

requests Ware claims to have mailed. This court finds that Ware has not established that a valid public records request was sent to either respondent. Therefore, we deny the requested writ and deny Ware's claim for statutory damages. At this time, we also deny respondents' request to declare Ware a vexatious litigator.

I. Background

{¶ 2} Ware filed a complaint for writ of mandamus on March 9, 2023. There, he alleged the following four public records requests were sent by certified mail: A December 27, 2021 request to the Cuyahoga County Clerk of Courts ("Request 1"); a December 27, 2021 request to the Cuyahoga County Prosecutor's Office ("Request 2"); a December 28, 2021 request to the Cuyahoga County Clerk of Courts ("Request 3"); and a May 23, 2022 request to the Cuyahoga County Prosecutor's Office ("Request 4").

A. Request 1

{¶ 3} On December 27, 2021, Ware alleged he mailed a public records request via certified mail, which he claimed was represented by Exhibit A attached to his complaint. According to the exhibit, Ware personally sent a records request to "Cuyahoga Co Clerk of Courts, 1200 Ontario Street, Cleve. [sic] Ohio 44113," using certified mail tracking number 9590940243718109690071. According to Ware, Exhibit B of the complaint contained the records request that was sent. There, Ware stated he requested "a copy of the judgment entry from case no. 93058, that was filed on July 2, 2009[.] A copy of the judgment entry from case no. 89285, that was filed on June 9, 2008[.] A copy of the judgment entry from case no. 89350 and case

no. 89636, that was filed on November 15, 2007.” Ware alleged that respondent Byrd did not answer this request. Exhibit A includes a separate section for signature on the certified mailing that was signed for by “C. Southern” on January 5, 2022.

B. Request 2

{¶ 4} Next, Ware alleged that he sent a records request to the Cuyahoga County Prosecutor’s Office via certified mail on December 27, 2021. Exhibit C attached to the complaint included a certified mail tracking number 70012510000303220031. The records request evidenced in Exhibit C asked for “a copy of the personnel file of Lisa Reitz Williamson. A copy of the personnel file of Russell Tye.” Exhibit C included a tracking number summary from the United States Postal Service. The tracking number summary stated that the certified mailing was “[d]elivered, left with individual.”

C. Request 3

{¶ 5} Ware alleged that on December 28, 2021, he sent a public records request via certified mail to the Cuyahoga County Clerk of Courts at 1200 Ontario Street, Cleveland, Ohio 44113, certified mail tracking number 70012510000303220048 as evidenced in Exhibit D to the complaint. He stated he requested the oath of office of Nailah K. Byrd and the office’s records retention schedule. Ware further alleged that the records request was returned to him without responsive records. He attached an envelope he received from the clerk of courts office that purportedly contained his returned request.

D. Request 4

{¶ 6} On May 23, 2022, Ware alleged he sent an additional records request to the Cuyahoga County Prosecutor’s Office at 1200 Ontario Street, 9th, Cleveland, Ohio, 44113 as evidenced by Exhibit F to the complaint. This exhibit included a certified mail tracking number 70212720000290570064. This request sought the personnel file of Cuyahoga County Assistant Prosecutor Daniel T. Van and the office’s records retention schedule. Ware alleged that he did not receive a response to this request.

E. Respondent’s Allegations

{¶ 7} Respondents filed a combined motion for summary judgment and a supplemental motion for summary judgment. According to respondents, there are several anomalies with relator’s records requests. Respondents submitted affidavits from employees of their respective offices that aver that the offices did not receive the records requests Ware alleged to have sent.¹ They also pointed out that Ware’s complaint included printouts from the United States Postal Service’s website with tracking updates for three requests, but not for the first one evidenced in Exhibit A. Respondent Byrd, through an employee affidavit, also asserted that there is no “C. Southern” employed in her office. Other affidavits submitted by representatives from the Cuyahoga County Clerk of Courts office averred that the office did not receive this certified mailing. Monica Berry, an employee of respondent Byrd,

¹ Exhibits A and B to respondents’ motion for summary judgment filed May 3, 2023.

averred in her affidavit attached to respondents' motion for summary judgment that their office tracked receiving two certified mailings from Ware with certified mail tracking numbers 70012510000303220048 and 7001251000303219578 in January and February 2022, respectively. However, the office does not have any record that these constituted public records requests.

