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NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2014-CA-001475-MR

JEFFERY CARPENTER APPELLANT

v.

APPEAL FROM FRANKLIN CIRCUIT COURT
HONORABLE THOMAS D. WINGATE, JUDGE
ACTION NO. 12-CI-00141

ADMINISTRATIVE OFFICE OF THE COURTS APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: ACREE, CHIEF JUDGE; J. LAMBERT, AND MAZE, JUDGES.

MAZE, JUDGE: Appellant, Jeffrey Carpenter, appeals from the Franklin Circuit Court's order dismissing his Petition for judicial review of an open records matter in which he sought his criminal history records and other information pertaining to himself. Appellee, Kentucky's Administrative Office of the Courts (hereinafter "AOC") holds the records Carpenter seeks. Carpenter argues on appeal that the

trial court misapplied the law, specifically KRS[1] 27A.450 and KRS 26A, in dismissing his Petition. However, we observe no error in the trial court's conclusion, and we affirm.

On November 29, 2011, while he was a prisoner at the Eastern Kentucky Correctional Center, Carpenter sent a request pursuant to the Kentucky Open Records Act (KORA) to AOC requesting his "centralized criminal history records and information pertaining to myself – including all CourtNet information and prison resident record card information." AOC apparently did not receive Carpenter's request.[2] Therefore, AOC did not respond to Carpenter's request, and Carpenter filed a complaint with the Attorney General's Office on December 22, 2011. Upon receiving notice of Carpenter's appeal to the Attorney General, AOC contacted Carpenter and informed him of the procedure in place for a prisoner's request for his "criminal record report." This procedure required Carpenter to fill out a form, which AOC enclosed, and payment of a fifteen-dollar fee. Finally, AOC referred Carpenter to the Department of Corrections for his resident record card. However, Carpenter completed none of these tasks.

The Attorney General's Office issued an opinion on January 24, 2012, which concluded that AOC, as the administrative arm of the Judicial Branch, was not bound by statutes of the General Assembly, including KORA. *See* 12-ORD[3]-

[1] Kentucky Revised Statutes.

[2] Carpenter attached a copy of the request to the Complaint in this case; therefore, it is part of the record.

[3] Open Records Decision.

023 (*citing Ex Parte Farley*, 570 S.W.2d 617 (Ky. 1978)); KRS 26A.200; KRS 26A.220; and 02-ORD-24. Ultimately, the Attorney General stated that the discretion to release the records Carpenter sought rests with AOC and the courts, *id*. (*citing* 05-ORD-266), and that AOC's response to Carpenter's appeal was sufficient.

Carpenter appealed the Attorney General's decision to the Franklin Circuit Court. However, that court dismissed Carpenter's Petition for failure to state a claim upon which relief could be granted. The trial court agreed with the Attorney General that KRS Chapter 26A, not KORA or any other statutes, governed the control and dissemination of AOC records, including the records Carpenter sought. This appeal follows.

Carpenter appeals from the dismissal of his Petition. This raises questions of law only, and therefore, we review the trial court's decision *de novo*. *See Fox v. Grayson*, 317 S.W.3d 1, 7 (Ky. 2010). Dismissal is inappropriate "unless it appears the pleading party would not be entitled to relief under any set of facts which could be proved in support of his claim." *Pari-Mutuel Clerks' Union of Ky., Local 541, SEIU, AFL-CIO v. Ky. Jockey Club*, 551 S.W.2d 801, 803 (Ky. 1977). To this end, we interpret the pleadings in this case liberally and in a light most favorable to Carpenter. *See Fox* at 7; CR[4] 12.02.

KRS 27A.450 states,

> Information submitted by the circuit clerk to the Administrative Office of the Courts shall be a public

[4] Kentucky Rules of Civil Procedure.

> record and shall be open to public inspection pursuant to KRS Chapter 61. KRS 17.150 excludes centralized criminal history records from public inspection; however, the subject of a record contained in that system shall have access to records relating to himself, subject to limitations set forth in KRS 17.150 and federal regulations.

