

RENDERED: APRIL 17, 2009; 10:00 A.M.
 NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2008-CA-001026-MR

PAUL J. VESPER

APPELLANT

v. APPEAL FROM KENTON CIRCUIT COURT
HONORABLE ROBERT W. MCGINNIS, JUDGE
ACTION NO. 08-CI-00175

WILLIAM HUMPERT, KENTON
COUNTY MASTER COMMISSIONER

APPELLEE

OPINION
AFFIRMING

*** * * * *

BEFORE: CLAYTON, NICKELL, AND VANMETER, JUDGES.

VANMETER, JUDGE: Paul J. Vesper appeals from the Kenton Circuit Court's order dismissing his petition relating to the Kentucky Administrative Office of the Court's (AOC's) denial of his open records request. For the following reasons, we affirm.

Pursuant to KRS¹ 426.520(1):

Before any real property is to be sold under an order or judgment of a court, other than an execution, the commissioner or other officer selling the property shall have it appraised, under oath, by two (2) disinterested, intelligent housekeepers of the county, who may be sworn by the officer.

On December 27, 2007, Vesper requested from the Kenton County Master Commissioner, William Humpert, a list of appraisers his office used in 2006 and 2007, how much each appraiser received in total compensation for the year, and written evidence of each appraiser's approved individual fee. In early January 2008, AOC's Office of General Counsel responded to Vesper's request, on behalf of the Kenton County Master Commissioner, as follows:

The Kentucky Supreme Court has declared that records generated by the courts and judicial agencies are not subject to the Kentucky Open Records Act (KRS 61.870 et. seq.). See *Ex parte Farley*, Ky., 570 S.W.2d 617 (1978). As noted in *Farley*, "the custody and control of records generated by the courts in the course of their work are inseparable from the judicial function itself and are not subject to statutory regulation." *Id.* at 624. As a quasi-judicial office, Master Commissioners clearly fall within the parameters of this case.

Even though the Kentucky court system is not subject to the Act, it has always strived to honor the underlying principles of open records law and to provide access to citizens whenever doing so does not interfere with the orderly operation of the courts. Mr. Humpert's office has told me that the appraisal amounts in Kenton County are set by General Orders signed by the county's circuit judges. The Kenton Circuit Clerk should have a General Orders file that you could access during regular office hours to obtain written evidence of the approved

¹ Kentucky Revised Statutes.

fee amounts. Also, judicial sales are a matter of public record, so if you have questions about the appraiser used or the amount paid out to them in a particular case, you can always request access to the specific case file at the Clerk's office.

Thereafter, Vesper filed a petition in the Kenton Circuit Court pursuant to KRS 61.882, seeking "to obtain records of the Master Commissioner for the Kenton Circuit Court relating to foreclosure proceedings for the years 2006 and 2007, after having been denied." In his petition, Vesper stated that some of the information he had requested had been reported to him orally. Still, he sought "[i]mmediate release of the information requested" as well as a monetary award and costs.

A special judge was assigned to the matter, and Humpert moved to dismiss Vesper's action. The circuit court ultimately dismissed Vesper's action for the reasons proffered in Humpert's motion to dismiss. This appeal followed.

Vesper argues that the circuit court erred by dismissing his petition. We disagree.

In dismissing Vesper's petition, the circuit court relied upon *Ex parte Farley*, 570 S.W.2d 617, 624 (Ky. 1978), in which the Kentucky Supreme Court opined that "the custody and control of the records generated by the courts in the course of their work are inseparable from the judicial function itself, and are not subject to statutory regulation." Accordingly, the court denied a public advocate's open records request to produce documents, compiled by the AOC, which the court utilized in evaluating death penalty cases. Still, the court stated that there was

“very little in the policies evinced by the Open Records Law that we could not accept as a matter of comity[,]” with certain noted exceptions, and stated that the records Farley requested would be “open to the public and, perforce, to all who may be interested, as soon as we have had the occasion and opportunity to examine and consider them ourselves.” *Id.* at 625, 627.

A master commissioner ““acts as the representative and assistant of the court which appoints him. He is a part of the court, and his official acts are subject to its control and supervision.”” *Sterling Grace Mun. Sec. Corp. v. Central Bank & Trust Co.*, 926 S.W.2d 670, 673 (Ky.App. 1996) (quoting *Shannon v. Ray*, 280 Ky. 31, 132 S.W.2d 545, 547 (1939)). This, combined with the holding in *Farley* that the custody and control of the records generated by the courts in the course of their work are not subject to statutory regulation, compels us to hold that the circuit court did not err by dismissing Vesper’s petition relating to the denial of his open records request.

Notwithstanding the foregoing, we note that the AOC complied with the open records laws by offering Vesper an opportunity to access certain of the circuit clerk’s records during regular office hours. KRS 61.872(1) provides that “public records shall be open for inspection by any person,” and subsection (3)(a) provides that a person may inspect the public records “[d]uring the regular office hours of the public agency[.]” Alternatively, a public agency may mail copies of the public records to the person. KRS 61.872(3)(b).

Vesper's argument that the circuit court erred by failing to permit him to depose and obtain documents from Humpert, including the documents he sought in his open records request, is rendered moot.

The Kenton Circuit Court's order is affirmed.

ALL CONCUR.

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