{¶ 8} Respondents also alleged and attempted to show that relator's records requests attached to his complaint were not actually what he sent in envelopes associated with the certified mail receipts that Ware alleged to have sent to respondents. Respondents, through their own public records request, obtained prison inmate records that showed Ware did not send the certified mailing for Request 1 evidenced in Exhibit A to Ware's complaint when Ware stated he did, if at all. Ware's institutional mailing records obtained from Trumbull Correctional Institution by respondents attached to the motion for summary judgment and supported by affidavit of a prison institution official, attached as Exhibit E, bear this out.

{¶ 9} Respondents also provided an affidavit from Summit County Assistant Prosecutor Marrett Hanna. Hanna averred that she was counsel of record in *State ex rel. Ware v. Kurt*, 9th Dist. Summit No. CA29622, 2023-Ohio-202. She averred that her office received a certified mailing from Ware. The mailing contained a copy of a journal entry that was issued by the Ninth District in the case and there was no reason for Ware to send this to Hanna via certified or regular mail. Hanna averred

that she was confused by the mailing because, as a party to the case, her office already received a copy of the journal entry.

{¶ 10} Respondents also noted that this is not the first instance that questions have arisen about the veracity of Ware's statements in a mandamus action seeking public records. Respondents also, with leave of court, filed a supplemental summary judgment motion citing other cases where public officials provided statements that they were not aware of public records requests filed by Ware until the filing of a complaint. *State ex rel. Ware v. Walsh*, 9th Dist. Summit No. 30051, 2021-Ohio-4585, ¶ 15; and *State ex rel. Ware v. Giavasis*, 163 Ohio St.3d 359, 2020-Ohio-5453, 170 N.E.3d 788, ¶ 3. Respondents assert that Ware is sending innocuous documents to state and local officials in order to generate a certified mailing paper trail that he would later use to claim that these mailings contained public records requests to which no response was received.

{¶ 11} Ware filed his own motion for summary judgment, opposition to respondent's motion for summary judgment, and opposition to respondent's motion to file supplemental motion for summary judgment. In these filings, Ware disputed respondents' allegations and alleged in an affidavit that the assistant prosecuting attorney representing respondents had colluded with others with whom the assistant prosecutor was in a sexual relationship to cast dispersions on Ware and his motives for filing public records requests. In Ware's opposition to respondents' supplemental motion for summary judgment, he asserted that this court had been poisoned against him and no matter what he submitted, this court would side with

respondents. Ware also included an affidavit that stated that he has “never altered any document filed in any courts, [the prosecutor representing respondents] is using any tool of her toolbox and a red herring to have my case dismissed by the eighth appellate district court.” Exhibit J to relator’s brief in opposition to respondents’ supplemental motion for summary judgment filed July 3, 2023.

{¶ 12} Because of the new evidence and allegations made in Ware’s brief, this court provided respondents with an opportunity to file a sur-reply. On July 14, 2023, respondents filed that sur-reply, where it produced evidence that documented Ware’s scheme. Respondents provided the affidavit of Stark County Assistant Prosecutor Aaron J. Voiland. He averred that his office had circulated an email to employees to not open and to hold any mail received from Ware. He went on to explain that on April 12, 2022, an attorney entered his office with a piece of certified mail with Ware’s name and return address on the envelope. This envelope bore the certified mail tracking number 70012510000303219431. The two individuals opened the envelope and documented its contents. According to the affidavit, the envelope contained a court filing by the Stark County Prosecutor from July 9, 2021. Voiland averred that on July 3, 2023, Ware filed a complaint for writ of mandamus in the Fifth District Court of Appeals seeking public records from the Stark County Prosecutor’s Office. The verified complaint filed by Ware stated that he sent a public records request to the Stark County Prosecutor’s Office via certified mail with the tracking number 70012510000303219431. Voiland further averred that the Stark County Prosecutor’s Office never received the public records request attached to

Ware's complaint prior to the filing of the complaint. The affidavit included copies of the email that was circulated to employees of the Stark County Prosecutor's Office, the envelope, and its contents with tracking number the office received on April 12, 2022, and a certified copy of Ware's complaint in the still pending case *State ex rel. Ware v. Stone*, 5th Dist. Stark No. 2023CA00066.

