

[Cite as *Thompson v. Cuyahoga Cty. Sheriff's Dept.*, 2018-Ohio-1577.]

LONNIE THOMPSON

Requester

v.

CUYAHOGA COUNTY
SHERIFF'S DEPARTMENT

Respondent

Case No. 2018-00251PQ

Judge Patrick M. McGrath

DECISION

{¶1} Requester Lonnie Thompson brings this case against respondent Cuyahoga County Sheriff's Department, alleging a denial of access to public records. Before the court are (1) a recommendation of dismissal filed on February 28, 2018, by Special Master Jeffery W. Clark, (2) Thompson's objections of March 12, 2018, to Special Master Clark's recommendation of dismissal, and (3) a response to Thompson's objections filed on March 19, 2018, by the sheriff's department. For reasons set forth below, the court holds that Thompson's objections should be overruled and that the special master's recommendation of dismissal should be modified and adopted.

Background and Procedural History

{¶2} On February 22, 2018, Thompson, an inmate at Trumbull Correctional Institution, sued the Cuyahoga County Sheriff's Department, alleging a denial of access to public records. In his complaint, Thompson asserted: "I made an Public Records request under the Freedom of Information Act, (see attached Exhibits, A, B and C) the reason why I was not given the records requested. This was denied on November 6, 2017." According to one exhibit, Thompson requested the following documents from Case Number CR-553640-A: (a) an affidavit, (b) complaint, (c) "Investigative Reports (Police Detective, Witness and Victim Statements & Reports on DVD & CD)", and (d) "Specific Investigatory Work Product."

{¶3} After Thompson filed his complaint, the court appointed Jeffery W. Clark as a special master in the cause. On February 28, 2018, Special Master Clark recommended dismissal of Thompson's complaint. Special Master Clark noted in his recommendation that Thompson, as a person incarcerated pursuant to a criminal conviction, is subject to requirements contained in R.C. 149.43(B)(8) relative to his public-records request. Special Master Clark stated:

Thompson's request does not include, or allege the existence of, the required finding of necessity by the sentencing judge [as required by R.C. 149.43(B)(8)]. A search of the Cuyahoga County Common Pleas Court criminal docket for the case referenced by Thompson, CR-11-553640-A, does not disclose any filing requesting such a finding. It appears beyond doubt that Thompson can prove no set of facts entitling him to an order to produce the requested records, and he therefore fails to state a claim for which relief may be granted. Civ.R. 12(B)(6).

(Footnote omitted.)

{¶4} According to this court's records, the court forwarded a copy of Special Master Clark's recommendation to Thompson and the Cuyahoga County Sheriff's Department. The court's docket indicates that Thompson received a copy of the special master's recommendation on March 3, 2018, and that the sheriff's department received a copy of the special master's recommendation on March 8, 2018.

{¶5} Six business days after Thompson received a copy of the special master's recommendation—on March 12, 2018—Thompson filed written objections to the special master's recommendation. In a certificate of service, Thompson represents that he sent a copy of his objections on March 6, 2018 via "**Certified/Registered/Return Receipt** U.S. Mail." Relying on *State ex rel. Caster v. City of Columbus*, 151 Ohio St.3d 425, 2016-Ohio-8394, 89 N.E.3d 598, and Crim.R. 16, Thompson urges that he is entitled to the information that he requested. And Thompson contends that the special master erred in recommending a dismissal of his complaint.

{¶6} A week after Thompson filed his objections—on March 19, 2018—the Cuyahoga County Sheriff's Department filed a response to Thompson's objections. The

sheriff's department maintains that Thompson misunderstands the holding of *Caster* and it urges the court to adopt the special master's recommendation of dismissal. In a certificate of service accompanying the response, counsel for the sheriff's department certified that she served a copy of the sheriff's department's response on Thompson "by ordinary U.S. mail" on March 19, 2018.

