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Commonwealth of Kentucky

Court of Appeals

NO. 2010-CA-001742-MR

KENTUCKY NEW ERA, INC. APPELLANT

APPEAL FROM CHRISTIAN CIRCUIT COURT
v. HONORABLE ANDREW SELF, JUDGE
ACTION NO. 09-CI-01943

CITY OF HOPKINSVILLE, KENTUCKY APPELLEE

AND 2010-CA-001773-MR

CITY OF HOPKINSVILLE, KENTUCKY CROSS-APPELLANT

CROSS-APPEAL FROM CHRISTIAN CIRCUIT COURT
v. HONORABLE ANDREW SELF, JUDGE
ACTION NO. 09-CI-01943

KENTUCKY NEW ERA, INC. CROSS-APPELLEE

OPINION
AFFIRMING IN PART AND REVERSING IN PART

** ** ** ** **

BEFORE: CAPERTON, CLAYTON, AND VANMETER, JUDGES.

VANMETER, JUDGE: Kentucky New Era, Inc. ("New Era") appeals from the August 25, 2010, order of the Christian Circuit Court holding that driver's license numbers, home addresses, and telephone numbers of witnesses and victims could be redacted from copies of Hopkinsville Police Department arrest citations and other reports requested under the Kentucky Open Records Act. The City of Hopkinsville ("Hopkinsville") cross-appeals from the May 20, 2010, order of the Christian Circuit Court holding that Hopkinsville failed to meet its burden to withhold records requested by New Era which contained the names of juvenile witnesses or victims. For the following reasons, we affirm in part, and reverse in part.

New Era staff writer and news editor, Julia Hunter, submitted an open records request to Hopkinsville to inspect copies of Hopkinsville Police Department arrest citations, including KYIBRS[1] reports and draft reports, from January 1, 2009 through August 31, 2009, which resulted in any of the following charges: first-degree stalking, second-degree stalking, harassing communications, harassment, first-degree terroristic threatening, second-degree terroristic threatening, or third-degree terroristic threatening. Hopkinsville declined to

[1] Kentucky Incident Based Reporting System.

provide records for open cases, records regarding juveniles, and redacted certain identifying information of victims, subjects and witnesses.

New Era sought review by the Office of the Attorney General ("OAG") regarding Hopkinsville's refusal to produce the requested records. The OAG issued a decision stating that Hopkinsville had not met its burden under KRS[2] 61.878 so as to lawfully refuse production of certain records. *See* 09-ORD-201, 2009 WL 4623921. Hopkinsville then filed the underlying action appealing the OAG decision. The parties filed competing motions for summary judgment, and the trial court issued an order on May 20, 2010, ruling in favor of New Era, and determining that Hopkinsville had not met its burden to withhold records for open cases, records regarding juveniles or redact certain identifying information of victims, subjects and witnesses. Hopkinsville filed a motion to alter, amend, or vacate the judgment, and on August 25, 2010, the trial court amended the judgment to permit Hopkinsville to redact all social security numbers, all driver's license numbers, home addresses, and telephone numbers from the produced records pursuant to KRS 61.878(1)(a), on the basis that the privacy interests in the information outweighed the public's interest in its disclosure. This appeal and cross-appeal followed.

On appeal, New Era argues that the trial court erred by permitting Hopkinsville to redact all driver's license numbers, home addresses, and telephone numbers from arrest citations, KYIBRS reports and draft reports, because the

[2] Kentucky Revised Statutes.

release of such information was not a clearly unwarranted invasion of personal privacy.[3] We disagree.

Codified in KRS Chapter 6, the Kentucky Open Records Act promotes a policy "that free and open examination of public records is in the public interest and the exceptions provided for by KRS 61.878 or otherwise provided by law shall be strictly construed, even though such examination may cause inconvenience or embarrassment to public officials or others." KRS 61.871. Among those exceptions are: "Public records containing information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy[.]" KRS 61.878(1)(a).

In applying this exception, Kentucky law requires its reviewing courts to conduct a two-part test:

> First, we must determine whether the information sought is of a personal nature. Second, we must examine whether the public disclosure of this information would constitute a "clearly unwarranted invasion of personal privacy." We do this by weighing the privacy interests of the persons involved against the public's interest in disclosure.

Cape Publ'ns, Inc. v. Univ. of Louisville Found., Inc., 260 S.W.3d 818, 821 (Ky. 2008) (citation omitted). The test must be applied on a case-by-case basis. *Palmer v. Driggers*, 60 S.W.3d 591, 597 (Ky.App. 2001) (citation omitted). Since such an inquiry involves only a question of law, our review is *de novo*. *Cape Publ'ns*, 260 S.W.3d at 821 (citation omitted).

[3] New Era concedes that the social security numbers were properly redacted from the requested records.