KRS 17.150 provides, in pertinent part,

> (4) Centralized criminal history records are not subject to public inspection. Centralized history records mean information on individuals collected and compiled by the Justice and Public Safety Cabinet from criminal justice agencies and maintained in a central location consisting of identifiable descriptions and notations of arrests, detentions, indictments, information, or other formal criminal charges and any disposition arising therefrom, including sentencing, correctional supervision, and release. The information shall be restricted to that recorded as the result of the initiation of criminal proceedings or any proceeding related thereto. Nothing in this subsection shall apply to documents maintained by criminal justice agencies which are the source of information collected by the Justice and Public Safety Cabinet. Criminal justice agencies shall retain the documents and no official thereof shall willfully conceal or destroy any record with intent to violate the provisions of this section.
> (5) The provisions of KRS Chapter 61 dealing with administrative and judicial remedies for inspection of public records and penalties for violations thereof shall be applicable to this section.

KRS 17.150(4)-(5).

We agree with the trial court that these statutes conflict with other statutes concerning AOC's control of its records. While KRS 27A.450 and KRS 17.150 seem to urge transparency and AOC's disclosure of documentation, KRS 26A.200 unequivocally establishes that records generated by any agency of the

Court of Justice, including AOC, "shall be the property of the Court of Justice and are subject to the control of the Supreme Court." Such records "shall be subject to the direction of the Supreme Court…." KRS 26A.220.

In *Ex parte Farley*, the Supreme Court took up whether a defendant could have ready access to various data and information KRS 532.075 required the Supreme Court to compile during its review of a capital case.[5] The Department of Public Advocacy (DPA) sought to inspect this information, citing "the Open Records Law" as the basis for its request. The Court firmly rejected the DPA's argument, reasoning that,

> [o]n its face, the Open Records Law, KRS 61.870-61.884 … appears to apply. Whether its provisions conflict with or are harmonious with KRS 26A.200-26A.220 … we need not decide, because we are firmly of the opinion 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 language.

Ex parte Farley, 570 S.W.2d at 624. The trial court ruled accordingly, holding that AOC was not bound by the prescribed procedure in KORA and that AOC's

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[5] KRS 532.075(6) mandated that this data and information include, *inter alia*,

> (a) … the records of all felony offenses in which the death penalty was imposed after January 1, 1970, or such earlier date as the court may deem appropriate.
> (b) … whatever extracted information it desires with respect thereto, including but not limited to a synopsis or brief of the facts in the record concerning the crime and the defendant.
> (c) … such data as are deemed by the chief justice to be appropriate and relevant to the statutory questions concerning the validity of the sentence.

requirement that Carpenter fill out a form and pay a fee to receive his records was permissible. We ultimately agree.

The Commonwealth's brief, like the Attorney General's Opinion before it, relies almost exclusively upon *Ex parte Farley* in its assertion that "all records that are under the control of the courts are not governed by" statutes, including KORA. The facts of *Ex parte Farley* seem easily distinguishable from those in this case. We agree with Carpenter that the distinguishable facts and result in *Ex Parte Farley*, as well as the express language of KRS 27A and KRS 17.150 are difficult, if not impossible, to square with the Commonwealth's argument. Even the Supreme Court in *Ex parte Farley* acknowledged that, at first blush, KORA appears to apply. 570 S.W.2d at 624. However, there are fundamental and well-intended reasons why this cannot be the case*;* and we ultimately reaffirm those reasons in this case.

At the heart of our constitutional system is the fundamental precept that the separate branches of government must remain separate and unbound by the others' direction. *See* Kentucky Constitution §§ 27-28. The defined and exclusive role of the Judicial Branch is "to say what the law is." *Ex parte Farley* at 622 (*quoting Marbury v. Madison*, 5 U.S. 137, 177, 2 L. Ed. 60 (1803)). In service to pragmatism and comity, AOC and the Judicial Branch which it serves

> ordinarily look to the General Assembly for an expression of public policy …. However, with respect to records that belong to the courts and are a part of their ongoing work, the only conclusion consistent with the constitutional right of control over their own records is

> that the public policy must be articulated by the courts themselves.

Ex parte Farley, 570 S.W.2d at 625. This remains necessary and true today.

AOC was not obligated under KORA to provide Carpenter with his centralized criminal history record. The only authority to which Carpenter cites in his argument to the contrary are statutes to which AOC is not bound. AOC has a procedure in place by which inmates and others may obtain their records; and Carpenter can avail himself of this procedure at any time. However, for purposes of his Petition, he is without a legal remedy. Accordingly, the order of the Franklin Circuit Court dismissing Carpenter's Petition is affirmed.

ALL CONCUR.

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