IN PART AND REMANDING

BEFORE: COMBS, HUDDLESTON, AND KNOPF, JUDGES.

KNOPF, JUDGE. On two (2) occasions in 1996, appellant, Mark Dyer filed open records requests with the Boyd County Detention Center and its Jailer Bob Stevens (together, Detention Center). Each time, the requests were denied and Dyer appealed to the Office of the Attorney General (AG). On both occasions the AG ruled in favor of appellant. Following his favorable AG rulings, the appellant, on each occasion, filed a motion for a declaratory judgment in Boyd Circuit Court seeking to, inter alia, enforce the AG ruling. Following the trial court's judgment on his motion, appellant, on each occasion, appealed to this Court. The two (2) appeals were subsequently consolidated and are considered

together in this opinion. We affirm in part, reverse in part, and remand.

APPEAL 97-CA-000616-MR

On July 18, 1996, Dyer filed an open records request (KRS 61.870 et. seq.) with the Detention Center seeking various records relating to his incarceration at the center and the full names and addresses of various employees of the center. The Detention Center denied the request on the grounds that its records are not public records. Dyer appealed to the AG pursuant to KRS 61.880(2). On September 10, 1996, the AG issued an opinion finding that the Detention Center's records were public records and declaring that the Detention Center had violated the Open Records Act.¹

On September 30, 1996, Dyer filed a motion for declaratory judgment (KRS 418.040) requesting that the Detention Center be required to furnish the requested records. The motion also alleged that, as a result of its denial, the Detention Center had violated various constitutional rights of Dyer and sought various monetary damages and awards. Following a hearing, on February 19, 1997, the trial court issued a one (1) page order directing the Detention Center to provide Dyer with the requested personnel information, with the exception of the employees' home addresses. The trial court denied Dyer's request for damages and fees. The order did not address the various other issues raised in appellant's pleadings. On February 20, 1997, Dyer filed a

¹ The opinion did not direct the Detention Center to turn over specific records to Dyer.

motion requesting additional findings of fact and conclusions of law regarding the issues raised in his pleadings (CR 41.02, 52.01, and 52.04) and a motion to alter, amend, or vacate judgment (CR 59.05). On February 28, 1997, the trial court entered an order denying these motions.

The trial court ordered the Detention Center to provide Dyer with the information requested in his open records request with the exception of the home addresses of the Detention Center employees. The trial court properly denied the request for the home addresses of the employees. Information of a personal nature where the public disclosure would constitute a clearly unwarranted invasion of personal privacy is not required to be disclosed under the Open Records Act. KRS 61.878(1)(a). Though often publicly available through other sources, home addresses are generally accepted by society as information in which an individual has an expectation of privacy and is not less private for Open Records Act purposes just because the information is available somewhere else. Zink v. Department of Workers' Claims, Ky. App., 902 S.W.2d 825 (1994). Hence, Dyer is not entitled to the home addresses of the Detention Center's personnel. See OAG 90-60 (KRS 61.878(1)(a) requires disclosure of the business addresses of members of the University of Kentucky Alumni Association, but not the home addresses). We affirm the judgment of the trial court relating to the open records issue.

Dyer's appeal raises seven (7) additional arguments:

(1) the trial court abused its discretion by refusing his request

for a jury trial; (2) the trial court abused its discretion when it did not rule that appellees violated his rights; (3) the trial court erred by not ruling on all issues that were submitted by the appellant; (4) the trial court erred and abused its discretion by denying the appellant any monetary damages; (5) the trial court erred by not ruling the appellees' response to motion for declaratory judgment procedurally deficient; (6) it was error and an abuse of discretion for the trial court to overrule his motion for findings of fact and conclusions of law; and (7) the trial court erred and abused its discretion by not vacating its judgment and altering and amending its judgment and entering a new one.

The trial court's order of February 19, 1997, consisted of a one (1) page summary of its decision and did not address any of these issues. In actions tried without a jury, the trial court is required to find the facts specifically and state separately its conclusions of law thereon. CR 52.01. We are precluded from deciding the remaining issues because the trial court failed to make any findings of fact or conclusions of law. Klop v. Klop, Ky. App., 763 S.W.2d 663 (1989). That failure, standing alone, would be insufficient grounds for reversal and remand. CR 52.04. However, Dyer properly and timely preserved this particular issue for review by timely filing a motion, as contemplated by CR 52.02, requesting findings of fact. This motion was denied by the trial court without explanation.

