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IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
April 12, 2017 Session

KENNETH L. JAKES v. SUMNER COUNTY BOARD OF EDUCATION

Appeal from the Chancery Court for Sumner County
No. 2014CV53 Dee David Gay, Judge

No. M2015-02471-COA-R3-CV

W. NEAL MCBRAYER, J., concurring.

I concur in the decision to affirm the judgment of the Chancery Court for Sumner County. I write separately to address the trial court's grant of the protective order, which prevented the parties from conducting further discovery, and the court's decision not to treat the March 31, 2014, email from the appellee, Kenneth Jakes, as a valid public record request under the Tennessee Public Records Act ("TPRA").

On April 9, 2014, Mr. Jakes filed his suit against the Sumner County Board of Education. Mr. Jakes later gave notices of deposition for what he described as "two key witnesses in this matter." In response, the Board of Education filed a motion for a protective order. Mr. Jakes then filed a motion to compel. Ultimately, the trial court denied the motion to compel and granted the protective order, concluding there was no need for further discovery.

The grant or denial of a protective order restricting or limiting discovery rests within the sound discretion of the trial court. *Loveall v. Am. Honda Motor Co., Inc.*, 694 S.W.2d 937, 939 (Tenn. 1985). "The burden of establishing abuse of discretion is on the party seeking to overturn the trial court's ruling on appeal." *Summers v. Cherokee Children & Family Servs., Inc.*, 112 S.W.3d 486, 530 (Tenn. Ct. App. 2002).

I agree with the majority that Mr. Jakes fell short of meeting his burden of establishing an abuse of discretion. The court's decision to cut off further discovery came only after its denial of the Board of Education's motion for summary judgment. At that time, counsel for Mr. Jakes seemed to acknowledge that any facts not gleaned through discovery to that point could be stipulated. Counsel stated:

> Well, if we're not allowed to perform any additional discovery, frankly, I guess I'll have to speak with [counsel for the Board of Education] and see if [we] can admit to some facts. If we can't, then just set it for a hearing – a trial. But the problem with that, I guess, Your Honor, is if we have a trial, then, with my limited discovery, I don't know that I'm going to be fully prepared.

Just over two months later, counsel for Mr. Jakes seemed to be prepared. He stated that the "trial would be two to three hours, the Court's already cut off discovery, and so it's a pretty simple process." Only now on appeal does Mr. Jakes complain that discovery depositions were necessary to "fully explore" whether the Board of Education's refusal to comply with his record request was willful. *See* Tenn. Code Ann. § 10-7-505(g) (2012).

I also agree with the majority that Mr. Jakes' March 31, 2014 email did not constitute a valid record request under the TPRA. However, to understand that decision, the circumstances under which the email was sent and the actual format of the email are important considerations. Prior to sending his March 31 email, Mr. Jakes sent other emails threatening to sue the Board of Education unless he was allowed to review the information he requested. One email to the Supervisor of Board and Community Relations stated: "you left out another way I could obtain your policy. That method is called DISCOVERY." Following those emails, Mr. Jakes then sent the following request:

> Any and all communications between you and any other party or parties concerning my first public record request for the Board of Education to provide for my inspection the BOE records policy.
>
> This is to include but not be limited to the following.
>
> All emails SENT OR RECEIVED.
>
> All audible recordings and voice mail by all parties.
>
> All letters.
>
> All memos.
>
> All text messaging.

Like an interrogatory used for discovery, Mr. Jakes employed broad language in his request designed to include as much information from as many sources as possible. Any request to review and inspect public records must be tailored "to enable the records custodian to identify the specific records to be located or copied." *Id*. § 10-7-

503(a)(7)(B). If the March 31 email was truly intended to constitute a request for inspection, which I doubt given the nature of the multiple communications from Mr. Jakes leading up to that point, the email failed to satisfy that standard.

W. NEAL MCBRAYER, JUDGE