With respect to whether the driver's license numbers, home addresses, and telephone numbers constitute personal information, we turn to this court's holding in *Zink v. Commonwealth, Dep't of Workers' Claims, Labor Cabinet*, 902 S.W.2d 825 (Ky.App. 1994), wherein we denied public access to injury reports filed with the Kentucky Department of Workers' Claims which contained the injured employee's name, home address, telephone number, date of birth, and social security number, among other information. *Id*. at 828. In so ruling, we reasoned that disclosure of such information would infringe upon the employees' right to privacy in the home. *Id*. at 829. Such a right, which this court described as "the right to be left alone," is one of "our most time-honored rights" and "has long been steadfastly recognized by our laws and customs." *Id*. Indeed, the information contained in the injury reports has been "accepted by society as details in which an individual has at least some expectation of privacy" despite some of the information being accessible through other public forums. *Id*. at 828. In the case at bar, therefore, the home addresses, telephone numbers, and driver's license numbers at issue amount to personal information and satisfy the first prong of our analysis.

The second prong of the test requires us to determine whether the public's interest in disclosure of the home addresses, telephone numbers, and driver's license numbers of witnesses and victims named in the police reports at issue outweighs the individual's privacy interests in said information. New Era argues that without disclosure of the identification and contact information, its ability to

inspect the Hopkinsville Police Department is burdened because it becomes harder to contact the witnesses and victims of these incidents. We do not find this argument to be compelling.

Public interest under the Kentucky Open Records Act "is premised upon the public's right to expect its agencies properly to execute their statutory functions." *Palmer*, 60 S.W.3d at 598. The purpose of the Act is not furthered "by disclosure of information about private citizens that is accumulated in various government files that reveals little or nothing about an agency's own conduct." *Zink*, 902 S.W.2d at 829. Here, the release of specific contact information would make it easier for New Era to contact the witnesses or victims named in the police reports, but the public interest in this information is minimal since its disclosure reveals nothing about the Hopkinsville Police Department's execution of its statutory functions. Thus, the privacy interest involved outweighs the public interest in such information and the trial court did not err in this regard.

In its cross-appeal, Hopkinsville argues that the trial court erred in its May 20, 2010, order by determining that records pertaining to juvenile victims or witnesses are not exempted from the Kentucky Open Records Act. With respect to such records, we hold that along with the telephone numbers, home addresses, and drivers' license numbers, the names of juveniles may also be redacted in accordance with KRS 61.878(a).[4]

[4] Hopkinsville argues that KRS 610.320 of the Juvenile Code precludes the disclosure of arrest reports pertaining to juveniles. Since we have determined that the juvenile names should be redacted under the personal privacy exemption found in KRS 61.878(1)(a), we decline to address whether KRS 610.320 bars disclosure of any records pertaining to juveniles. We do note that

The General Assembly has demonstrated a strong commitment to the protection and care of children, most noticeably reflected in the Juvenile Code, codified in KRS Chapters 600 to 645. *See* KRS 610.320(3) (limits disclosure of juvenile law enforcement records); KRS 610.340 (limits disclosure of juvenile court records); KRS 620.050(5) (limits disclosure of information contained in investigations into allegations of child abuse, dependency or neglect). Extending that commitment to the present case, we believe that allegations of stalking, harassment and terroristic threatening of a juvenile "touches upon the most intimate and personal features of private lives." *Kentucky Bd. of Exam'rs of Psychologists v. Courier-Journal & Louisville Times Co.*, 826 S.W.2d 324, 328 (Ky. 1992). As we stated earlier, the public interest asserted by New Era in this circumstance is minimal. Due to the nature of these crimes, as well as the heightened privacy interest afforded towards juveniles, we are compelled to find that the potential adverse impact on juvenile victims or witnesses outweighs any benefit to the public from releasing the juveniles' names contained in these reports. Accordingly, the trial court erred and we now hold that Hopkinsville may redact the names of juveniles contained in the reports sought by New Era.

Lastly, we must address the trial court's conclusion in its May 20, 2010, order that "it is a violation of the [Open Records Act] for a public agency, in this case [Hopkinsville], to issue a blanket denial or to unilaterally determine which records are to be withheld based on its own subjective interpretation of the

disclosing the names of juvenile victims and witnesses of the crimes at issue, while protecting the names of juvenile perpetrators, seems to produce a perverse and absurd result.

statutory exceptions." As an initial point, blanket redactions do not necessarily violate the Open Records Act. *Cape Pulb'ns v. City of Louisville*, 147 S.W.3d 731, 735 (Ky.App. 2003). In *Cape Publ'ns*, once Cape Publications challenged the redaction, the public agency had the burden to establish an exemption precluding disclosure of the required documents. *Id*. at 733-34. Judicial review of such an action requires the courts to engage in a case-by-case analysis. *Id.* at 734. Thus, a proper interpretation of the law allows the public agency to redact records from an open records request at their discretion, but it must meet the burden set forth by KRS 61.878 when the redaction is challenged. To the degree the trial court's order would not allow Hopkinsville to make a blanket denial of production based on its interpretation of an exception to the Open Records Act prior to New Era's challenge, we reverse such a holding.

The orders of the Christian Circuit Court are affirmed in part, and reversed in part.

ALL CONCUR.

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