

RENDERED: AUGUST 25, 2017; 10:00 A.M.  
NOT TO BE PUBLISHED

**Commonwealth of Kentucky**

**Court of Appeals**

NO. 2015-CA-001835-MR

RUBEN RIOS SALINAS

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT  
HONORABLE KIMBERLY N. BUNNELL, JUDGE  
ACTION NO. 98-CR-01270

DEPARTMENT OF PUBLIC ADVOCACY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: JONES, STUMBO, AND TAYLOR, JUDGES.

JONES, JUDGE: The present appeal arises out of a *pro se* motion for sanctions the Appellant, Ruben Rios Salinas, filed several years after he was convicted of several felonies in Fayette Circuit Court. As part of this criminal action, Salinas asked the circuit court to order the Department of Public Advocacy (“DPA”) to turn over any files its attorneys had kept related to Salinas’s criminal cases, to the extent those files had not already been provided to him. On November 10, 2014,

the circuit court issued an order requiring the DPA and its attorneys to turn over all such files. The DPA complied by turning over all responsive files in its current possession. However, the files kept by attorney Gene Lewter, who had represented Salinas, could not be located. The DPA then asked Mr. Lewter whether he might still maintain those files. He indicated that after his representation of Salinas ceased, he turned the files over to the Fayette County Legal Aid (“FCLA”), for whom he worked at the time.<sup>1</sup>

After the DPA failed to locate Mr. Lewter’s files, Salinas filed a motion with the circuit court seeking sanctions based on the DPA’s failure to turn over all records as ordered and its failure to properly safeguard Salinas’s files. The DPA responded that it had attempted to comply with the order in good faith and had produced to Salinas all records it was able to locate. The DPA further explained that it believed Mr. Lewter’s files may have been destroyed either during an elevator fire or as a result of exposure to water during storage, both of which occurred while FCLA still had possession of the records. The circuit court refused to hold the DPA in contempt and denied Salinas’s motion for sanctions. This appeal followed.

We review a trial court's grant or denial of sanctions for abuse of discretion. *Rumpel v. Rumpel*, 438 S.W.3d 354, 361 (Ky. 2014). “The test for abuse of discretion is whether the trial judge's decision was arbitrary, unreasonable,

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<sup>1</sup> In 2007, the DPA took over the FCLA’s responsibilities in representing indigent defendants. At this time, it also assumed all of FCLA’s archiving and records duties. Mr. Lewter became an employee of DPA at this time.

unfair, or unsupported by sound legal principles.” *Commonwealth v. English*, 993 S.W.2d 941, 945 (Ky. 1999).

There was no abuse of discretion in this case. The DPA provided all responsive documents in its possession to Salinas. There was no showing that it intentionally kept anything from him. While it is regrettable that some documents may have been destroyed, nothing in the record indicates that the destruction of any of Salinas’s files occurred after the production order or was intentional. To the contrary, the DPA explained that the files were likely either destroyed during a fire or from water damage, events that occurred long before the DPA was ordered to turn over its files. The DPA complied with the circuit court’s order to the best of its present ability. Likewise, there was no showing that the DPA or its predecessor mishandled the files in bad faith or for any improper purpose. As such, the circuit court properly refused to hold the DPA in contempt and/or sanction it.

The order of the Fayette Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Ruben Rios Salinas  
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BRIEF FOR APPELLEE:

B. Scott West  
Frankfort, Kentucky