

IN THE DISTRICT COURT OF CLEVELAND COUNTY
STATE OF OKLAHOMA

STATE OF OKLAHOMA } S.S.
CLEVELAND COUNTY }
FILED In The
Office of the Court Clerk

DEC 11 2006

Ginger Martinez, individually and as
Personal Representative of the Estate of
Kenneth Wayne Ginn,

Petitioner,

vs.

Board of County Commissioners of
Cleveland County, Oklahoma; and F.
DeWayne Beggs, as Sheriff of Cleveland
County,

Respondents.



DOCKET 0 PAGE RECORDED
Rhonda Hall, Court Clerk
Jerry Bowman DEPUTY

Case No.: CJ-2006-1757

**PETITIONER'S RESPONSE TO
RESPONDENTS' MOTION AND BRIEF TO DISMISS**

STATEMENT OF THE CASE

The Petitioner submits her response to the Respondents' Motion and Brief to Dismiss and states the Motion should be denied for the following reasons:

The Petitioner has filed her Petition pursuant to 12 O.S. § 3227, which provides for depositions and discovery before a suit is filed. Petitioner is seeking discovery of information and documents from the Respondent regarding the arrest, detention, booking, and the care and custody of Kenneth Wayne Ginn by the Cleveland County Sheriff's Department.

Kenneth Wayne Ginn was taken into custody by the Cleveland County Sheriff's Department on May 2, 2006, and he died on the same day while confined at the Cleveland County Detention Center. Although Kenneth Wayne Ginn was heavily intoxicated, and had reportedly fallen and hit his head, he was placed in a jail cell and did not receive any medical care or treatment. He was then left in his jail cell for over three (3) hours without anyone checking on him. When someone finally checked on him around 11:30 p.m., he was dead.

The Petitioner requested that the Respondents be ordered to produce for deposition, the person or persons most knowledgeable about the arrest, detention, booking, care and custody of Kenneth Wayne Ginn and that the Respondents be ordered to produce all information, video tapes and documents relating to this matter. The Petitioner has requested the Cleveland County Sheriff's Department to produce the information and documents; however, the Cleveland County Sheriff's Office has refused to produce some of the requested information. The Petitioner believes the requested information will show there was a "reckless indifference" by the Cleveland County Sheriff's Office in failing to provide medical care to Kenneth Wayne Ginn. In order to identify the proper parties to a lawsuit and to determine the proper causes of action, the Petitioner needs the requested information. At this time, Petitioner no longer desires to require depositions if the requested records are produced by Respondents.

The Respondents disputed the allegations of the Petitioner and refused to produce any of the requested information and documents until the last few days, after this Petition was filed. In a letter from Respondents' counsel dated December 7, 2006, which was in response to Petitioner's Open Records Act request of June 23, 2006, they enclosed a portion of the requested documents. However, they failed to produce, among other things, information concerning the other prisoners in the Cleveland County jail on May 2, 2006.

The Petitioner is seeking information to which she is entitled under the Open Records Act. In essence, this Petition should be treated as an action to force Respondents to produce the records pursuant to 51 O.S. § 24A.17(B) which provides, in part:

B. Any person denied access to records of a public body or public official:

1. May bring a civil suit for declarative or injunctive relief, or both, but such civil suit shall be limited to records requested and denied prior to filing of the civil suit; and

2. If successful, shall be entitled to reasonable attorney fees.

LAW AND ARGUMENT

The Petitioner is clearly entitled to the requested information. 51 O.S. § 24A.8, which is titled Law Enforcement Agency Records Available for Public Inspection, specifically provides the following:

- A. Law enforcement agencies shall make available for public inspection, if kept, the following records:
 1. An arrestee description, including the name, date of birth, address, race, sex, physical description, and occupation of the arrestee;
 2. Facts concerning the arrest, including the cause of arrest and the name of the arresting officer;
 3. A chronological list of incidents pertaining to the arrest, including initial offense report information showing the offense, date, time, general location, officer, and a brief summary of what occurred; and
 4. Radio logs, including a chronological listing of the calls dispatched.
- B. Law enforcement agencies shall make available for public inspection, if kept, the following records:

