

IN THE COURT OF APPEALS OF TENNESSEE  
AT JACKSON  
August 29, 2001 Session

**CONTEMPORARY MEDIA, INC., d/b/a THE MEMPHIS FLYER,  
and ASHLEY FANTZ**

v.

**A. C. GILLESS, AS SHERIFF OF SHELBY COUNTY**

**Appeal from the Chancery Court for Shelby County  
No. CH-00-1207-2 Floyd Peete, Chancellor**

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**No. W2000-02774-COA-R3-CV - Filed June 3, 2002**

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This is a petition brought under the Public Records Act. As part of an investigative story into the hiring practices of the county sheriff's department, a local newspaper publisher sought photographs from the personnel files of nineteen recently hired deputy sheriffs. The sheriff's department denied the request because the newly hired deputy sheriffs were in the pool of officers available for undercover work. The publisher then filed a petition seeking disclosure of the photographs under the Public Records Act. The trial court ordered that the sheriff's department make the photographs available to the publisher. The sheriff's department appealed. We reverse, finding that the requested photographs were exempted from the Act's disclosure requirements.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Reversed**

HOLLY KIRBY LILLARD, J., delivered the opinion of the court, in which W. FRANK CRAWFORD, P.J., W.S., and ALAN E. HIGHERS, J., joined.

Donnie E. Wilson, Shelby County Attorney, Renee Allen-Walker, Senior Assistant County Attorney, and Brian L. Kuhn, Assistant County Attorney, Memphis, Tennessee, for the appellant, A.C. Gilless.

Jerry E. Mitchell, John H. Dotson, and Craig C. Conley, Memphis, Tennessee, for the appellees, Contemporary Media, Inc. and Ashley Fantz.

**OPINION**

This case involves a petition brought under the Public Records Act, Tenn. Code Ann. §§ 10-7-503 to 10-7-505 ("the Act"). Petitioner/appellee Contemporary Media, Inc. is the publisher of *The Memphis Flyer*, a weekly newspaper circulated throughout Memphis and its surrounding area. Petitioner/appellee Ashley Fantz was employed by Contemporary Media as a staff writer for *The Memphis Flyer*. Respondent/appellant A.C. Gilless is the Sheriff of Shelby County.

As part of an investigative story into the hiring practices of the Shelby County Sheriff's Department, Fantz requested photographs from the personnel files of nineteen recently hired deputy sheriffs. The department's legal counsel granted Fantz an interview but refused to provide the requested photographs. In June 2000, Contemporary Media and Fantz filed a petition in the Shelby County Chancery Court seeking access to the photographs.

At the hearing on the petition, the sheriff's department did not dispute that the photographs were "public records" for purposes of the Act. Nevertheless, the department argued that the requested photographs came within an exemption to the Act for personnel information on police officers "designated as working undercover." Tennessee Code Annotated § 10-7-504(g)(1)(A) (1999) provides:

Personnel information of any police officer designated as working undercover may be segregated and maintained in the office of the chief law enforcement officer. Such segregated information shall be treated as confidential under this subsection. Such segregated information is the address and home telephone number of the officer as well as the address or addresses and home telephone number or numbers of the members of the officer's household and/or immediate family. Information in such file which has the potential, if released, to threaten the safety of the officer or the officer's immediate family or household members may be redacted if the chief law enforcement officer determines that its release poses such a risk.

In support of its position, the sheriff's department presented the testimony of several senior officers. The officers testified that all nineteen recently hired deputy sheriffs were considered part of the pool of officers available for undercover assignments, explaining that the sheriff's department needed to use newly hired deputies for undercover work, first because they were the appropriate age to blend in with criminals and, secondly, they were less exposed in the community and therefore were less likely to be detected as undercover officers. The senior officers testified that they did not know whether any of the nineteen newly hired officers had, at that point, actually been assigned undercover work. At the conclusion of the hearing, the trial court found that the only information to which the exemption applies is the "law enforcement officer's address and home telephone number as well as address's (sic) and home telephone numbers of his immediate family." The trial court ordered that the photographs be made available to Contemporary Media and Fantz within five days of its order. From this order, sheriff's department now appeals.

On appeal, the sheriff's department argues that the photographs are exempted from the Act's disclosure requirements by Tennessee Code Annotated § 10-7-504(g)(1)(A), an exemption regarding undercover officers. Even if the statutory exemption on undercover officers does not apply, the sheriff's department argues that public disclosure of the photographs would subject the officers and their families to a substantial risk of harm and, thereby, violate the officers' constitutionally protected right to privacy. *See Kallstrom v. City of Columbus*, 136 F.3d 1055 (6<sup>th</sup> Cir. 1998).

This case involves a matter of statutory construction. Since this is an issue of law, this Court's review is de novo without a presumption of correctness. *See Freeman v. Marco Transp. Co.*, 27 S.W.3d 909, 911 (Tenn. 2000). In interpreting a statute, the court must "ascertain and give effect to the legislative intent." *Sharp v. Richardson*, 937 S.W.2d 846, 850 (Tenn. 1996). In the absence of ambiguity, legislative intent is derived from the face of the statute. *Davis v. Reagan*, 951 S.W.2d 766, 768 (Tenn. 1997); *Westland W. Cmty. Assoc. v. Knox County*, 948 S.W.2d 281, 283 (Tenn. 1997). "Accordingly, courts are restricted to the 'natural and ordinary' meaning of a statute unless an ambiguity necessitates resorting elsewhere to ascertain legislative intent." *Freeman*, 27 S.W.3d at 911-912.

