[Cite as *SER Striker v. Cline*, 2010-Ohio-2861.]

COURT OF APPEALS
RICHLAND COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE EX REL.,	:	JUDGES:
RALEIGH M. STRIKER	:	Hon. W. Scott Gwin, P.J.
	:	Hon. Sheila G. Farmer, J.
Relator	:	Hon. Patricia A. Delaney, J.
	:	
-vs-	:	
	:	
CLERK OF COURT,	:	Case No. 09CA107
ALYCE F. CLINE	:	
	:	
Respondent	:	O P I N I O N

CHARACTER OF PROCEEDING: Complaint For Writ of Mandamus

JUDGMENT: Denied

DATE OF JUDGMENT ENTRY: June 21, 2010

APPEARANCES:

For Relator

RALEIGH M. STRIKER, PRO SE
3560 Alvin Road
Shelby, OH 44875

For Respondent

RICHARD LEE SHEPHERT
City of Shelby
6 Water Street
Shelby, OH 44875

Farmer, J.

{¶1} Relator, Raleigh M. Striker, has filed a Complaint for Writ of Mandamus against Respondent, Alyce F. Cline, Clerk of Courts for the City of Shelby Municipal Court. Relator alleges Respondent has failed to comply with the Ohio Public Records Act. Respondent has filed an Answer as well as a Motion for Summary Judgment. Relator did not file a response to the Motion for Summary Judgment.

{¶2} Relator has filed a "Motion to Amend and Supplement Writ of Mandamus" which we grant. Civ.R. 15(A) permits a party to amend a pleading as a matter of course prior to the filing of a responsive pleading. Relator filed the motion to supplement the complaint on September 25, 2009. Respondent did not file an answer until October 15, 2009, therefore, Relator is able to amend his original complaint without leave of court.

{¶3} Relator raises four claims in his Complaint and Amended Complaint in addition to a request for statutory damages and attorney fees. First, he requests this Court issue a writ of mandamus because Respondent did not provide copies of public records upon Relator's request. Second, Relator avers Respondent has failed to properly post its public records policy. Third, Relator argues the Respondent fails to time stamp documents. Finally, Relator suggests the law director should have filed a Mandamus Complaint.

{¶4} Respondent's Motion for Summary Judgment relates to the first claim for production of public records. Respondent suggests the first cause of action is moot because the requested records have been provided. We grant Respondent's motion for summary judgment on Relator's first claim.

{¶5} Relator's first claim involves three public records requests. The initial request was made to Respondent in writing on June 3, 2009. Respondent advised Relator the requested records were unavailable because the case was pending before the trial court. Relator's sole request was for "a copy of recorded proceeding of Shelby Municipal Court hearing 10:00 AM May 27, 2009, Docket case 2009cvi0015." Relator left the request with Respondent.

{¶6} Next, Relator made a verbal request on June 15, 2009 for records from Respondent who again advised, the records could not be provided because the case was pending with the trial court. Relator admits in his Complaint he left Respondent's office out of frustration without leaving a copy of any request.

{¶7} The third and final request occurred when Relator left a written request for four documents with Respondent on September 2, 2009. Relator filed the instant Complaint on September 3, 2009. Respondent provided the requested documents to Relator on September 16, 2009.

{¶8} In her Motion for Summary Judgment, Respondent argues the first claim has become moot because the records requested by Relator have been provided. We agree.

{¶9} Generally to be entitled to the issuance of a writ of mandamus, the Relator must demonstrate: (1) a clear legal right to the relief prayed for; (2) a clear legal duty on the respondent's part to perform the act; and, (3) that there exists no plain and adequate remedy in the ordinary course of law. *State ex rel. Master v. Cleveland* (1996), 75 Ohio St.3d 23, 26-27, 661 N.E.2d 180; *State ex rel. Harris v. Rhodes* (1978), 5 Ohio St.2d 41, 324 N.E.2d 641, citing State *ex rel.National City Bank v. Bd of*

Education (1977) 520 Ohio St.2d 81, 369 N.E.2d 1200. However, where the allegation relates solely to public records request, the Supreme Court has held, "The requirement of the lack of an adequate legal remedy, as an element of a petition for writ of mandamus, does not apply to public-records cases to compel compliance with the Public Records Act. R.C. § 149.43." *State ex rel. Glasgow v. Jones* 119 Ohio St.3d 391, 894 N.E.2d 686 (Ohio,2008) at HN 2.

MOTION FOR PARTIAL SUMMARY JUDGMENT

{¶10} The Supreme Court addressed a fact pattern analogous to the case at bar in State ex rel. Toledo Blade Co. v. Ohio Bureau of Workers' Comp. et al. (2005), 106 Ohio St.3d 113. In Toledo Blade, the Blade requested certain records from the Ohio Bureau of Workers' Compensation (BWC). After the Complaint was filed, the BWC provided certain records. The Supreme Court held, "The Blade's mandamus claim for unredacted audit reports of coin-inventory records is moot because respondents have now provided these records. See *State ex rel. Cranford v. Cleveland,* 103 Ohio St.3d 196, 2004-Ohio-4884, 814 N.E.2d 1218, ¶ 23, quoting *116 *State ex rel. Cincinnati Enquirer, Div. of Gannett Satellite Info. Network, Inc. v. Dupuis,* 98 Ohio St.3d 126, 2002-Ohio-7041, 781 N.E.2d 163, ¶ 8 (" 'In general, the provision**715 of requested records to a Relator in a public-records mandamus case renders the mandamus claim moot'"). State ex rel. Toledo Blade Co. v. Ohio Bur. of Workers' Comp. (2005), 106 Ohio St.3d 113, 115-116, 832 N.E.2d 711, 714 – 715.

