

COURT OF APPEALS OF OHIO
EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

MAYOR BRANDON L. KING,	:	
	:	
Relator,	:	No. 108870
	:	
v.	:	
	:	
THOMAS BUTH,	:	
	:	
Respondent.	:	

JOURNAL ENTRY AND OPINION

JUDGMENT: COMPLAINT DISMISSED
DATED: December 10, 2019

Writ of Mandamus
Motion No. 531287
Order No. 533601

Appearances:

Willa M. Hemmons, Law Director City of East Cleveland,
for *relator*.

Muskovitz & Lemmerbrock L.L.C., Ryan J. Lemmerbrock
and Brooks W. Boron, for *respondent*.

ANITA LASTER MAYS, J.:

{¶ 1} The city of East Cleveland, East Cleveland Mayor Brandon King, and East Cleveland Fire Chief Michael Celiga, (collectively the “City”), have filed a complaint for a writ of mandamus. The City seeks to compel the East Cleveland

Firefighters Union, IAFF Local 550, and East Cleveland Firefighters Union, IAFF President Thomas Bluth, (collectively the “Union”), “to produce a list of names of the East Cleveland Firefighters and amounts due them from the monetary judgment of \$103,000 entered in [*East Cleveland Firefighters, et al. v. City of East Cleveland, et al*, Cuyahoga C.P. No. CV-16-861942].” The Union has filed a joint Civ.R. 12(B)(6) motion to dismiss that we grant for the following reasons.

I. Facts

{¶ 2} In April of 2016, the Union filed a grievance and for arbitration alleging that the City had violated a collective bargaining agreement by unilaterally understaffing the fire department on each daily shift. On April 15, 2016, the Union filed a complaint, *East Cleveland Firefighters v. City of East Cleveland*, CV-16-861942, for a temporary restraining order, preliminary injunction, and declaratory and injunctive relief. The trial court granted the Union’s request for injunctive relief and ordered the City to refrain from violating the terms of the collective bargaining agreement pending arbitration. On April 25, 2016, the trial court granted the Union’s motion for a preliminary injunction and further imposed a fine of \$750 for each day of the City’s failure to comply with the collective bargaining agreement. The City continued its noncompliance with the collective bargaining agreement which resulted in the trial court increasing sanctions to \$1,250 per day and attorney fees in the amount of \$5,000. In addition, the Union filed a motion to reduce the sanctions imposed upon the City to judgment, which the trial court granted in the amount of \$103,000. The City appealed the contempt finding and monetary

judgment of \$103,000. In *East Cleveland Firefighters v. East Cleveland*, 8th Dist. Cuyahoga No. 104948, 2017-Ohio-1558, this court affirmed the trial court's judgment that reduced the monetary sanctions imposed upon the City in the amount of \$103,000.

{¶ 3} In March of 2018, the Union once again filed a second motion to reduce the sanctions imposed upon the City to a monetary judgment. On April 5, 2018, the trial court granted the Union's motion and reduced the monetary obligations owed by the City to \$248,750. The City appealed the trial court's judgment. In *East Cleveland Firefighters v. East Cleveland*, 8th Dist. Cuyahoga No. 107034, 2019-Ohio-534, this court reversed the trial court's April 5, 2018 judgment that reduced sanctions to a monetary judgment of \$248,750 on the basis that the trial court failed to conduct a hearing before reducing the sanctions to a monetary judgment. The appeal was remanded to the trial court for further proceedings based upon the failure of the trial court to conduct a hearing prior to reducing sanctions to a monetary judgment.

{¶ 4} On September 9, 2019, the trial court conducted a hearing with regard to the Union's motion to reduce sanctions to a monetary judgment. At the conclusion of the hearing, the trial court entered a monetary judgment against the City in the total amount of \$264,744.11, which consisted of the original amount of \$248,750 plus interest in the amount of \$15,994.11. On September 9, 2019, the City filed a notice of appeal from the trial court's judgment of September 9, 2019. See *East Cleveland Firefighters v. East Cleveland*, 8th Dist. Cuyahoga No. 108982.