{¶ 13} Ware was given an opportunity to address the new evidence in respondent's sur-reply brief. On July 31, 2023, he filed his opposition where he claimed that respondents' attorney was colluding with other state actors to spread lies about him. Aside from personal attacks and general denials, Ware did not address the evidence submitted regarding the Stark County case.

{¶ 14} We also note that during the course of briefing, respondents provided records to Ware that satisfied Requests 1 and 3, and partially satisfied Request 4. Respondents did not provide the personnel files of employees of the prosecutor's office as requested in Requests 2 and 4.

II. Law and Analysis

{¶ 15} An action for writ of mandamus is one of the proper remedies to vindicate the rights provided by Ohio's Public Records Act embodied in R.C. 149.43 et seq., *State ex rel. IdeaStream Pub. Media v. Cuyahoga Metro. Hous. Auth.*, 8th Dist. Cuyahoga No. 110346, 2021-Ohio-2843, ¶ 10. To succeed, relators must show by clear and convincing evidence that they have a clear legal right to the requested records and that respondents have a clear legal duty to provide them. *State ex rel. Penland v. Ohio Dept. of Rehab. & Corr.*, 158 Ohio St.3d 15, 2019-Ohio-4130, 139

N.E.3d 862, ¶ 9. “Clear and convincing evidence” is “more than a preponderance of the evidence, but not to the extent of such certainty as proof beyond a reasonable doubt * * *.” *State ex rel. Griffin v. Doe*, 165 Ohio St.3d 577, 2021-Ohio-3626, 180 N.E.3d 1123, ¶ 5, citing *State ex rel. Miller v. Ohio State Hwy. Patrol*, 136 Ohio St.3d 350, 2013-Ohio-3720, 995 N.E.2d 1175, ¶ 14.

{¶ 16} Here, Ware “bears the burden to plead and prove facts showing that he requested a public record pursuant to R.C. 149.43(B)(1) and that [respondents] did not make the record available.” *State ex rel. Ware v. Crawford*, 167 Ohio St.3d 453, 2022-Ohio-295, 194 N.E.3d 323, ¶ 14, citing *Welsh-Huggins v. Jefferson Cty. Prosecutor’s Office*, 163 Ohio St.3d 337, 2020-Ohio-5371, 170 N.E.3d 768, ¶ 26.

{¶ 17} The matter is before the court on cross-motions for summary judgment. According to Civ.R. 56(C), summary judgment is appropriate when, construing the evidence most strongly in favor of the nonmoving party, (1) there is no genuine issue of material fact; (2) the moving party is entitled to judgment as a matter of law; and (3) reasonable minds can only reach a conclusion that is adverse to the nonmoving party. *Zivich v. Mentor Soccer Club*, 82 Ohio St.3d 367, 369-370, 696 N.E.2d 210 (1998), citing *Horton v. Harwick Chem. Corp.*, 73 Ohio St.3d 679, 653 N.E.2d 1196 (1995), paragraph three of the syllabus. However, “a party’s unsupported and self-serving assertions, offered by way of affidavit, standing alone and without corroborating materials under Civ.R. 56, will not be sufficient to demonstrate material issues of fact.” *Bell v. Beightler*, 10th Dist. Franklin No. 02AP-569, 2003-Ohio-88, ¶ 33, citing *C.R. Withem Ents. v. Maley*, 5th Dist. Fairfield No.

01 CA-54, 2002-Ohio-5056, ¶ 24; *Kulch v. Structural Fibers, Inc.*, 78 Ohio St.3d 134, 170, 677 N.E.2d 308 (1997) (Cook, J., concurring in part and dissenting in part).

