

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2009 CA 1932

THEODORE J. PHILLIPS

VERSUS

GANAWAY'S #5 CONVENIENCE STORE

Judgment Rendered: MAY - 7 2010

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On Appeal from the Sixteenth Judicial District Court
In and for the Parish of St. Mary
State of Louisiana
Docket No. 120,282

Honorable Keith Comeaux, Judge Presiding

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Theodore J. Phillips
Angola, Louisiana

Plaintiff/Appellant
In Proper Person

Frank J. Judycki
Morgan City, Louisiana

Counsel for Defendants/Appellees
Ganaway's #5 Convenience Store,
Inc., Verna Ganaway & Pam Ganaway

* * * * *

BEFORE: DOWNING, GAIDRY, AND McCLENDON, JJ.

McCLENDON, J.

Theodore J. Phillips appeals a judgment that dismissed his petition for failure to state a cause of action. For the reasons that follow, we affirm.

Phillips asserts that on March 9, 2004, he was found guilty of armed robbery of Ganaway #5 Convenience Store employees and armed robbery with the use of a firearm. On June 10, 2009, Phillips filed a petition naming Ganaway's #5 Convenience Store (Ganaway's), and its owners, Pam and Verna Ganaway, as defendants. Therein, Phillips alleged that he had previously requested "public records pertaining to the [surveillance video system], in store #5" and that defendants failed to answer the requests. Phillips prayed for damages arising from defendants' negligence in failing to provide the items requested. In connection with his petition, Phillips also filed interrogatories, requests for production of documents, and requests for admissions, all of which pertained to Ganaway's surveillance video system.

On July 2, 2009, the defendants filed a Peremptory Exception of No Cause of Action, asserting that Ganaway's was not subject to the Public Records Law, LSA-R.S. 44:1, *et seq.*, and as such, Phillips had failed to state a cause of action against the defendants. Following a hearing, the trial court found that Ganaway's was not subject to a public records request and dismissed Phillips' suit.

Phillips has appealed, asserting that the trial court erred in failing to rule on the defendants' exception of no cause of action and in denying his request for public records pursuant to LSA-R.S. 44:1, *et seq.*

DISCUSSION

Despite Phillips' contention that the trial court failed to rule on the defendants' exception of no cause of action, the record clearly reflects otherwise. We note that the purpose of the hearing was to address the defendants' exception of no cause of action, and prior to ruling, the trial judge indicated "I'm going to go ahead and grant the Exception of No Cause of Action." Moreover, the written judgment signed by the trial court reflected the matter was being

dismissed following a hearing "on the Peremptory Exception of No Cause of Action." Accordingly, this assignment of error is without merit.

Phillips also contends that the trial court erred by denying him access to public records from Ganaway's. Although Phillips does not indicate the purpose he seeks the requested materials, Phillips maintains that he is entitled to the "surveillance video system records" and materials because Ganaway's is a "Public Body" under the Public Records Law. See LSA-R.S. 44:1, *et seq.*

We disagree. Louisiana Revised Statutes 44:1(A)(1) defines "public body" as follows:

As used in this Chapter, the phrase "public body" means any branch, department, office, agency, board, commission, district, governing authority, political subdivision, or any committee, subcommittee, advisory board, or task force thereof, or any other instrumentality of state, parish, or municipal government, including a public or quasi-public nonprofit corporation designated as an entity to perform a governmental or proprietary function.

A plain reading of Phillips' petition and discovery in connection therewith show that he had requested materials from a convenience store and its employees. Phillips has not sued or requested records from a "public body" within the meaning of LSA-R.S. 44:1(A)(1).¹ Furthermore, even if Phillips were seeking materials from a "public body," we note that much of the information sought may otherwise be protected. See LSA-R.S. 44:1(A)(2)(b).²

In light of the foregoing, we conclude that the trial court did not err in granting defendants' exception of no cause of action. Therefore, we affirm the judgment of the trial court and assess costs of this appeal against Theodore J. Phillips.

AFFIRMED.

¹ Moreover, although Phillips asserts that defendants are subject to the Public Records Law through LSA-R.S. 47:9006 ("All records of the corporation shall be deemed public records and subject to public inspection as provided by the provisions of R.S. 44:1 *et seq.*"), we note that the corporation referred to therein is the Louisiana Lottery Corporation. See LSA-R.S. 47:9003.

² Louisiana Revised Statutes 44:1(A)(2)(b) provides:

Notwithstanding Subparagraph (a), any documentary material of a security feature of a public body's electronic data processing system, information technology system, telecommunications network, or electronic security system, including hardware or software security, password, or security procedure, process, configuration, software, and code is not a "public record".