

[Until this opinion appears in the Ohio Official Reports advance sheets, it may be cited as *State ex rel. Ames v. Baker, Dublikar, Beck, Wiley & Mathews*, Slip Opinion No. 2023-Ohio-2668.]

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SLIP OPINION NO. 2023-OHIO-2668

THE STATE EX REL. AMES, APPELLANT, v. BAKER, DUBLIKAR, BECK, WILEY & MATHEWS ET AL., APPELLEES.

[Until this opinion appears in the Ohio Official Reports advance sheets, it may be cited as *State ex rel. Ames v. Baker, Dublikar, Beck, Wiley & Mathews*, Slip Opinion No. 2023-Ohio-2668.]

Mandamus—Public-records requests—Court of appeals did not err in determining that redactions from legal invoices extend no further than narrative portions of each invoice—Court of appeals did err in going outside the documents attached to appellant-requester’s complaint and granting appellees’ motions to dismiss based on the documents it reviewed in camera—Court of appeals’ judgment modified and judgment denying petition entered as if it had been originally filed in this court.

(No. 2023-0135—Submitted May 16, 2023—Decided August 3, 2023.)

APPEAL from the Court of Appeals for Portage County,

No. 2021-P-0046, 2023-Ohio-263.

Per Curiam.

{¶ 1} In *State ex rel. Ames v. Baker, Dublikar, Beck, Wiley & Mathews*, this court reversed the Eleventh District Court of Appeals’ judgment dismissing appellant Brian M. Ames’s mandamus petition and remanded the case to the court of appeals with instructions to conduct an in camera inspection of partially redacted legal invoices to determine whether they contained descriptions of services protected from disclosure by the attorney-client privilege. 170 Ohio St.3d 239, 2022-Ohio-3990, 210 N.E.3d 518, ¶ 15-19 (“*Ames I*”). The court of appeals conducted this inspection, determined that the invoices contained protected information, granted the motions to dismiss of appellees, Baker, Dublikar, Beck, Wiley & Mathews (“the Baker firm”), Public Entity Risk Services of Ohio (“PERSO”), and the Ohio Township Association Risk Management Authority (“OTARMA”), and accordingly dismissed Ames’s petition seeking production of the invoices in unredacted form under Ohio’s Public Records Act, R.C. 149.43. Ames has appealed. We now modify the judgment of the court of appeals and enter judgment denying the petition as if it had been originally filed in this court.

I. BACKGROUND

{¶ 2} In April 2021, Ames, a resident of Portage County, in which Rootstown Township is located, emailed a public-records request to an attorney at the Baker firm asking for “copies of the invoices for legal services provided to [the Rootstown Township Board of Trustees] by [OTARMA] and [PERSO] for [nine] cases.” (Second, third, and fourth sets of brackets sic.) *Id.* at ¶ 4. “OTARMA is a governmental risk-sharing pool with Ohio townships, including Rootstown Township, as members. PERSO is an Ohio for-profit corporation that provides claim-handling services to OTARMA and its members. And the Baker firm provides legal services to PERSO, documenting the services it provides in invoices addressed to PERSO.” *Id.* at ¶ 2.

{¶ 3} The Baker firm provided Ames with the invoices, but it redacted the narrative portions on the ground that they contained information protected from disclosure by the attorney-client privilege. After the Baker firm refused Ames’s follow-up request for unredacted invoices, Ames filed his petition for a writ of mandamus in the court of appeals, seeking an order directing appellees to produce unredacted invoices. The court of appeals dismissed the petition under Civ.R. 12(B)(6), concluding that although appellees were subject to the Public Records Act notwithstanding their private-party status, the information sought by Ames was protected from disclosure under the attorney-client privilege because it contained descriptions of legal services. *Id.* at ¶ 5. Ames then appealed to this court.

{¶ 4} This court reversed and remanded to the court of appeals with instructions to conduct an in camera inspection of the invoices at issue. Our analysis proceeded in two parts. First, we concluded that PERSO could be sued under the Public Records Act. (OTARMA and the Baker firm did not argue, as PERSO did, that they were immune from suit. *Id.*, 170 Ohio St.3d 239, 2022-Ohio-3990, 210 N.E.3d 518, at fn. 1.) Second, and of direct relevance to the analysis that follows below, we concluded that the court of appeals had misapplied the Civ.R. 12(B)(6) standard by presuming that the redacted invoices contained information protected from disclosure under the attorney-client privilege. As we pointed out, Ames had alleged that the redacted invoices attached to his petition did not include privileged information. *Id.* at ¶ 16-17. By failing to presume the truth of this allegation as required under the Civ.R. 12(B)(6) standard, the court of appeals committed reversible error in granting appellees’ motions to dismiss. *Id.* at ¶ 15, 17.

