

Commonwealth Of Kentucky

Court of Appeals

NO. 2005-CA-000309-MR

JEFFERY L. CARPENTER

APPELLANT

v. APPEAL FROM LOGAN CIRCUIT COURT
HONORABLE TYLER L. GILL, JUDGE
ACTION NO. 03-CI-00213

BILL JENKINS, JAILER

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: JOHNSON AND TAYLOR, JUDGES; BUCKINGHAM,¹ SENIOR JUDGE.

TAYLOR, JUDGE: Jeffery L. Carpenter brings this *pro se* appeal from a September 2, 2003, judgment on the pleadings of the Logan Circuit Court dismissing his complaint for damages under the open records act (Kentucky Revised Statutes (KRS) 61.872-61.884). We affirm.

¹ Senior Judge David C. Buckingham sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes (KRS) 21.580.

The record reflects that Carpenter sought production of certain records under the open records act from the jailer of the Logan County Detention Center, Bill Jenkins (Jenkins). Carpenter contends he sent Jenkins two letters by mail requesting the records and no response was forthcoming from Jenkins. Thereupon, Carpenter "appealed" to the attorney general for production of the documents. The attorney general sent notice to Jenkins of the request filed by Carpenter and the subsequent "appeal." Jenkins forthwith produced the documents to Carpenter. Jenkins stated he was unaware of the request for open records filed by Carpenter.

Carpenter subsequently filed a complaint under KRS 61.882 against Jenkins in the Logan Circuit Court. Carpenter sought monetary damages for Jenkins' failure to timely comply with the provisions of the open records act. Specifically, Carpenter alleged that Jenkins produced the documents fifty-one days after his request and that such violated the required three-day time limit contained in KRS 61.872. On September 2, 2003, the circuit court entered a judgment on the pleadings dismissing Carpenter's complaint. This appeal follows.

Carpenter contends the circuit court committed error by entering a judgment on the pleadings dismissing his complaint. A judgment on the pleadings is proper only if "on the facts, the moving party is clearly entitled to judgment."

Spencer v. Woods, 282 S.W.2d 851, 853 (Ky. 1955). For reasons hereinafter stated, we are of the opinion the circuit court properly entered a judgment on the pleadings dismissing Carpenter's complaint.

KRS 61.880 and KRS 61.882 represent two separate avenues of relief for violation of the open records act. Under KRS 61.880, a person may elect to enforce the open records act by application to the attorney general. Under KRS 61.882, a person may alternatively elect to enforce the open records act by filing a complaint in the circuit court without first seeking the assistance of the attorney general.² If an individual files an application for relief with the attorney general under KRS 61.880 and prevails, the enforcement provisions of KRS 61.882 are unavailable. However, under KRS 61.880, an individual may initially seek enforcement with the attorney general and if denied relief, the individual may then file an action in the circuit court for review of the attorney general's adverse decision. KRS 61.880(5)

In this case, Carpenter filed an application with the attorney general under KRS 61.880. Upon receiving notice from the attorney general, Jenkins supplied the requested documents to Carpenter. As Carpenter elected to pursue his remedies under KRS 61.880, and subsequently prevailed, he cannot now file a

² An aggrieved party is not required to exhaust his remedies under KRS 61.880 before filing an action under KRS 61.882.

complaint in circuit court under KRS 61.882. Accordingly, we believe the circuit court properly entered a judgment on the pleadings dismissing Carpenter's complaint for damages under the open records act.

For the foregoing reasons, the judgment on the pleadings of the Logan Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

NO BRIEF FOR APPELLEE

Jeffery L. Carpenter, *Pro Se*
West Liberty, Kentucky