

[Until this opinion appears in the Ohio Official Reports advance sheets, it may be cited as *State ex rel. Bandy v. Gilson*, Slip Opinion No. 2020-Ohio-5222.]

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SLIP OPINION NO. 2020-OHIO-5222

THE STATE EX REL. BANDY, APPELLANT, v. GILSON ET AL., APPELLEES.

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Mandamus—Public-records requests—Appellant not entitled to writ to compel production of coroner’s records—When a particular document has not been clearly requested, a writ of mandamus will not issue to compel production of that document—Court of appeals’ dismissal of petition affirmed.

(No. 2020-0458—Submitted August 18, 2020—Decided November 12, 2020.)

APPEAL from the Court of Appeals for Cuyahoga County, No. 109330,
2020-Ohio-1031.

Per Curiam.

{¶ 1} Appellant, Willie Bandy, appeals the judgment of the Eighth District Court of Appeals dismissing his petition for a writ of mandamus. Also pending is

Bandy's motion for leave to amend his reply brief. We deny the motion and affirm the judgment of the court of appeals.

Background

{¶ 2} Bandy is an inmate at the Grafton Correctional Institution, where he is serving a sentence of 15 years to life for the murder of Ray Emerson. In December 2001, Cuyahoga County Deputy Coroner Dawn McCollum performed an autopsy on the body of Ray, who had been stabbed, strangled, and beaten. On July 13, 2012, Bandy received a copy of the complete Ray autopsy report from the Office of the Cuyahoga County Medical Examiner.

{¶ 3} On September 18, 2014, Bandy wrote to the medical examiner's office to acknowledge receipt of the report and to request photographs of Ray's injuries:

* * * I'm requesting * * * Emerson Ray's photographs if any. The photographs needed [are of] the injuries pertaining to Ray's causes of death, and a full photograph of Ray at the coroner's office the day Ray's body was brought in. The photographs at the scene that [were] taken by the coroner's office will be helpful[.]

* * *

The requester in this case needs only the photographs of Ray's injuries and at the coroner's office showing those injuries listed in the autopsy report[.]

The medical examiner's office responded on September 22 but did not provide the photographs.

{¶ 4} On December 27, 2019, Bandy filed a petition in the Eighth District of Court of Appeals against Cuyahoga County Medical Examiner Thomas P. Gilson, Deputy Coroner McCollum, and Forensic Scientist Amy Riley

(collectively, “the office”). He requested a writ of mandamus to compel the office to provide (1) photographs of Ray’s stab wounds, (2) X-rays of the stab wounds, (3) Ray’s death certificate, and (4) a signed autopsy report.

{¶ 5} The court of appeals granted the office’s motion to dismiss. The court held that R.C. 313.10, the coroner’s statute, expressly excludes photographs from the definition of “public record.” 2020-Ohio-1031, ¶ 10. The court further concluded that the office had not failed to fulfill any legal duty, because the other items sought in Bandy’s petition were not mentioned in his letter to the office. *Id.* at ¶ 11.

{¶ 6} Bandy appealed. The parties filed merit briefs, and Bandy timely filed a reply brief. On August 6, 2020, Bandy filed a motion for leave to amend his reply brief.

Legal analysis

The timeliness of the office’s merit brief

{¶ 7} As a preliminary matter, Bandy contends in his first-filed reply brief that the office’s merit brief was filed out of time and must be disregarded. S.Ct.Prac.R. 16.03(A)(2) requires an appellee to file its merit brief within 30 days of the filing of the appellant’s merit brief. Bandy filed his merit brief on June 24, 2020. Counting June 24 as day No. 1, Bandy calculates that the office’s brief was due no later than July 23. The office filed its merit brief on July 24—one day out of time, according to Bandy. Accordingly, he claims to be entitled to judgment per S.Ct.Prac.R. 16.07(B), which provides that if an appellee fails to file a merit brief within the time allowed, this court “may accept the appellant’s statement of facts and issues as correct and reverse the judgment [on appeal] if the appellant’s brief reasonably appears to sustain reversal.”

{¶ 8} Bandy’s argument is meritless. S.Ct.Prac.R. 3.03(A)(1) clarifies that when “computing any period of time prescribed or allowed by these rules * * *, the day of the act from which the designated period of time begins to run shall not be

included.” So, counting June 25 as day No. 1, as the rule requires, day No. 30 fell on July 24. Therefore, the office’s brief was timely filed.

Bandy’s motion for leave to amend

{¶ 9} Although styled as a motion for leave to *amend* his reply brief, Bandy actually seeks leave to file a supplemental brief. That supplemental brief, attached to the motion, appears intended to introduce into the record testimony that Deputy Coroner McCollum gave at another criminal trial. Bandy apparently is attempting to submit this testimony to achieve two purposes: (1) to cast doubt on the conclusion that Ray died from a stab wound, so as to bolster Bandy’s claim that he needs the autopsy photographs to prove his innocence, and (2) to prove that the photographs and other records he seeks are in the possession of the office.

{¶ 10} We deny the motion because the evidence Bandy seeks to introduce is irrelevant. Just as a requester’s reason for seeking public records is irrelevant and cannot be used as a reason to *deny* a request, *State ex rel. Quolke v. Strongsville City School Dist. Bd. of Edn.*, 142 Ohio St.3d 509, 2015-Ohio-1083, 33 N.E.3d 30, ¶ 23-24, so too the strength of Bandy’s interest in obtaining the records is not a factor in whether he is legally entitled to receive them. And it is unnecessary for Bandy to prove that the records are maintained by the office because that fact is not in dispute. The issue, as discussed below, is whether Bandy is entitled to a writ of mandamus compelling the office to provide the records, and the amended reply brief does not speak to that issue.