II. Mandamus Requirements and Analysis

{¶ 5} The City, in order to be entitled to a writ of mandamus, must demonstrate that: (1) it possesses a clear legal right to have the Union provide it with a list of East Cleveland firefighters that are allegedly entitled to \$103,000 in sanctions; (2) the Union possesses a clear duty to provide the City with a list of East Cleveland firefighters that are allegedly entitled to the monetary judgment; and (3) the City possesses no plain and adequate remedy in the ordinary course of the law. *State ex rel. Kerns v. Simmers*, 153 Ohio St.3d 103, 2018-Ohio-256, 1010 N.E. 3d 430; *State ex rel. Berger v. McMonagle*, 6 Ohio St.3d 28, 451 N.E.2d 225 (1983). Moreover, mandamus is an extraordinary remedy that is to be exercised with caution and only when the right is clear. Mandamus will not issue in doubtful cases. *State ex rel. Taylor v. Glasser*, 50 Ohio St.2d 165, 364 N.E.2d 1 (1977); and *State ex rel. Connole v. Cleveland Bd. of Edn.*, 87 Ohio App.3d 43, 621 N.E.2d 850 (8th Dist.1993).

{¶ 6} Upon a review of the complaint for a writ of mandamus, we find that the City has failed to establish that it possesses a clear legal right to the names of any East Cleveland firefighters entitled to sanctions reduced to a monetary judgment and that the Union possesses a clear legal duty to provide the City with a list of East Cleveland Firefighters entitled to sanctions reduced to a monetary judgment. Of greater importance is the fact that the City possesses or possessed an adequate remedy in the ordinary course of the law. *State ex rel. Tran v. McGrath*, 78 Ohio

St.3d 45, 6767 N.E.2d 108 (1997); *State ex rel. Johnson v. Cuyahoga Cty. Court of Common Pleas*, 8th Dist. Cuyahoga No. 104891, 2017-Ohio-394.

{¶ 7} The City was permitted to use the discovery procedures available within the Ohio Rules of Civil Procedure in order to obtain a list of those individual East Cleveland firefighters entitled to the sanctions reduced to a monetary judgment. Discovery, through depositions — Civ.R. 28, 30, and 32, stipulations — Civ.R. 29, interrogatories — Civ.R. 33, production of documents — Civ.R. 34, and requests for admission — Civ.R. 36, was all available to the City during the course of the proceedings before the trial court. In addition, the City has availed itself of an appeal, filed in *East Cleveland Firefighters v. East Cleveland*, 8th Dist. Cuyahoga No. 108982, that remains pending. It must also be noted that the amount of the monetary judgment that is owed to the Union is in dispute and the subject of the appeal currently pending in CA-108982. Thus, the City has availed itself of a remedy in the ordinary course of the law, which prevents this court from issuing a writ of mandamus.

{¶ 8} Finally, it is well settled that mandamus will not lie to enforce a right against a private person. *State ex rel. Longacre v. Penton Publishing Co*, 77 Ohio St.3d 266, 673 N.E.2d 1297 (1977); *State ex rel. Russell v. Duncan*, 64 Ohio St.3d 538, 597 N.E.2d 142 (1992); *State ex rel. Pressley v. Indus. Comm.*, 11 Ohio St.2d 141, 228 N.E.2d 631 (1967). Herein, the City has failed to aver facts which can establish that the Union is not a private person.

III. Conclusion

{¶ 9} Accordingly, we grant the Union's motion to dismiss. Costs to the City. The court directs the clerk of courts to serve all parties with notice of this judgment and the date of entry upon the journal as required by Civ.R. 58(B).

{¶ 10} Complaint dismissed.

ANITA LASTER MAYS JUDGE

PATRICIA ANN BLACKMON, P.J., and
KATHLEEN ANN KEOUGH, J., CONCUR