{¶11} We find Relator's claim to be moot based upon Respondent's having provided the requested documents to Relator. Further, even had the claim not been

moot, we do not find Respondent failed to comply with his duty under the Public Records Act for the reasons which follow:

{¶12} The Tenth District Court of Appeals has examined the duty of a public office pursuant to a public records request, "[P]ublic offices are required to promptly prepare records and transmit them within a reasonable period of time after receiving the request for the copy. The term "promptly" is not defined in the statute. However, statutes in other states give their agencies from between three and 12 days from the date the public records were requested to make the documents available. The word "prompt" is defined as "performed readily or immediately." Webster's Eleventh New Collegiate Dictionary (2005) 994."*State ex rel. Simonsen v. Ohio Dept. of Rehab. & Corr.* 2008 WL 5381924, 6 (Ohio App. 10 Dist.). Other courts have examined the number of days which may be considered reasonable or unreasonable. Ten business days has been held to be reasonable while 32, 37, and 79 business days have been held to be unreasonable. See *State ex rel. Bardwell v. Cuyahoga Cty. Bd. of Commrs.*, 2009 WL 3387654, 1 (Ohio App. 8 Dist.) (ten business days not violation); *State ex rel. Simonsen v. Ohio Dept. of Rehab. & Corr.*, 2009 WL 250867, 7 (Ohio App. 10 Dist.) (37 days not reasonable); *State ex rel. Bardwell v. Rocky River Police Dept.*, 2009 WL 406600, 7 (Ohio App. 8 Dist.) (32 business days unreasonable); *Bardwell v. Cleveland*, 2009 WL 3478444, 5 (Ohio App. 8 Dist.) (79 days unreasonable).

{¶13} In the instant case, the records were given to Relator on the ninth business day after the request was made in writing. We cannot say 9 days is unreasonable under these circumstances.

ATTORNEY FEES AND STATUTORY DAMAGES

{¶14} We find the oral request made on June 15, 2009 was withdrawn when Relator left the office. Relator made no request to be contacted and left no information for Respondent to contact him once the file had been retrieved.

{¶15} With regard to the first written request which was made on June 3, 2009, we find the public record requested was not requested from the person responsible for the public record. R.C. 149.43 requires disclosure of public records from the public office responsible for those records. In the case of recordings of court proceedings, the person responsible or public office is the judge of the court or the official court reporter.

{¶16} Because the request was not made to the person responsible for the records, Relator has not demonstrated a clear legal duty of the Respondent to provide the requested recording.

{¶17} R.C. 149.43(C) requires an award of statutory damages in cases where a written request is made and where the public office has failed to comply with the written request. Relator did not transmit a written request until September 2, 2009. Respondent did not fail to comply with a written request, therefore, we find statutory damages should not be awarded.

{¶18} R.C. 149.43(C)(2)(b) allows an award of attorney fees only if judgment is rendered ordering a public office to comply with division (B) of the Public Records Act. Because we have not rendered a judgment against Respondent for violation of division (B), attorney fees cannot be awarded.

{¶19} We grant summary judgment in favor of Respondent as it relates to the mandamus claim for records.

REMAINING CLAIMS

{¶20} In addition to the alleged violations of the Public Records Act, Relator raises fifteen "Propositions of Law" in his merit brief. The Court will treat these "Propositions of Law" as Assignments of Error. Based upon our foregoing analysis, the Court denies Propositions of Law 1, 3, 4, 5, 6, 7, 8, and 9.

"Proposition of Law No. 11"

{¶21} In his "Proposition of Law 11" Relator argues the City of Shelby Law Director had the duty to file and pursue a mandamus action. The Law Director has not been named as a party in this action pursuant to Civ.R. 10(A) which provides,

{¶22} "**Civ R 10 Form of pleadings:**

{¶23} **Caption; names of parties**

{¶24} Every pleading shall contain a caption setting forth the name of the court, the title of the action, the case number, and a designation as in Rule 7(A). In the complaint the title of the action shall include the names and addresses of all the parties, but in other pleadings it is sufficient to state the name of the first party on each side with an appropriate indication of other parties."

{¶25} Although Relator periodically refers to the law director, the law director was not named in the Complaint as a party. Even had the Law Director been named, we would not issue the writ.

{¶26} Relator cites R.C. 733.58 in support of this proposition which provides, R.C. 733.58 provides, "In case an officer or board of a municipal corporation fails to

perform any duty expressly enjoined by law or ordinance, the village solicitor or city director of law shall apply to a court of competent jurisdiction for a writ of mandamus to compel the performance of the duty."