The Public Records Act provides that "[a]ll state, county and municipal records...shall at all times, during business hours, be open for personal inspection by any citizen of Tennessee, and those in charge of such records shall not refuse such right of inspection to any citizen, unless otherwise provided by state law." Tenn. Code Ann. § 10-7-503(a). The Public Records Act further mandates that courts broadly construe the Act "so as to give the fullest possible public access to public records." Tenn. Code Ann. § 10-7-505(d). However, the Public Records Act includes exemptions for certain "confidential" records. *See* Tenn. Code Ann. § 10-7-504. Where a public official denies a citizen access to public records, the official has the burden of showing by a preponderance of the evidence that the requested records come within one of the exemptions to the Public Records Act. *Memphis Publ'g Co. v. Holt*, 710 S.W.2d 513, 517-518 (Tenn. 1986).

In this case, the parties do not dispute that the requested photographs are contained in the officers' personnel files. Thus, absent a statutory exemption, the Public Records Act requires that the photographs be disclosed. *See* Tenn. Code Ann. § 10-7-503(c)(1) ("Except as provided in § 10-7-504(g), all law enforcement personnel records shall be open for inspection..."). Therefore, we must determine whether the exemption in Tennessee Code Annotated § 10-7-504(g)(1)(A), regarding undercover officers, applies to the requested photographs.

Tennessee Code Annotated § 10-7-504(g)(1)(A) provides that certain personnel information may be segregated and treated as confidential regarding a police officer "designated as working undercover." Contemporary Media notes that the record below does not establish that any of the nineteen newly hired police officers were actually working on an undercover assignment at the time of the hearing in the trial court below. However, witnesses for the sheriff's department made it clear that all nineteen new officers were considered part of the pool of officers immediately available for undercover assignments. The witnesses explained that the department favors using new officers for undercover work because, first, they are the appropriate age to infiltrate gangs, drug networks, and other criminal groups and, second, their lack of public exposure makes it less likely that they will be recognized as police officers.<sup>1</sup> The sheriff's department would not use an officer in an

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<sup>1</sup> Contemporary Media emphasizes the fact that the nineteen officers had appeared in public in uniform and that class photos were routinely posted on the walls of the training academy building, which is open to the public. We must observe that this would result in much more limited public exposure than the exposure that would result from photographs  
(continued...)

undercover operation once the officer's face had been exposed in a newspaper or on television.

We cannot agree with the contention that the phrase "designated as working undercover" must be limited to officers who are actually working on an undercover assignment at the time of the request for the personal information. To hold otherwise would be in effect to preempt the use of the newly hired officers for undercover duty in the future, since the public exposure of the officer's face would put him or her at risk of being recognized. Therefore, we conclude that the phrase "designated as working undercover" as used in Tennessee Code Annotated § 10-7-504 (g)(1)(A) would include officers such as the nineteen newly hired officers at issue in this case, who were designated as in the pool of officers immediately available for undercover assignment.

Contemporary Media argues on appeal, and the trial court held, that the language in Tennessee Code Annotated § 10-7-504(g)(1)(A) stating that "[s]uch segregated information is the address and home telephone number of the officer as well as the address or addresses and home telephone number or numbers of the members of the officer's household and/or immediate family," expressly limits the information which can be kept confidential. Because photographs are not explicitly listed along with addresses and phone numbers, Contemporary Media argues, they are not exempted from the Act's disclosure requirements. *See State v. Harkins*, 811 S.W.2d 79, 82 (Tenn. 1991) ("Normally, it is a rule of statutory construction which is well recognized by our courts, that the mention of one subject in a statute means the exclusion of other subjects that are not mentioned."). However, the sheriff's department notes that the last sentence of the statute states that "[i]nformation in such file which has the potential, if released, to threaten the safety of the officer or the officer's immediate family or household members may be redacted if the chief law enforcement officer determines that its release poses such a risk." Since anonymity is essential to undercover work, the sheriff's department argues that the officers' photographs clearly have "the potential, if released, to threaten the safety of the officer" and his family.

In construing statutes, different segments of the statute should be "construed together in light of the general purpose and plan . . . and object to be obtained." *State v. Peele*, 58 S.W.3d 701, 704 (Tenn. 2001) (quoting *Neff v. Cherokee Ins. Co.*, 704 S.W. 2d 1, 3 (Tenn. 1986)). The statute should be interpreted in such a way "so that no part will be inoperative, superfluous, void or insignificant . . . and to give effect to every word, phrase, clause and sentence of the act in order to carry out the legislative intent." *Peele*, 58 S.W.3d at 704 (quoting *Tidwell v. Collins*, 522 S.W. 2d 674, 676-77 (Tenn. 1975)). The construction urged by Contemporary Media on appeal, for all intents and purposes, ignores the sentence in the statute authorizing the chief law enforcement officer to redact information which he determines has the potential to threaten the safety of the officer or his family. Moreover, the obvious purpose of the exemption is to protect the safety of officers who do undercover work and to enable law enforcement officials to maintain effective

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<sup>1</sup>(...continued)

of the officers being published in *The Memphis Flyer*. We assume that Contemporary Media employees who market advertisements in *The Memphis Flyer* would agree with this observation.

undercover operations. Publication of the officers' photographs in a city-wide newspaper clearly threatens the safety of an officer in undercover work and compromises the ability of the sheriff's department to have undercover operations. Under these circumstances, we must conclude that the exemption to the Public Records Act contained in Tennessee Code Annotated § 10-7-504(g)(1)(A) permits the sheriff's department to redact or keep confidential the photographs of the nineteen newly hired deputy sheriffs. Consequently, the order requiring the sheriff's department to make the photographs available to Contemporary Media and Fantz must be reversed. This holding pretermits all other issues raised on appeal.

The decision of the trial court is reversed. Costs are taxed to the appellees, Contemporary Media Inc., d/b/a *The Memphis Flyer*, and Ashley Fantz, for which execution may issue, if necessary.

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HOLLY KIRBY LILLARD, JUDGE