Law and Analysis

{¶7} Pursuant to R.C. 2743.75(A), this court has authority to adjudicate or resolve complaints based on alleged violations of R.C. 149.43(B). According to R.C. 2743.75(D)(2), notwithstanding any provision to the contrary in R.C. 2743.75, "upon the recommendation of the special master, the court of claims on its own motion has authority to dismiss the complaint at any time." Thus, in accordance with R.C. 2743.75(D)(2), the special master has authority to recommend the dismissal of a complaint filed under R.C. 2743.75, and this court on its own motion has authority to dismiss at any time a complaint alleging a denial of access to public records that is brought under R.C. 2743.75.

{¶8} R.C. 2743.75(F)(2) governs objections to a report and recommendation issued by a special master of this court. Pursuant to R.C. 2743.75(F)(2):

Either party may object to the report and recommendation within seven business days after receiving the report and recommendation by filing a written objection with the clerk and sending a copy to the other party by certified mail, return receipt requested. Any objection to the report and recommendation shall be specific and state with particularity all grounds for the objection. If neither party timely objects, the court of claims shall promptly issue a final order adopting the report and recommendation, unless it determines that there is an error of law or other defect evident on the face of the report and recommendation. If either party timely objects, the other party may file with the clerk a response within seven business days after receiving the objection and send a copy of the response to the objecting party by certified mail, return receipt requested. The court, within seven business days after the response to the objection is filed, shall issue a final order that adopts, modifies, or rejects the report and recommendation.

{¶9} Here, the court's docket indicates that Thompson received a copy of the special master's recommendation on March 3, 2018, and that he filed written objections on March 12, 2018. The court finds that Thompson has filed his objections within seven business days after receiving the special master's recommendation. Accordingly, Thompson's objections are timely filed. Additionally, in his certificate of service, Thompson represents that he served a copy of his objections on respondent by certified mail, return receipt requested, as required by R.C. 2743.75(F)(2).

{¶10} The court further finds that the sheriff's department's response is timely filed because the sheriff's department filed its response within seven business days after Thompson filed his objections. However, the sheriff's department's response is procedurally irregular because the sheriff's department's counsel sent a copy of the response to Thompson by "ordinary U.S. Mail," not by certified mail, return receipt requested, as required by R.C. 2743.75(F)(2).

{¶11} Thompson's complaint indicates that he is presently incarcerated at Trumbull Correction Institution and some exhibits appended to Thompson's complaint show that Thompson has been assigned an inmate number. If the factual allegations in Thompson's complaint and exhibits are presumed to be true and if all reasonable inferences therefrom are construed in Thompson's favor, a reasonable inference exists that Thompson is incarcerated pursuant to a criminal conviction. R.C. 149.43(B)(8), which concerns the availability of public records to incarcerated persons, thus applies in this instance. R.C. 149.43(B)(8) provides:

A public office or person responsible for public records is not required to permit a person who is incarcerated pursuant to a criminal conviction or a juvenile adjudication to inspect or to obtain a copy of any public record concerning a criminal investigation or prosecution or concerning what would be a criminal investigation or prosecution if the subject of the investigation or prosecution were an adult, *unless the request to inspect or to obtain a copy of the record is for the purpose of acquiring information that is subject to release as a public record under*

this section and the judge who imposed the sentence or made the adjudication with respect to the person, or the judge's successor in office, finds that the information sought in the public record is necessary to support what appears to be a justiciable claim of the person.