{¶ 5} On remand, the court of appeals conducted an in camera inspection of the invoices at issue, determining that “only the narrative portions of the billing records were redacted” and that the “dates of service, the hours, rates, and dollar amounts charged, along with descriptions of any costs incurred for court reporters

and like services, were not redacted.” 2023-Ohio-263, 207 N.E.3d 101, ¶ 8. The court thus found that “the billing records provided to Mr. Ames were all appropriately redacted, and that Mr. Ames’s public records request was fulfilled according to law.” *Id.* at ¶ 9. Based on this finding, the court determined that “there are no claims upon which relief can be granted since Mr. Ames received the legal invoices he requested, which were properly redacted under the attorney-client privilege.” *Id.* at ¶ 15. The court granted appellees’ motions to dismiss Ames’s petition. Ames then filed this appeal.

II. ANALYSIS

A. *The court of appeals’ in camera inspection*

{¶ 6} We have reviewed the unredacted invoices and find no error in the court of appeals’ determination that the redactions extend no further than the narrative portions of each invoice, which describe the rendition of legal services. Because “the narrative portion of [an] invoice describing the service is protected from disclosure by the attorney-client privilege,” *Ames I*, 170 Ohio St.3d 239, 2022-Ohio-3990, 210 N.E.3d 518, at ¶ 15, Ames is not entitled to receive the unredacted invoices he has requested.

{¶ 7} We disagree with Ames’s assertion that the court of appeals failed to “revie[w] the unredacted invoices to make a factual determination as to what portions of the narratives contain exempt information.” How Ames would know this is a mystery, given that he was not privy to the court of appeals’ in camera inspection. Ames appears to be speculating based on *State ex rel. Anderson v. Vermilion* that the narrative portions contain disclosable information relating to the “general title of the matter being handled, the dates the services were performed, and the hours, rate, and money charged for the services,” 134 Ohio St.3d 120, 2012-Ohio-5320, 980 N.E.2d 975, ¶ 15 (observing that this information is not protected from disclosure). There is no basis for Ames’s speculation; the invoices that Ames received did not redact this information.

{¶ 8} Ames also claims that the process of redaction leaves a court with “no way to determine the hours reasonably expended by attorneys on a case without examining the narrative portions to determine if the hours are properly billed to a client.” But this case turns on whether the redactions set forth on the invoices at issue contain information protected from disclosure under the attorney-client privilege, not whether the fees reflected on those invoices are reasonable.

B. Disposition under Civ.R. 12(B)(6) based on documents outside the complaint

{¶ 9} Ames is on stronger ground in arguing that the court of appeals erred in disposing of this case under Civ.R. 12(B)(6). But even accepting Ames’s point, we conclude that it would be futile to remand this matter for further proceedings to correct the court of appeals’ error.

{¶ 10} In determining that it could decide the case based on appellees’ motions to dismiss, the court of appeals acknowledged this court’s statement in *State ex rel. Hanson v. Guernsey Cty. Bd. of Commrs.* that a “movant may not rely on allegations or evidence outside the complaint [in seeking dismissal under Civ.R. 12(B)(6)]; otherwise, the motion must be treated, with reasonable notice, as a Civ.R. 56 motion for summary judgment,” 65 Ohio St.3d 545, 548, 605 N.E.2d 378 (1992), citing Civ.R. 12(B).

{¶ 11} The court of appeals also recognized the procedure outlined in *Pride v. Ohio Civ. Rights Comm.*, 10th Dist. Franklin No. 87AP-665, 1987 WL 26291 (Dec. 3, 1987), which addresses the interplay between the procedures applicable to a motion to dismiss and a motion for summary judgment. In that case, the Tenth District Court of Appeals reversed a trial court’s dismissal of a complaint on the ground that the complaint’s allegations were sufficient to withstand a Civ.R. 12(B)(6) motion to dismiss and remanded the case for an in camera inspection of records sought by the plaintiff that the defendants claimed were exempt from disclosure. In doing so, the Tenth District observed that a remand to the trial court for an “in camera inspection will, as a practical matter, require the [trial] court to

consider matters outside the pleading.” *Id.* at *4. Thus, “where a civil defendant files a motion to dismiss in cases such as this, the court may convert the matter to a motion for summary judgment pursuant to Civ.R. 12(B) to expedite the matter.” *Id.*

{¶ 12} Here, however, the court of appeals declined to follow *Hanson* or *Pride*. Instead, it pointed to the rule that a court may consider material incorporated in a complaint for purposes of ruling on a Civ.R. 12(B)(6) motion. 2023-Ohio-263, 207 N.E.3d 101, at ¶ 12. Construing the redacted invoices attached to Ames’s complaint and the unredacted invoices reviewed in camera as having the same identity, the court of appeals concluded that it could consider the unredacted invoices under Civ.R. 12(B)(6). *Id.* at ¶ 13 (“We find no authority holding that redaction (or lack thereof) changes a document’s identity”).

