

**IN THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
PORTAGE COUNTY, OHIO**

STATE OF OHIO ex rel.	:	PER CURIAM OPINION
CORTEZ M. OLIVER,	:	
	:	
Relator,	:	CASE NO. 2017-P-0080
	:	
- VS -	:	
	:	
PORTAGE COUNTY	:	
CLERK OF COURTS,	:	
	:	
Respondent.	:	

Original Action for Writ of Mandamus.

Judgment: Petition denied.

Cortez M. Oliver, pro se, PID: A581-824, Mansfield Correctional Institution, 1150 North Main Street, Mansfield, OH 44901 (Relator).

Victor V. Vigluicci, Portage County Prosecutor, and *Allison B. Manayan*, Assistant Prosecutor, 241 South Chestnut Street, Ravenna, OH 44266 (For Respondent).

PER CURIAM.

{¶1} This action in mandamus is presently before this court for consideration of the Civ.R. 56(C) motion for summary judgment filed by respondent, the Portage County Clerk of Courts.

{¶2} Relator, Cortez M. Oliver, is an inmate at the Mansfield Correctional Institution. He filed a petition for a writ of mandamus in this court, alleging that on October 16, 2017, he requested from respondent medical records that he claims were

part of the record in Portage County Court of Common Pleas case No. 2009 CR 00488. Relator maintains the medical records were never disclosed to him or his attorney during trial, and he was requesting them in order to file a “Post-Conviction or Delayed Reopening of Direct Appeal under newly discovered evidence.” He further maintains respondent failed to produce those documents. Relator now seeks a writ of mandamus to compel respondent to release the requested documents. Relator argues he has a clear legal right to have respondent produce the medical records, respondent has a clear legal duty to produce the records, and relator has no other adequate remedy at law to compel respondent to perform its lawful duty.

{¶3} Respondent filed an answer, denying relator made a request to the clerk for the medical records in case No. 2009 CR 00488. Attached to the answer are the following: (1) a 2009 “Motion for Medical Records Disclosed to Counsel” filed by relator, through counsel, in case No. 2009 CR 00488; (2) a 2009 “Motion for Medical Records” filed by relator, through counsel, in case No. 2009 CR 00488; (3) a 2009 judgment entry from case No. 2009 CR 00488 finding the motion had been complied with; (3) an affidavit of Kathleen Gray, the supervisor of the Portage County Clerk of Courts, averring there is no record in case No. 2009 CR 00488 of relator’s request to the clerk for medical records; (4) a copy of a letter from relator to the clerk of courts dated October 10, 2017, in which relator makes a public records request for the medical records in case No. 2009 CR 00402; and (5) a copy of Kathleen Gray’s response to the October 10, 2017 request, stating no medical records were filed in that case.

{¶4} Relator filed a reply to respondent’s answer. Attached to the reply was a letter dated October 23, 2017, from the deputy clerk of the Portage County Clerk of

Courts, which relator maintains rebuts Ms. Gray's affidavit and indicates that he "had in fact prior to the filing of his writ * * * made a request for a copy of the medical records under case no. 2009CR488."

{¶5} Respondent subsequently filed a Civ.R. 12(C) motion for judgment on the pleadings. This court denied that motion in a judgment entry on May 24, 2018.

{¶6} On August 13, 2018, respondent filed a motion for summary judgment pursuant to Civ.R. 56(C), which we now consider. Attached to the motion is the affidavit of Allison Blakemore Manayan, a Portage County Assistant Prosecutor, which incorporates by reference certified copies of pleadings, motions, papers, documents, memoranda, orders and judgment entries filed with the clerk of courts in case No. 2009 CR 00488. Relator did not respond to the motion.

{¶7} Civ.R. 56(C) provides that summary judgment is proper when

(1) [n]o genuine issue as to any material fact remains to be litigated; (2) the moving party is entitled to judgment as a matter of law; and (3) it appears from the evidence that reasonable minds can come to but one conclusion, and viewing such evidence most strongly in favor of the party against whom the motion for summary judgment is made, that conclusion is adverse to that party.

Temple v. Wean United, Inc., 50 Ohio St.2d 317, 327 (1977).

{¶8} "[T]he moving party bears the initial responsibility of informing the trial court of the basis for the motion, and identifying those portions of the record before the trial court [e.g., pleadings, depositions, answers to interrogatories, etc.] which demonstrate the absence of a genuine issue of fact on a material element of the nonmoving party's claim." *Dresher v. Burt*, 75 Ohio St.3d 280, 292 (1996), citing Civ.R. 56(C) and *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). If the moving party satisfies this burden, the nonmoving party has the burden to provide evidence

demonstrating a genuine issue of material fact, pursuant to Civ.R. 56(E), “and, if the nonmovant does not so respond, summary judgment, if appropriate, shall be entered against the nonmoving party.” *Id.* at 293.

{¶9} “Mandamus is a writ, issued in the name of the state to an inferior tribunal, a corporation, board, or person, commanding the performance of an act which the law specially enjoins as a duty resulting from an office, trust, or station.” R.C. 2731.01. “To be entitled to a writ of mandamus, the relator must be able to prove that: (1) he has a clear legal right to have a specific act performed by a public official; (2) the public official has a clear legal duty to perform that act; and (3) there is no legal remedy that could be pursued to adequately resolve the matter.” *State ex rel. Vance v. Kontos*, 11th Dist. Trumbull No. 2014-T-0078, 2014-Ohio-5080, ¶9, citing *State ex rel. Appenzeller v. Mitrovich*, 11th Dist. Lake No. 2007-L-125, 2007-Ohio-6157, ¶5. A defendant seeking a writ of mandamus must prove he is entitled to the writ by clear and convincing evidence. *State ex rel. Ward v. Reed*, 141 Ohio St.3d 50, 2014-Ohio-4512, ¶10, citing *State ex rel. Waters v. Spaeth*, 131 Ohio St.3d 55, 2012-Ohio-69, ¶13.

{¶10} In its motion for summary judgment, respondent maintains relator failed to satisfy the elements for the writ to issue. Respondent argues that because the clerk is not in possession of the requested records, the clerk did not have a clear legal duty to provide relator with the records. In support, respondent references the October 23, 2017 letter from the deputy clerk attached to relator’s reply. The letter states:

The clerk of courts office received your request for medical records in case 2009CR488. Unfortunately we do not keep these records here and we will not be able to complete your request. I can only make a couple suggestions to you because we do not know who holds these records. Maybe try the Prosecutor’s office or the arresting agency.

{¶11} “There can be no clear legal duty on one to furnish records which are not in his possession or control.” *Bradley v. Shannon*, 24 Ohio St.2d 115, 116 (1970); see also *State ex rel. Striker v. Frary*, 130 Ohio St.3d 81, 2011-Ohio-4705, ¶1.

{¶12} Here, the letter from the deputy clerk indicates relator was notified the clerk’s office is not in possession of the documents he requested. Relator has failed to put forth any evidence demonstrating the clerk’s office is in possession of those documents. Because there is no dispute that respondent is not in possession or control of the requested documents, respondent does not have a clear legal duty to provide relator with those documents as a matter of law.

{¶13} After a review of the evidentiary materials, we determine no genuine issue of material fact remains to be litigated.

{¶14} Respondent’s motion for summary judgment is granted.

{¶15} The petition for a writ of mandamus is denied.

DIANE V. GRENDALL, J., CYNTHIA WESTCOTT RICE, J., TIMOTHY P. CANNON, J.,
concur.