(Emphasis added.) Here, even assuming that Thompson's public-records request is for the purpose of acquiring information that is subject to release as a public record under R.C. 149.43(B), the complaint before the court does not reference an entry from the judge who imposed Thompson's sentence or made an adjudication with respect to Thompson, or the judge's successor in office, wherein the judge or the judge's successor finds that the information sought in the public record is necessary to support what appears to be a justiciable claim of Thompson. Neither does Thompson represent in his objections that he possesses such an entry. Under these circumstances, the court determines that the special master's recommendation for a dismissal of Thompson's complaint is not error. *Accord State ex rel. Fogle v. Steiner*, 74 Ohio St.3d 158, 161, 656 N.E.2d 1288 (1995) ("*sua sponte* dismissal without notice is appropriate where the complaint is frivolous or the claimant obviously cannot prevail on the facts alleged in the complaint"). Nevertheless, the special master's search of the criminal docket of the Cuyahoga County Court of Common Pleas to support his recommendation for dismissal pursuant to Civ.R. 12(B)(6) is inconsistent with the standard for dismissal under Civ.R. 12(B)(6) because the special master relied on evidence outside the complaint or incorporated in the complaint to support his recommendation. *See State ex rel. Crabtree v. Franklin County Bd. of Health*, 77 Ohio St. 3d 247, 249, 673 N.E.2d 1281 (1997), fn. 1 (material "incorporated in a complaint may be considered part of the complaint for purposes of determining a Civ.R. 12(B)(6) motion to dismiss"); *see also Sheridan v. Metro. Life Ins. Co.*, 182 Ohio App.3d 107, 2009-Ohio-1808, 911 N.E.2d 950, ¶ 15 (10th Dist.) (stating that in considering dismissal under Civ.R. 12(B)(6), a trial court "may not rely on allegations or evidence outside the complaint").

{¶12} With respect to Thompson’s objections, the court does not find that *State ex rel. Caster v. City of Columbus*, 151 Ohio St.3d 425, 2016-Ohio-8394, 89 N.E.3d 598, or Crim.R. 16 requires this court to reject the special master’s recommendation of dismissal, as Thompson urges. First, *Caster* involved an attempt by an Ohio attorney engaged by the Ohio Innocence Project to obtain certain law-enforcement records concerning a convicted criminal defendant whose direct appeals ended more than four years prior to the making of the request for public records. *Caster* is thus factually distinguishable from the circumstances of this case. And a review of *Caster* discloses that the Ohio Supreme Court did not discuss R.C. 149.43(B)(8) in the opinion.

{¶13} Second, Crim.R. 16 governs discovery in criminal matters. Subject to exceptions stated in Crim.R. 1(C), the Ohio Rules of Criminal Procedure prescribe the procedure to be followed in all courts of this state in the exercise of *criminal jurisdiction*. Crim.R. 1(A). However, this court adjudicates *civil* actions—not criminal cases. See R.C. 2743.03(A). Thompson’s reliance on Crim.R. 16 is not persuasive.

Conclusion

{¶14} Accordingly, for reasons set forth above, and upon independent review, the court holds that Thompson’s objections should be overruled and that the special master’s recommendation of dismissal should be modified and adopted.

PATRICK M. MCGRATH
Judge

cc:

LONNIE THOMPSON, #A640-614
P.O. Box 901
Leavittsburg, Ohio 44430

Kelli K. Perk
1200 Ontario Street, 8th Floor
Cleveland, Ohio 44113

[Cite as *Thompson v. Cuyahoga Cty. Sheriff's Dept.*, 2018-Ohio-1577.]

LONNIE THOMPSON

Requester

v.

CUYAHOGA COUNTY
SHERIFF'S DEPARTMENT

Respondent

Case No. 2018-00251PQ

Judge Patrick M. McGrath

JUDGMENT ENTRY

{¶15} For reasons set forth in the decision filed concurrently herewith, and upon independent review of the objected matters, the court MODIFIES and ADOPTS Special Master Jeffery W. Clark's recommendation of dismissal filed on February 28, 2018, OVERRULES respondent Lonnie Thompson's objections of March 12, 2018, to Special Master Clark's recommendation of dismissal, and DISMISSES Thompson's complaint against respondent Cuyahoga County Sheriff's Department. Court costs are assessed against Thompson. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

PATRICK M. MCGRATH
Judge

cc:

LONNIE THOMPSON, #A640-614
P.O. Box 901
Leavittsburg, Ohio 44430

Kelli K. Perk
1200 Ontario Street, 8th Floor
Cleveland, Ohio 44113

Filed March 21, 2018
Sent to S.C. Reporter 4/23/18