

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
SANDUSKY COUNTY

Randolph D. Rohm

Court of Appeals No. S-09-030

Relator

v.

The Fremont City School
District Board of Education

DECISION AND JUDGMENT

Respondent

Decided: June 14, 2010

* * * * *

James H. Ellis, III, for relator.

Jeanne M. Mullin, for respondent.

* * * * *

SINGER, J.

{¶ 1} Relator, Randolph D. Rohm, filed a complaint in mandamus, requesting that we order respondent, The Fremont City School District Board of Education, to produce certain public records regarding employment and retirement issues. During the pendency of this case, after a pretrial was conducted by the court, respondent ultimately provided the requested

documents, or was relieved from doing so by relator's withdrawal of one of its requests. Although we denied summary judgment because the records request became moot after the documents were provided to relator, we imposed the sanction of \$1,000 authorized under R.C. 149.43(C). We also stated that, upon proper documentation, we would award attorney fees to relator. Respondent opposes that award and requests that we reconsider our decision on the basis that attorney fees are punitive and no showing of deliberate intent to withhold the requested documents has been shown. In the alternative, respondent requests that we reduce relator's proposed fee amount.

Attorney Fees

{¶ 2} R.C. 149.43 was amended, effective September 29, 2007, and "subsection (C) now provides new standards for awarding attorney fees in public-records mandamus cases." *State ex rel. Toledo Blade Co. v. Seneca Cty. Bd. of Commrs.*, 120 Ohio St.3d 372, 2008-Ohio-6253, ¶ 48. This amendment "[s]pecifies certain circumstances in which a court must award statutory damages or reasonable attorney's fees to the aggrieved person in a mandamus action, and certain circumstances in which a court may reduce or deny an award of statutory damages or attorney's fees to the aggrieved person." (Citations omitted.) *State ex rel. Doe v. Smith*, 123 Ohio St.3d 44, 2009-Ohio-4149, ¶ 21.

{¶ 3} Thus, R.C. 149.43(C)(2), as amended in 2007, authorizes an award of reasonable attorney fees in a public-records mandamus case and provides, in pertinent part:

{¶ 4} "(b) If the court renders a judgment that orders the public office or the person responsible for the public record to comply with division (B) of this section, *the court may*

award reasonable attorney's fees subject to reduction as described in division (C)(2)(c) of this section. The court shall award reasonable attorney's fees, subject to reduction as described in division (C)(2)(c) of this section when either of the following applies:

{¶ 5} "(i) The public office or the person responsible for the public records failed to respond affirmatively or negatively to the public records request in accordance with the time allowed under division (B) of this section.

{¶ 6} "(ii) The public office or the person responsible for the public records promised to permit the relator to inspect or receive copies of the public records requested within a specified period of time but failed to fulfill that promise within that specified period of time.

{¶ 7} "(c) *Court costs and reasonable attorney's fees awarded under this section shall be construed as remedial and not punitive.* Reasonable attorney's fees shall include reasonable fees incurred to produce proof of the reasonableness and amount of the fees and to otherwise litigate entitlement to the fees. The court may reduce an award of attorney's fees to the relator or not award attorney's fees to the relator if the court determines both of the following:

{¶ 8} "(i) That, based on the ordinary application of statutory law and case law as it existed at the time of the conduct or threatened conduct of the public office or person responsible for the requested public records that allegedly constitutes a failure to comply with an obligation in accordance with division (B) of this section and that was the basis of the mandamus action, a well-informed public office or person responsible for the requested public records reasonably would believe that the conduct or threatened conduct of the public office or

person responsible for the requested public records did not constitute a failure to comply with an obligation in accordance with division (B) of this section;

{¶ 9} "(ii) That a well-informed public office or person responsible for the requested public records reasonably would believe that the conduct or threatened conduct of the public office or person responsible for the requested public records as described in division (C)(2)(c)(i) of this section would serve the public policy that underlies the authority that is asserted as permitting that conduct or threatened conduct." (Emphasis added.)

{¶ 10} Thus, under amended R.C. 149.43(C)(2)(b), attorney fees are not considered to be punitive and, if either factor applies, are mandatory, subject to possible reduction by the factors under (C)(2)(c). In this case, neither factor under R.C. 149.43(C)(2)(b) applies. Consequently, the propriety of attorney fees will be addressed within the parameters set out in R.C. 149.43(C)(2)(c)(i) and (ii).

{¶ 11} Attorney fees are discretionary under R.C. 149.43(C)(2)(c), and may also be subject to reduction. The potential reduction factors specified in R.C. 149.43(C)(2)(c)(i) and (ii) are considered after a court makes an initial, tentative decision to award fees. *State ex rel. Doe*, supra, ¶ 33. "Therefore, consistent with existing precedent, courts can consider the presence of a public benefit conferred by the relator seeking disclosure" of the requested public records. *Id.*, citing to *State ex rel. Toledo Blade Co.*, supra, ¶ 49 and *State ex rel Fox v. Cuyahoga Cty. Hosp. Sys.* (1988), 39 Ohio St.3d 108, 112.

{¶ 12} Considering the first factor under section (C)(2)(c)(i), respondent never contended that relator's initial requests were not public records or were protected information.

Additionally, after the mandamus action was filed, relator was reasonable when the parties met to facilitate respondent's provision of the missing documents. Relator did not contest the document respondent alleged to fall under attorney-client privilege and withdrew its request for relevant emails, since the production of those documents would be costly to respondent.

{¶ 13} Prior to the filing of the complaint in mandamus, respondent provided only a few documents in response to the five requested categories and deemed the other requests to be "vague and overbroad." Contrary to respondent's contention, the requests filed by relator were not unclear or overbroad. Respondent simply failed to gather and provide the requested documents within a reasonable time, forcing relator to file the instant mandamus action. Therefore, we do not find that a "well-informed public office or person responsible for the requested public records reasonably would believe that the conduct * * * of the public office or person * * * did not constitute a failure to comply with an obligation in accordance with division (B) of this section * * *."

{¶ 14} Likewise, under section (C)(2)(c)(ii), the facts presented do not support a finding that a "well-informed public office or person responsible for the requested public records reasonably would believe that the conduct or threatened conduct of the public office or person responsible for the requested public records as described in division (C)(2)(c)(i) of this section would serve the public policy that underlies the authority that is asserted as permitting that conduct * * *." Respondent has set forth no public policy reason for failing to fulfill the request in a reasonable time period. We conclude that the timely provision of records involving the calculation of retirement benefits and employment records of a public employee serves to

benefit not only that employee, but other employees of respondent, as well as the public at large. Therefore, neither of the factors of R.C. 149.43(C)(2)(c) are met which would require a reduction or denial of attorney fees in this case.

{¶ 15} Relator has requested \$5,100 in attorney fees, which included the \$100 filing fee. Upon review of the itemized documentation provided, we find that all services rendered were related to the mandamus action and the amounts charged were reasonable.

{¶ 16} Accordingly, the petition for writ of mandamus is dismissed as now moot. Relator's motion for attorney fees and court costs is well-taken and granted. Costs assessed to relator. Respondent is ordered to pay relator \$5,100 for attorney fees and reimbursement for court costs.

{¶ 17} It is so ordered. Pursuant to Civ.R. 58(B), the clerk is directed to serve upon all parties, within three days, a copy of this decision in a manner prescribed by Civ.R. 5(B).

WRIT DISMISSED.

Peter M. Handwork, J.

JUDGE

Mark L. Pietrykowski, J.

JUDGE

Arlene Singer, J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
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