

NOT DESIGNATED FOR PUBLICATION

ANDREW J. STANKEVICH * **NO. 2014-CA-1352**
VERSUS *
RONAL SERPAS AND THE * **COURT OF APPEAL**
CITY OF NEW ORLEANS * **FOURTH CIRCUIT**
* **STATE OF LOUISIANA**

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APPEAL FROM
CIVIL DISTRICT COURT, ORLEANS PARISH
NO. 2014-01627, DIVISION "C"
Honorable Sidney H. Cates, Judge

* * * * *

Judge Dennis R. Bagneris, Sr.

* * * * *

(Court composed of Judge Dennis R. Bagneris, Sr., Judge Roland L. Belsome,
Judge Joy Cossich Lobrano)

Andrew J. Stankevich
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**IN PROPER PERSON PLAINTIFF/APPELLANT, ANDREW J.
STANKEVICH**

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**COUNSEL FOR DEFENDANT/APPELLEE RONAL SERPAS AND
THE CITY OF NEW ORLEANS**

AFFIRMED

JUNE 17, 2015

Plaintiff, Andrew Stankevich, filed a petition for writ of mandamus and a motion for summary judgment against Ronal Serpas and the City of New Orleans (collectively “the City”) alleging that the New Orleans Police Department (“NOPD”) withheld documents he requested pursuant to the Louisiana Public Records Act. The City maintains that the evidence in the record clearly shows that it responded to plaintiff in a timely manner and that plaintiff received all the documents that were requested. After a hearing, the trial court denied plaintiff’s petition for writ of mandamus and his motion for summary judgment. Plaintiff now appeals this final judgment. For the following reasons, we hereby affirm.

FACTS

According to the pleadings, on July 2, 2013, plaintiff and his landlord, Louise Griffin, both dialed 911 requesting NOPD assistance to 2135 Mandeville Street, New Orleans, Louisiana in reference to a landlord/tenant dispute. The officers determined that the dispute between the plaintiff and his landlord was a civil matter and that no crime had been committed. Therefore, the call was listed as a disturbance and determined to be a “NAT” or necessary action taken, and was documented under item G-42778-13.

On July 12, 2013, plaintiff emailed Assistant City Attorney Anita Curran, and requested the public records regarding the July 2nd incident between him and his landlord. On July 17, 2013, Ms. Curran responded via email and advised him of the procedure for which to obtain the records he was seeking and requested “an incident report item number” so that the Police Department could locate the

records. Ms. Curran also advised that if he did not have the incident number, he could pay a \$150.00 fee for the NOPD to conduct a search of the incident.

Thereafter, on July 19, 2013, plaintiff emailed Ms. Curran to request a copy of audio and/or transcript of Louise Griffin's 911 call and asked questions regarding the incident report. On July 22, 2013, Ms. Curran responded that she did not know the answer to his questions and that he should contact "the Police Department, Record, and Identification Division" to help him with his requests.

On July 24, 2013, plaintiff emailed Ms. Curran and requested "to pay \$150 to have the New Orleans Police Department search for an incident report number" in order to request a copy of the audio recording of the 911 call. On that same day, Ms. Curran responded by providing plaintiff with the proper form to be used as well as the address and payment information needed. On August 6, 2013, plaintiff emailed Ms. Curran to say that he received a "transcript for the July 2nd 911 call" but that "said transcript was a [sic] only portion of the actual 911 call." On August 12, 2013, Ms. Curran forwarded plaintiff's email regarding the 911 transcript to Lt. Bradley Tollefson and asked for his assistance in plaintiff's public records requests. On that same date, Lt. Tollefson responded to plaintiff and explained that the transcript of the 911 call is not redacted and provided him with the procedure for receiving the 911 audio and other documents he was requesting. Lt. Tollefson also stated that "[t]he call was initially a "disturbance" call but changed by the officer to a "miscellaneous incident" call. It was marked up NAT (Necessary Action Taken) and therefore there was no report. There was no allegation of criminal activity or the complaint operator would have made it a signal which would have corresponded to the crime." Later that day, plaintiff

responded to Lt. Tollefson by thanking him for his “quick response” and requested an “unabridged version of Griffin’s 911 call.”

Plaintiff paid the required fee for the copy of the 911 tape and records he requested and was provided with a copy of two 911 audio CD’s, one incident and one calls for service.