A. No Valid Records Requests

{¶ 18} A valid public records request is a prerequisite to relief in mandamus. *State ex rel. McCaffrey v. Mahoning Cty. Prosecutor's Office*, 133 Ohio St.3d 139, 2012-Ohio-4246, 976 N.E.2d 877, ¶ 20, citing *State ex rel. Taxpayers Coalition v. Lakewood*, 86 Ohio St.3d 385, 390, 715 N.E.2d 179 (1999); and *Strothers v. Norton*, 131 Ohio St.3d 359, 2012-Ohio-1007, 965 N.E.2d 282, ¶ 14. The Supreme Court of Ohio determined that relief in mandamus was unavailable for meta data associated with digitally stored records because the records request sent by the relator did not request this data prior to the filing of the mandamus complaint. *Id.* at ¶ 21. The court stated that “R.C. 149.43(C) requires a prior request as a prerequisite to a mandamus action.” *Id.* at ¶ 20.

{¶ 19} Here, Ware has alleged that he sent four records requests to respondents via certified mail. However, respondents have each averred that they did not receive these records requests from Ware. Were this the balance of the evidence presented, this court would be inclined to find under the summary judgment standard and public policy regarding the Public Records Act that Ware established that he sent these requests. *See Crawford*, 167 Ohio St.3d 453, 2022-Ohio-295, 194 N.E.3d 323, at ¶ 12. But there is much more evidence to support that Ware did not, in fact, send the documents he claims.

{¶ 20} Employees for respondents averred that their departments track incoming public records requests and they have no record of receiving Ware's requests evidenced in his complaint. Further, the certified mail tracking number associated with Request 1 does not appear on his prison inmate mail log for the period in question and Ware does not explain this discrepancy. Further, the affidavit of Stark County Assistant Prosecutor Voiland establishes that Ware sent a certified mailing to the Stark County prosecutor's office that did not contain a public records request. Over a year later, Ware filed a public records mandamus action claiming that a records request was contained within the certified mailing. This affidavit is consistent with other affidavits filed by respondents. For instance, Summit County assistant prosecutor Hanna averred that she received a certified mailing from Ware. A copy of a January 25, 2023 Ninth District Court of Appeals decision was the only thing in the envelope. She averred that there was no reason for Ware to send the prosecutor's office a copy of the judgment.

{¶ 21} Further, Ware's various affidavits contain sworn statements for which he could have no personal knowledge or are materially false. In Ware's affidavit in support of his June 8, 2023 brief in opposition to respondents' motion for summary judgment, Ware averred that the prosecutor representing respondents was involved in a romantic relationship with the Summit County prosecutor who supplied an affidavit in this case. Ware did not provide any evidence in support of this sworn statement and did not establish by what personal knowledge he could make such a sworn statement.

{¶ 22} Ware further swore in his affidavit in support of his July 3, 2023 brief in opposition to respondents’ supplemental motion for summary judgment (Exhibit J) that he has “never altered any document filed in any courts * * *.” However, this court has previously found that Ware has done just that.

{¶ 23} In a motion for relief from judgment, Ware attempted to establish that this court erred in reviewing his affidavit of prior civil actions that he filed with his complaint in a public records mandamus action. *State ex rel. Ware v. Byrd*, 8th Dist. Cuyahoga No. 110865, 2022-Ohio-1175. Ware submitted an altered affidavit to support his claim in an effort to have this court’s decision vacated. This court explained that the affidavit of prior civil actions attached to the motion for relief from judgment was demonstrably different from the one attached to his complaint. *Id.* at ¶ 9-10. We cautioned relator that should he continue to file frivolous motions or actions, he would be determined to be a vexatious litigator pursuant to Loc.App.R. 23. *Id.* at ¶ 16.

{¶ 24} The Supreme Court of Ohio has also found that an affidavit submitted by Ware contained unexplained discrepancies, *Crawford*, 167 Ohio St.3d 453, 2022-Ohio-295, 194 N.E.3d 323, at ¶ 21, or was false. *Id.* at ¶ 66-71 (DeWine, J., dissenting). A dissenting justice summarized the discrepancy: “Ware attests that he sent one version of the document; Crawford attests that she received a different version. Ware attests that he mailed his version in the same envelope in which Crawford attests that she received her version. So, unless the document transformed

itself while in the hands of the postal service, someone isn't telling the truth." *Id.* at ¶ 67 (DeWine, J., dissenting).