{¶ 13} The court of appeals drew additional support for its approach from *DeLoge v. DeSoto Cty. Sheriff’s Dept.*, 230 So.3d 1026 (Miss.App.2017), and *Allied Erecting & Dismantling Co., Inc. v. U.S. Steel Corp.*, N.D. Ohio No. 4:12CV1390, 2013 WL 5442276 (Sep. 27, 2013). In *DeLoge*, a Mississippi appellate court affirmed a trial court’s decision granting a defendant’s motion to dismiss under that state’s version of Civ.R. 12(B)(6) after conducting an in camera inspection of records submitted by the defendant. The appellate court rejected the plaintiff’s argument that the trial court had erred in failing to convert the motion to dismiss into a motion for summary judgment. Because the plaintiff had referred to the records in his complaint and made them a central part of his complaint, the appellate court held that the trial court’s analysis of these records was proper under Mississippi’s version of Civ.R. 12(B)(6). *DeLoge* at ¶ 13.

{¶ 14} The federal district court applied a similar standard in *Allied Erecting*. In that case, the district court had before it copies of contracts that the plaintiff had not attached to its complaint. The court concluded that it could review these contracts as part of its analysis of the defendant’s federal Civ.R. 12(B)(6)

motion without converting it into a motion for summary judgment because the contracts were “ ‘referred to in the complaint and [were] central to the claims contained therein.’ ” *Id.* at *1, fn. 1, quoting *Bassett v. Natl. Collegiate Athletic Assn.*, 528 F.3d 426, 430 (6th Cir.2008).

{¶ 15} Here, we discern two errors in the court of appeals’ analysis. First, contrary to what the court determined, Ames did not effectively incorporate the *unredacted* invoices into his complaint by attaching the redacted invoices to his complaint. Rather, by attaching the *redacted* invoices, he incorporated a different set of documents that on their face display less information than the unredacted invoices display.

{¶ 16} Second, the court of appeals improperly relied on the standard announced in *DeLoge* and *Allied Erecting* for deciding a Civ.R. 12(B)(6) motion. The general rule announced by this court for deciding a Civ.R. 12(B)(6) motion is that “courts cannot rely on evidence or allegations outside the complaint to determine [the] motion.” *State ex rel. Fuqua v. Alexander*, 79 Ohio St.3d 206, 207, 680 N.E.2d 985 (1997). There are “narrow exceptions” to this rule. *State ex rel. Ames v. Summit Cty. Court of Common Pleas*, 159 Ohio St.3d 47, 2020-Ohio-354, 146 N.E.3d 573, ¶ 5 (a court may go outside the evidence and allegations of a complaint in determining whether the case is moot); *see State ex rel. Neguse v. McIntosh*, 161 Ohio St.3d 125, 2020-Ohio-3533, 161 N.E.3d 571, ¶ 18 (“When entertaining a motion to dismiss a writ complaint, a court may take notice of the docket and record in a closely related case to determine whether the current complaint states a claim for relief”). But this case does not implicate those exceptions. And this court has not adopted the broader standard announced in *DeLoge* and *Allied Erecting* for deciding a Civ.R. 12(B)(6) motion.

{¶ 17} Although we conclude that the court of appeals erred in going outside the documents attached to Ames’s complaint and granting appellees’

motions to dismiss based on the documents it reviewed in camera, to remand this case to the court of appeals for further proceedings would be futile.

{¶ 18} The key issue in this case is whether the redacted invoices contain information protected from disclosure by the attorney-client privilege. As noted above, they do. And although Ames faults the court of appeals for creating an end run “around summary judgment by accepting evidence and argument from one side while excluding the other,” he does not identify any evidence that he would like to obtain and furnish on remand to support his request for the writ. Without more, Ames has not shown any prejudice resulting from the court of appeals’ error.

{¶ 19} Because this court reviews the judgment of a court of appeals in a mandamus action as if it had been originally filed here, we modify the judgment of the court of appeals, which granted appellees’ motions to dismiss Ames’s petition, to instead enter judgment denying the writ. *See State ex rel. E. Mfg. Corp. v. Ohio Civ. Rights Comm.*, 63 Ohio St.3d 179, 180-181, 586 N.E.2d 105 (1992) (holding that the court of appeals erred in dismissing the relator’s complaint and in failing to deny the writ pursuant to the respondent’s motion for summary judgment, and modifying the court of appeals’ judgment by granting the respondent’s motion for summary judgment and denying the writ).

III. CONCLUSION

{¶ 20} We modify the judgment of the Eleventh District Court of Appeals dismissing the petition and instead enter judgment denying the petition.

Writ denied.

KENNEDY, C.J., and FISCHER, DEWINE, DONNELLY, STEWART, BRUNNER, and DETERS, JJ., concur.

Brian M. Ames, pro se.

Baker, Dublikar, Beck, Wiley & Mathews, James F. Mathews, and Andrea K. Ziarko, for appellee Baker, Dublikar, Beck, Wiley & Mathews.

January Term, 2023

Buechner, Haffer, Meyers & Koenig Co., L.P.A., Robert J. Gehring, and Saba N. Alam, for appellee Ohio Township Association Risk Management Authority.

Reminger Co., L.P.A., Patrick Kasson, and Thomas Spyker, for appellee Public Entity Risk Services of Ohio.