In August 2013, plaintiff filed a complaint with the NOPD Public Integrity Bureau, (“PIB”), and also sought any documents it maintained regarding his complaint. The PIB complaint was assigned to Sgt. Frederick Conerly and documented under PIB Control Number 2013-0634N. Sgt. Conerly completed his investigation on May 22, 2014 and determined that no formal investigation was merited because there was no allegation of police misconduct. Although plaintiff alleges in his petition for writ of mandamus that NOPD did not respond to his November 23, 2013 request for the PIB report; the record reflects that NOPD issued responses to plaintiff on November 25, 2013 and February 19, 2014, advising him that his request for documents was being processed. The record also indicates that a copy of the PIB report was mailed to plaintiff on May 22, 2014.

On September 15, 2013, Detective Alisha Henderson was assigned to investigate the matter after plaintiff requested an investigation into the July 2, 2013 incident. On October 8, 2013, Detective Henderson issued a report finding that the incident did not warrant any criminal action and that the dispute was in reference to a rental agreement.

On February 14, 2014, plaintiff filed this petition for writ of mandamus alleging that he was denied records by the NOPD relating to the dispute on July 2, 2013, between him and his landlord. He then filed a motion for summary judgment on June 18, 2014. After a hearing, the trial court denied his petition for

mandamus and motion for summary judgment. Specifically, the trial court stated as follows:

But the bottom line is, as I have read the extensive documentary history of this case, they've given you everything that they have and everything that you requested.

Now, if you are attempting to address the sufficiency or the adequacy or the reasonableness or unreasonableness of what was provided, that's not what you asked for in this petition. So for that reason, I'm going to deny your request because in essence they've given you all the records that exist, and you're not satisfied that - -with the content of those records.

Plaintiff now appeals this final judgment.

DISCUSSION

A writ of mandamus is an extraordinary remedy which should be applied only where ordinary means fail to afford adequate relief. *La. Assessors' Retirement Fund, et al v. City of New Orleans, et al*, 01-735 (La. 2/26/02); 809 So.2d 955. *Smith v. Dunn*, 263 La. 599, 268 So.2d 670, 672 (La. 1972). A writ of mandamus may be directed to a public officer to compel the performance of a ministerial duty required by law. La. C.C.P. art. 3863. The writ should be issued only in cases where the law provides no relief by ordinary means or where the delay involved in obtaining ordinary relief may cause injustice. La. C.C.P. art. 3862; *Smith*, 268 So.2d at 672.

A trial court's disposition of a motion for summary judgment is reviewed using the *de novo* standard of review "under the same criteria governing the trial court's consideration of whether summary judgment is appropriate." *D'Angelo v. Guarino*, 10-1555, p.3 (La. App. 4 Cir. 3/9/12); 88 So.3d 683, 686 (citing *Wilson v. Calamia Constr. Co.*, 11-0639, p. 3 (La. App. 4 Cir. 9/28/11); 74 So.3d 1198,

1200). In determining whether summary judgment is appropriate, a court must resolve the following two issues: (i) whether there is any genuine issue of material fact; and (ii) whether the mover is entitled to judgment as a matter of law. *Warren v. Kenny*, 10-1580, pp. 5-6 (La. App. 4 Cir. 4/27/11); 64 So.3d 841, 845-46 (citing *Ocean Energy, Inc. v. Plaquemines Parish Government*, 04-0066, p.5 (La.7/6/04); 880 So.2d 1, 5.)

The issue in this appeal is whether the trial court erred in denying plaintiff's petition for mandamus and motion for summary judgment. After a review of the record, we find that the plaintiff failed to point to any evidence to support his allegations that the City and NOPD intentionally withheld records and failed to timely respond to his records request. The record reflects that plaintiff received a copy of the 911 audio tape of the July 2, 2013 incident with him and his landlord; a copy of the complaint history of the 911 call; copy of the incident report; and a copy of the PIB investigation report that was completed on May 22, 2014. The record also reflects that the City and NOPD timely responded to all of the plaintiff's requests as well as answered plaintiff's questions regarding the process.

Plaintiff testified at the hearing that although he received the documents he had requested, "I felt that a crime had been committed, and then I contacted - I wasn't complaining about the records request, but I was stating that the records that I got indicated that the landlord lied to the police about me and made false statements. And then I requested police [inaudible] regarding the new matter." However, plaintiff's dissatisfaction with the investigation does not justify the issuance of a mandamus. Because plaintiff timely received the documents that were requested, and because the record supports the trial court's denial of

plaintiff's petition for mandamus as well as motion for summary judgment, we hereby affirm the September 24th judgment.

AFFIRMED