The merits of Bandy’s appeal

{¶ 11} For a court to dismiss a complaint pursuant to Civ.R. 12(B)(6), it must appear beyond doubt from the complaint that the relator can prove no set of facts warranting relief, after all factual allegations of the complaint are presumed true and all reasonable inferences are made in the relator’s favor. *State ex rel. Natl. Elec. Contrs. Assn., Ohio Conference v. Ohio Bur. of Emp. Servs.*, 83 Ohio St.3d 179, 181, 699 N.E.2d 64 (1998). We review a dismissal under Civ.R. 12(B)(6) de

nov. *State ex rel. Brown v. Nusbaum*, 152 Ohio St.3d 284, 2017-Ohio-9141, 95 N.E.3d 365, ¶ 10.

{¶ 12} To be entitled to a writ of mandamus, the relator must establish, by clear and convincing evidence, (1) a clear legal right to the requested relief, (2) a clear legal duty on the part of the respondent to provide it, and (3) the lack of an adequate remedy in the ordinary course of the law. *State ex rel. Love v. O'Donnell*, 150 Ohio St.3d 378, 2017-Ohio-5659, 81 N.E.3d 1250, ¶ 3.

{¶ 13} As a general rule, the records of a coroner having jurisdiction over a particular case—“ including, but not limited to, the detailed descriptions of the observations written during the progress of an autopsy and the conclusions drawn from those observations filed in the office of the coroner’ ”—are public records. *State ex rel. Cincinnati Enquirer v. Pike Cty. Gen. Health Dist.*, 154 Ohio St.3d 297, 2018-Ohio-3721, 114 N.E.3d 152, ¶ 13, quoting R.C. 313.10(A)(1). And “[a]ll records in the coroner’s office that are public records are open to inspection by the public, and any person may receive a copy of any such record or part of it upon demand in writing, accompanied by payment of’ the requisite fees. R.C. 313.10(B).

{¶ 14} However, R.C. 313.10 expressly exempts certain categories of documents from the definition of “public record.” Subject to certain exceptions not relevant here (pertaining to requests from journalists, R.C. 313.10(D), and insurers, R.C. 313.10(E)), “the following records in a coroner’s office are not public records: * * * [p]hotographs of a decedent made by the coroner or by anyone acting under the coroner’s direction or supervision.” R.C. 313.10(A)(2)(b). Bandy’s request for the coroner’s photos showing Ray’s injuries falls squarely within this exception.

{¶ 15} Bandy’s legal argument rests almost entirely on *State ex rel. Fellows v. Soboslay*, 11th Dist. Trumbull No. 96-T-5422, 1996 WL 706825 (July 26, 1996). In *Fellows*, the court of appeals granted a writ of mandamus to compel a county coroner to provide autopsy photographs to a requester. However, in 1996, when

Fellows was decided, R.C. 313.10 did not contain an exception for photographs. R.C. 313.10(A)(2), which exempts coroner photographs from the definition of “public record,” became effective on August 17, 2006, as part of Am.Sub.H.B. No. 235, 151 Ohio Laws, Part IV, 7190, 7192. To the extent that *Fellows* stands for the proposition that a coroner’s autopsy photographs are public records, that aspect of the decision is no longer good law.

{¶ 16} Bandy also cites *State ex rel. Clay v. Cuyahoga Cty. Med. Examiner’s Office*, 2016-Ohio-407, 58 N.E.3d 552 (8th Dist.2016), *aff’d*, 152 Ohio St.3d 163, 2017-Ohio-8714, 94 N.E.3d 498, in which a court of appeals granted a writ of mandamus compelling a county medical examiner to produce his complete file on an autopsy. However, *Clay* is distinguishable. The requester in that case was not only the person convicted of murdering the deceased, he was also her father. *Id.* at ¶ 4-5. Therefore, he was able to invoke R.C. 313.10(C)(1), which requires a coroner to provide, upon written request, a complete copy of a file on a decedent to the decedent’s next of kin. Bandy, by contrast, has not claimed to be Ray’s next of kin.

{¶ 17} For these reasons, the court of appeals was correct to deny the writ of mandamus as to the coroner’s photographs.

{¶ 18} Bandy claims to be entitled to other records from the coroner’s office—specifically, the X-rays of the stab wounds and the signed autopsy report. But in his request, Bandy mentioned only photographs. A requester “must request records before bringing the mandamus action.” *State ex rel. Essi v. Lakewood*, 2018-Ohio-5027, 126 N.E.3d 254, ¶ 26 (8th Dist.). And when a requester has not clearly requested a specific document, a writ of mandamus will not issue to compel production of that record. *See State ex rel. Cushion v. Massillon*, 5th Dist. Stark No. 2010CA00199, 2011-Ohio-4749, ¶ 57 (holding that records concerning arbitrator fees fell outside scope of public-records request because initial request did not clearly request arbitrator-fee records). Bandy argues that “the *thrust* of his

writ of mandamus was solely to compel [the office] to release to [him] *all items in its files* pertaining to the death of Emerson Ray” to which he is entitled. (Emphasis added.) But a public-records request must be specific and particularly describe what is being sought. *State ex rel. Zauderer v. Joseph*, 62 Ohio App.3d 752, 756, 577 N.E.2d 444 (10th Dist.1989).

{¶ 19} The court of appeals was correct to deny Bandy’s request for a writ of mandamus, and so we affirm.

Judgment affirmed.

O’CONNOR, C.J., and KENNEDY, FRENCH, FISCHER, DEWINE, and DONNELLY, JJ.

STEWART, J., not participating.

Willie Bandy, pro se.

Michael C. O’Malley, Cuyahoga County Prosecuting Attorney, and Mark R. Musson, Assistant Prosecuting Attorney, for appellee.