The appellee concedes that "[p]erhaps the trial court

should have made specific findings of fact and conclusions of law as requested by Mr. Dyer." In order for us to engage in a meaningful review of the trial court's decision, we need the basic findings upon which it basis its holdings. This action is, therefore, remanded to the trial court for entry of additional findings of fact and conclusions of law sufficient to determine the merits of appellant's claims.²

APPEAL 97-CA-001564-MR

On December 6 and December 16, 1996, appellant filed an open records request seeking copies of menus showing "all meals served to [appellant's] cell, and the cell next to [appellant's] that held mostly blacks and Muslims . . ." The Detention Center provided the menus for appellant's cell but denied the request for the menus of the adjacent cell on the grounds that the release of the information would result in an invasion of personal privacy. Dyer again appealed to the Attorney General.

On March 25, 1997, the AG issued an opinion finding that the Detention Center's denial was improper. On May 28, 1997, Dyer again filed a motion for declaratory judgment seeking to enforce the AG's opinion. Again appellant alleged that the appellees had violated various rights and sought various monetary damages. On June 6, 1997, the trial court issued an order, without stating its reason, sua sponte summarily denying Dyer's petition. On June 12, 1997, appellant filed a motion to

² In conjunction with our conclusion that a remand is necessary, we refer the trial court to the final portion of this opinion addressing the argument of the appellee that these issues are frivolous.

reconsider. On June 20, 1997, the trial court denied this motion.

After the AG has rendered an opinion, if an appeal is not filed within thirty (30) days, the AG's decision has the force and effect of law and is enforceable in the circuit court of the county where the public agency has its principal place of business. KRS 61.880(5)(b). We reverse the judgment of the trial court denying appellant's motion to require the Detention Center to provide him with the food menus requested in his open records request. On remand the trial court should enter an order requiring the Detention Center to supply Dyer with this information.³ With respect to the remaining issues, as with this appeal's companion case, and for the same reasons, we vacate and remand for additional findings.⁴

APPELLEES' ARGUMENT

The Detention Center argues that Dyer is simply harassing the judicial system, advancing frivolous actions and appeals, and should be stopped dead in his tracks. While appellant properly brought his actions to enforce the open records opinions of the AG, there are convincing indications that the appellees' argument is correct. For example, Dyer's second motion for declaratory judgment sought \$900,000.00 in damages

³The trial court made no finding, and the record is unclear, on whether the information has already been provided. If it has, the issue is, of course, moot.

⁴Again, however, we refer the trial court to our discussion at the appellees' argument.

from each of twenty-three (23) potential defendants.⁵ Hence, Dyer, in effect, sought \$20,700,000.00 in damages because the Detention Center resisted his request to tell him what the inmates in the adjoining cell ate.⁶ Similarly, his first motion went well beyond his legitimate interest in enforcing the AG's opinion.

There is a proper method for addressing the problem of inmates who engage in frivolous and recreational litigation which was, unfortunately, not followed in the proceedings below. KRS 454.405(1) permits the dismissal of a civil action brought by an inmate if the trial court is satisfied that the action is malicious, harassing, without merit, or factually frivolous. However, the trial court, in dismissing the case, must include as part of its order specific findings as to the reasons for the dismissal. KRS 454.405(3). On remand, we direct the trial court's attention to that portion of KRS 454.405(1) which provides that the dismissal may be made at any time; KRS 454.405(4), which, in the event of a dismissal, provides for an assessment of fines and costs against the inmate; and KRS 197.045(4)(a), which provides for the revocation of good time credits if an action is dismissed for the reasons identified in KRS 454.405.

⁵ In his second motion for declaratory judgment, in addition to Boyd County Detention Center and Bob Stevens, appellant also names as defendants "One to Twenty-one employees [of the Detention Center] . . .[to] be found at [a] later date through discovery, testimony, and the like."

⁶ The AG concluded that the Detention Center had made a good faith argument that the disputed records were exempt pursuant to KRS 61.880(1).

For the forgoing reasons these appeals are affirmed in part, reversed in part, and remanded for further proceedings consistent with this opinion.

ALL CONCUR.

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