{¶27} R.C. 733.59 provides, "If the village solicitor or city director of law fails, upon the written request of any taxpayer of the municipal corporation, to make any application provided for in sections 733.56 to 733.58 of the Revised Code, the taxpayer may institute suit in his own name, on behalf of the municipal corporation." This section permits a taxpayer to initiate a lawsuit if a law director fails to do so.

{¶28} Further R.C. 149.43 allows any aggrieved party to file a mandamus action to enforce the provisions of R.C. 149.43.

{¶29} We find both R.C. 733.59 and R.C. 149.43 provide Relator with an adequate remedy at law which precludes the issuance of a writ of mandamus.

"Proposition of Law No. 13"

{¶30} Proposition 13 addresses a Motion for Default Judgment which was previously denied by a separate judgment entry. We adhere to our previous ruling and decline to address it again.

{¶31} The remaining "Propositions of Law" can be divided into three issues: (1) Should a writ of mandamus issue to compel Respondent to time stamp documents, (2) Should a writ of mandamus issue to compel Respondent to post a particular public records policy, and (3) Should a writ mandamus issue requiring the Law Director to represent Respondent?

"Proposition of Law 2"

{¶32} The crux of Relator's "Proposition of Law No. 2" suggests a writ of mandamus should issue to require Respondent to time stamp documents rather than file stamp the documents. Relator relies in part on R.C. 2303.08 in support of his contention Respondent is required to time stamp documents, however, R.C. 2303.08 applies only to Common Pleas Court clerks.

{¶33} In addition, Relator cites R.C. 1901.31(E) in support of his proposition which provides in relevant part,

{¶34} "The clerk shall do all of the following: file and safely keep all journals, records, books, and papers belonging or appertaining to the court;

{¶35} *

{¶36} Under proper dates, the clerk shall note the filing of the complaint, issuing of summons or other process, returns, and any subsequent pleadings."

{¶37} R.C. 1901.31(E) does not by its plain language require a clerk to time stamp documents. Rather, the only requirement under this section is to file documents under the proper dates.

{¶38} Relator raises four examples wherein Respondent is alleged to have failed to properly file stamp documents. First is an entry from Case Number CVI 090015. The copy Relator attached to his complaint does not have a file stamp. The copy of the document provided by Respondent does have a file stamp. Obviously, Relator has obtained a copy which happens to not have been file stamped. This does not mean Respondent failed to file stamp the original. The second and third issues involve alleged missing documents from arraignments held on January 23, 2009. Respondent

avers no documents exist, therefore, no documents were file stamped. Relator has not demonstrated the existence of any documents. Rather, Relator has simply shown a notation on the Clerk's docket indicating arraignments were held. Finally, the only documents at issue which were not file stamped were presented to Respondent as a package or group. Respondent states only the first page of the package was file stamped because it was presented as a group for filing. Relator cites no authority for the proposition that each page of a packaged document must be file stamped. Because Relator has failed to demonstrate a clear legal duty on the part of the Respondent to do an act which is not already being done, the writ will not issue.

"Proposition of Law 10"

{¶39} In his tenth "Proposition of Law", Relator argues Respondent has failed to post its public records policy pursuant to R.C. 149.43(E)(2). Respondent explains the policy is now posted. Relator does not dispute Respondent's contention the policy is now posted. Because the Respondent is in compliance with R.C. 149.43(E)(2), we find the issue is moot which is akin to our holding above wherein once records are provided, the request for mandamus becomes moot. For this reason, the requested writ of mandamus is denied.

"Propositions of Law 12, 14, and 15"

{¶40} The remaining three "Propositions of law" relate to Relator's contention the Law Director of the City of Shelby was required to represent Respondent rather than private counsel. This Court has already overruled Relator's motion regarding this issue. Further, the Law Director of the City of Shelby has not been named as a party in this action. Relator cites no authority for the proposition that Respondent has a duty to

use the law director as counsel. For this reason, the requested writ of mandamus is denied.

{¶41} MOTION FOR PARTIAL SUMMARY JUDGMENT GRANTED.

{¶42} COMPLAINT FOR MANDAMUS DENIED.

{¶43} COSTS TO RELATOR.

{¶44} IT IS SO ORDERED.

By Farmer, J.

Gwin, P.J. and

Delaney, J. concur.

s/ Sheila G. Farmer

s/ W. Scott Gwin

s/ Patricia A. Delaney

JUDGES

IN THE COURT OF APPEALS FOR RICHLAND COUNTY, OHIO

FIFTH APPELLATE DISTRICT

STATE EX REL., RALEIGH M. STRIKER	:	
Relator	:	
-vs-	:	JUDGMENT ENTRY
CLERK OF COURT, ALYCE F. CLINE	:	
Respondent	:	Case No. 09CA107

For the reasons stated in our accompanying Memorandum-Opinion, the requested writ of mandamus is denied. The motion for partial summary judgment granted. The complaint for mandamus denied.

Costs to Relator.

s/ Sheila G. Farmer

s/ W. Scott Gwin

s/ Patricia A. Delaney

JUDGES