{¶ 25} On the evidence presented in this case and under the applicable standard that apply to this case, in our discretion, we determine that a writ of mandamus shall not issue. Ware has not established that he sent records requests to the respondents as alleged in the complaint.

B. Statutory Damages and Costs

{¶ 26} Pursuant to R.C. 149.43(C)(2), a person that sends a public records request via certified mail, among other means, is entitled to statutory damages "if a court determines that the public office or the person responsible for public records has failed to comply with an obligation in accordance with division (B)" of the Public Records Act. Further, if a court orders a public office or person to comply with the public records act or decides that a public office or person has acted in bad faith then "the court shall determine and award to the relator all court costs * * *." R.C. 149.43(C)(3)(a)(i) and 149.43(C)(3)(a)(ii).

{¶ 27} Here, respondents have averred that they did not receive public records requests from Ware as he has alleged. Ware has submitted affidavits that state he sent the records requests attached to his complaint. The Supreme Court of Ohio has held that "'evenly balanced' evidence in the record regarding whether a public-records request was sent by certified mail did not satisfy a relator's clear-and-convincing-evidence burden of proof." *State ex rel. Griffin v. Doe*, 165 Ohio St.3d 577, 2021-Ohio-3626, 180 N.E.3d 1123, ¶ 8, citing *Giavasis*, 163 Ohio St.3d 359,

2020-Ohio-5453, 170 N.E.3d 788, at ¶ 32. *See also State ex rel. Pietrangelo v. Avon Lake*, 149 Ohio St.3d 273, 2016-Ohio-5725, 74 N.E.3d 419, ¶ 27. Here, the evidence in the record does not rise to the level of evenly balanced because respondents have averred that they did not receive the records requests and have submitted evidence tending to show that Ware has engaged in a pattern of sending innocuous documents to various public agencies via certified mail to establish a paper trail that he later uses to assert that the public agency ignored a public records request. In light of this evidence, Ware is not entitled to statutory damages.

{¶ 28} This court is also not directing respondents to comply with a duty imposed on them by the Public Records Act. We further do not find that respondents acted in bad faith. Therefore, Ware is not entitled to costs in this action.

C. Vexatious Litigator

{¶ 29} Respondents request that this court declare Ware to be a vexatious litigator pursuant to Loc.App.R. 23. Under this rule, if we, “sua sponte or on motion by a party, determines that an appeal, original action, or motion is frivolous or is prosecuted for delay, harassment, or any other improper purpose, it may impose on the person who signed the appeal, original action, or motion, a represented party, or both, appropriate sanctions.” Loc.App.R. 23(A). “If a party habitually, persistently, and without reasonable cause engages in frivolous conduct under division (A) of this rule, the Eighth District Court of Appeals may, sua sponte or on motion by a party, find the party to be a vexatious litigator.” Loc.App.R. 23(B).

{¶ 30} In the present case, we decline to find Ware to be a vexatious litigator. Even where Ware has submitted false or misleading affidavits, the Ohio Supreme Court has still granted Ware relief in mandamus and awarded him statutory damages. *Crawford*, 167 Ohio St.3d 453, 2022-Ohio-295, 194 N.E.3d 323. And recently, the Supreme Court of Ohio found that Ware was entitled to statutory damages in a different public records mandamus action. *State ex rel. Ware v. Parikh*, Slip Opinion No. 2023-Ohio-2536. The public records act must be liberally construed in favor of broad access and declaring one a vexatious litigator under the present circumstances would not comport with the spirit of the Act to preclude a citizen's right to access of records on valid request. However, should Ware continue to file actions or motions in this court that are bereft of merit, this court will have no choice but to limit his future filings by declaring him a vexatious litigator.

III. Conclusion

{¶ 31} Respondents' motion for summary judgment and supplemental motion for summary judgment are granted. Ware's motion for summary judgment is denied. Ware's request for relief in mandamus is denied. Ware shall bear the costs of this action. The clerk is directed to serve on the parties notice of this judgment and its date of entry upon the journal. Civ.R. 58(B).

{¶ 32} Writ denied.

EMANUELLA D. GROVES, JUDGE

FRANK DANIEL CELEBREZZE, III, P.J., and
MARY EILEEN KILBANE, J., CONCUR