• • •

4. Jail registers, including jail blotter data or jail booking information recorded on persons at the time of incarceration showing the name of each prisoner with the date and cause of commitment, the authority committing the prisoner, whether committed for a criminal offense, a description of the prisoner, and the date or manner of discharge or escape of the prisoner.
- C. Except for the records listed in subsections A and B of this section and those made open by other state or local laws, law enforcement agencies may deny access to law enforcement records except where a court finds that the public interest or the interest of an individual outweighs the reason for denial.

As noted above, the records identified in subsections A and B of § 24A.8 “shall” be made available for public inspection. As further noted in subsection C, the court may require that additional records be produced if the interest of an individual outweighs the reason for denial.

The Respondents contend that Petitioner has not met the provisions of 12 O.S. § 3227(A)(1)(c) through (e) which require, in part, the following:

• • •

- (c) The facts which he desires to establish by the proposed testimony and his reasons for desiring to perpetuate it.
- (d) The names or, if the names are unknown, a description of the persons he expects will be adverse parties and their addresses so far as known.
- (e) The names and addresses of the persons to be examined and the substance of the testimony which he expects to elicit from each.

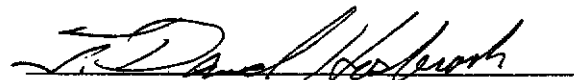
The Petitioner has met the requirement of subsection (c) above by stating her belief that the requested evidence will show there was a “reckless indifference” in failing to provide medical care.

The Petitioner, to the extent possible, has met the requirements of subsection (d) and (e) above. Although the names are unknown, she has described the persons of interest as those “most knowledgeable about the arrest, detention, booking, care and custody of Kenneth Wayne Ginn.” The Petitioner does not know the names and addresses of these persons. If the Respondents had produced the documents and information they were required to produce pursuant to 51 O.S. § 24A.8, the Petitioner could have been more specific in her request. The Respondents complaints about the lack of specificity in Petitioner’s requests should not be given much weight, since the Respondents have refused to produce information to which Petitioner is entitled and which should reveal the names of potential parties and persons to be deposed. In any event, the Petitioner no longer needs to take any depositions, if the Court requires the Respondents to produce the requested records.

On December 8, 2006, Petitioner received a letter from Respondents' counsel which was in response to Petitioner's request made on June 23, 2006, for documents under the Open Records Act. Although it has been over five (5) months since Petitioner's request for documents, the Respondents have only produced a portion of the documents required to be produced. The Petitioner requests that the Court find that the interests of the Petitioner outweigh any reason of the Respondents for the denial of the records and order the Respondents to produce the requested records and information. As previously stated the Petitioner is seeking information to which she is entitled to under the Open Records Act. In essence, this Petition should be treated as an action to force Respondents to provide the records pursuant to 51 O.S. § 24A.17(B).

CONCLUSION

The Petitioner has clearly established her right to the requested information pursuant to the provisions of 12 O.S. § 3227 and 51 O.S. §24A.8. The Respondents are obligated to produce the requested information, yet, they have absolutely refused to produce some documents. The Petitioner requests that the Court order the Respondents to produce the requested information and documents and award Petitioner attorney fees and costs..



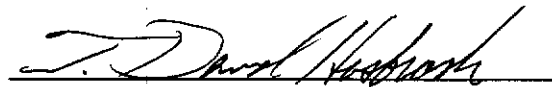
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CERTIFICATE OF SERVICE

This is to certify that on the 4 day of December, 2006, a true and correct copy of the above and foregoing document was faxed to 405-848-4978 and mailed by regular U.S. Mail with sufficient postage thereon, to:

Ambre C. Gooch
COMINGDEER, LEE & GOOCH
6011 N. Robinson Avenue
Oklahoma City, OK 73118

ATTORNEYS FOR RESPONDENTS


T. David Hasbrock