

Commonwealth Of Kentucky

Court Of Appeals

NO. 1998-CA-000289-MR

COMMONWEALTH OF KENTUCKY

APPELLANT

v. APPEAL FROM WAYNE CIRCUIT COURT
HONORABLE EDDIE LOVELACE, JUDGE
INDICTMENT NOS. 94-CR-00003, 94-CR-00004,
94-CR-00005, 94-CR-00006, AND 95-CR-00032

MARTHA BLEVINS, FRANCES WADDLE,
CHRISTY KEITH, and JIMMY COLLINS

APPELLEES

OPINION

AFFIRMING

** ** * * *

BEFORE: HUDDLESTON, KNOPF and MILLER, Judges.

HUDDLESTON, Judge: The Commonwealth of Kentucky appeals from four Wayne Circuit Court orders granting the appellees' motion to expunge/seal court records pursuant to Kentucky Revised Statute (KRS) 431.076. We affirm.

In February 1994, the Wayne County Grand Jury indicted Martha Blevins, Frances Waddle, Christy Keith and Jimmy Collins for the capital offense of complicity to commit murder (KRS 502.020 and

507.020) as a result of failing to prevent the murder of a young child, Daniel Thomas Reynolds.

Reynolds died in December 1993 as a result of injuries sustained from beatings while in the custody of his mother, Brandy Reynolds Parker, and stepfather, Robert Parker. In June 1993, the Kentucky Cabinet for Human Resources (CHR) (now Cabinet for Families and Children) obtained an emergency protective order based on alleged physical abuse of the child by his mother and stepfather. The child was temporarily placed in the custody of his maternal grandmother and the parents were required to attend family therapy counseling. In August 1993, the trial court ordered that custody of the child be returned to Brandy Parker with continued monitoring by CHR. The appellees were employees with CHR with some supervisory connection in varying degrees with the monitoring of the Parkers. The Commonwealth alleged that the appellees facilitated the death of the child by failing to act to remove him from the custody of the Parkers despite indications that he was being physically abused.

In June 1995, a jury unanimously found all of the appellees not guilty of the complicity to commit murder charge.¹ In January 1998, the appellees filed separate motions to expunge/seal the records related to their criminal prosecutions pursuant to KRS 431.076. The Commonwealth filed a response arguing the public interest would not be served by sealing the records. After a brief hearing, the trial court granted the motions and

¹Brandy and Robert Parker were tried, convicted of murder and sentenced in relation to Daniel's death.

ordered the expungement/sealing of the records of the court, and of the Kentucky State Police, the Office of the Commonwealth's Attorney, and the Cabinet for Human Resources. This appeal followed.

The Commonwealth argues that the public interest militates in favor of retaining open access to the records surrounding the prosecution of these four social workers. It contends that continued public access to the records would perpetuate heightened awareness in the protection of children. It also asserts that expungement/sealing of the records would afford no real relief to the appellees because of the extensive publicity that surrounded the prosecution and trial of these social workers. The Commonwealth argues that the benefits to society in retaining public access to the records outweighs the relief available to the appellees by sealing the records.

KRS 431.076 provides in relevant part:

(1) A person who has been charged with a criminal offense and who has been found not guilty of the offense, or against whom charges have been dismissed with prejudice, and not in exchange for a guilty plea to another offense, may make a motion, in the District or Circuit Court in which the charges were filed, to expunge all records including, but not limited to, arrest records, fingerprints, photographs, index references, or other data, whether in documentary or electronic form, relating to the arrest, charge, or other matters arising out of the arrest or charge.

. . . .

(4) If the court finds that there are no current charges or proceedings pending relating to the matter for which the expungement is sought, the court may grant the motion and order the sealing of all records in the custody of the court and any records in the custody of any other agency or official, including law enforcement records. The court shall order the sealing on a form provided by the Administrative Office of the Courts. Every agency, with records relating to the arrest, charge, or other matters arising out of the arrest or charge, that is ordered to seal records, shall certify to the court within sixty (60) days of the entry of the expungement order, that the required sealing action has been completed. All orders enforcing the expungement procedure shall also be sealed.

(5) After the expungement, the proceedings in the matter shall be deemed never to have occurred. The court and other agencies shall reply to any inquiry that no record exists on the matter. The person whose record is expunged shall not have to disclose the fact of the record or any matter relating thereto on an application for employment, credit, or other type of application.

(6) Inspection of the expunged records may thereafter be permitted by the court only upon a motion by the person who is the subject of the records and only to those persons named in the motion. (Emphasis supplied.)

A fundamental rule of statutory construction is to ascertain and give effect to the intent of the statute. Beach v. Commonwealth, Ky., 927 S.W.2d 826, 828 (1996); Commonwealth v. Nunnally, Ky., 920 S.W.2d 523, 524 (1996). In interpreting a statute, the courts generally must give the words used in the statute their ordinary and common meaning. Lynch v. Commonwealth, Ky., 902 S.W.2d 813, 814 (1995); Alderman v. Bradley, Ky. App., 957 S.W.2d 264, 266 (1997). But see KRS 446.080(4) (technical words and phrases shall be construed according to their appropriate meaning). It is well-established that the use of the word "may" in a statute connotes a term of permission or discretion, as opposed to the word "shall," which makes a provision mandatory. KRS 446.010(20) and (29); and see, e.g., Gaines v. O'Connell, 305 Ky. 397, 204 S.W.2d 425 (1947); Sturgill v. Beard, Ky., 303 S.W.2d 908 (1952), overruled on other grounds by Commonwealth, Dept. of Public Safety v. Thomas, Ky., 467 S.W.2d 337 (1971); Butler v. Groce, Ky., 880 S.W.2d 547 (1994).

The language of KRS 431.076 clearly gives the trial court broad discretion in deciding whether to seal court records associated with a criminal prosecution. The statute limits the court's discretion by designating certain factors that must exist such as a motion by the person charged, resolution of the charges by a not guilty finding or dismissal with prejudice, and the absence of current charges or pending proceedings relating to the matter for which expungement/sealing is sought. The statute uses the word "shall" to mandate certain actions, but uses the permissive term "may" in connection with the ultimate decision on

granting the motion to seal the records. This language grants the trial court discretionary authority subject to review only for an abuse of discretion. Abuse of discretion in relation to the exercise of judicial power implies "arbitrary action or capricious disposition under the circumstances, at least an unreasonable and unfair decision." Kentucky National Park Commission v. Russell, 301 Ky. 187, 191 S.W.2d 214, 217 (1945). See also Kuprion v. Fitzgerald, Ky., 888 S.W.2d 679, 684 (1994).

In the case at bar, the Commonwealth pursued a unique prosecution of four state social workers for the death of a child while in the custody of the parents. Both parents were convicted of crimes for the death of the child, but a jury acquitted the appellees. The prosecution of the appellees garnered immense media publicity, so the circumstances surrounding the alleged inadequacies in the state child welfare system has already received extensive attention. Moreover, state government has taken action to implement measures within the state agencies to help prevent future incidents like the one in this case. More importantly, the trial judge is in the best position to weigh the various factors and the interests of the parties in determining whether to seal the records. He is intimately aware of the facts surrounding the prosecution of these appellees. Under all the circumstances, we cannot say that the trial court abused its discretion in granting the motion to expunge/seal the records in this case.

For the foregoing reasons, we affirm the order of the Wayne Circuit Court.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

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