

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS
FIFTH DIVISION

KEITH HALL

PLAINTIFF

v.

60CV-11-5454

FILED 12/01/11 15:22:55
Larry Crane Pulaski Circuit Clerk
CR3

STUART THOMAS, CHIEF OF LITTLE
ROCK POLICE DEPARTMENT

DEFENDANT

ORDER DENYING MOTION FOR STAY OF SUBSTITUTED ORDER

This matter comes before the Court on Defendant Stuart Thomas' Motion for Stay of Substituted Order ("Motion"). Defendant requests that the Court enter a stay of its November 30, 2011 Amended and Substituted Order for Disclosure of "Use of Force" Documents Pursuant to the Arkansas Freedom of Information Act.

The Arkansas Rules of Civil Procedure provides in relevant part:

(d) *Stay Upon Appeal.* When an appeal is taken, the appellant by giving a supersedeas bond may obtain a stay subject to the exceptions contained in subdivision (a) of this rule, and except as to child custody orders and similar orders. The bond may be given at or after the time of filing the notice of appeal. After an appeal has been docketed in the appellate court, application for leave to file a bond may be made only in such court.

ARCP 62(d). Although Rule 62(d) provides this Court with the authority to issue a stay, the Court is not required to stay the execution of its order pending appellate review.

Defendant asserts that the Supreme Court of Arkansas has indicated its preference to grant a stay when the question is whether certain records are public records that should be disclosed. The basis for Defendant's contention is *Pulaski Co. v. Ark. Democratic-Gazette, Inc.*, an Arkansas Supreme Court case, in which it was stated:

Pulaski County filed a notice of appeal, a designation of the record, and a motion for stay pending appeal. The circuit court denied the motion for stay on June 26, 2007. Pulaski County then filed motions to expedite and for stay pending appeal with this court. We granted the motion to expedite, and ordered the stay pending appeal.

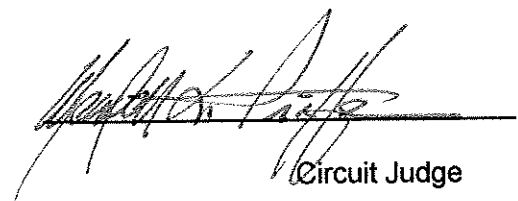
Pulaski Co. v. Ark. Democratic-Gazette, Inc., 370 Ark. 435, 438 (2007). The statements relied upon by the Defendant are merely recitals of the case's procedural history. Nothing contained in *Pulaski Co. v. Ark. Democratic-Gazette, Inc.* requires this Court to issue a stay of its November 30, 2011 amended and substituted order.

Moreover, nothing about the Motion or the use of force reports that the Court has ordered Defendant Thomas to produce pursuant to the Arkansas Freedom of Information Act pertain to personal information, information related to any proceeding in which Lt. David Hudson or any other person is subject to discipline resulting in suspension or termination. As such, the Motion is without merit, whether reviewed on privacy or due process grounds.

There are no reasons to further delay disclosure of the use of force reports. Release of the use of force reports has not been demonstrated as necessary in order to protect any interest contemplated by the Freedom of Information Act. The Court has examined the use of force reports *in camera*. They do not contain information which if disclosed would constitute an invasion of Lt. Hudson's privacy interests. They raise no due process considerations concerning Lt. Hudson or any other person. Simply put, there is no legitimate reason for their continued non-disclosure. This FOIA request has been pending since November 14, 2011. More than two weeks have passed since the request was made. The use of force reports should be produced forthwith.

WHEREFORE, based on the foregoing law, findings and conclusions, the Court HEREBY DENIES Defendant's Motion for Stay of Substituted Order.

ORDERED this 1 day of December, 2011.


Circuit Judge