

[Cite as *State ex rel. Rittner v. Court of Claims of Ohio*, 2010-Ohio-1728.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State ex rel. Daniel L. Rittner, Sr.,	:	
Relator,	:	
v.	:	No. 09AP-774
The Court of Claims for Ohio et al.,	:	(REGULAR CALENDAR)
Respondents.	:	

D E C I S I O N

Rendered on April 20, 2010

Daniel L. Rittner, Sr., pro se.

*Richard Cordray, Attorney General, and Aaron D. Epstein,
for respondent Court of Claims of Ohio.*

IN MANDAMUS
ON OBJECTION TO THE MAGISTRATE'S DECISION

KLATT, J.

{¶1} Relator, Daniel L. Rittner, Sr., commenced this original action in mandamus seeking an order compelling respondent, Court of Claims of Ohio, to adjudicate his claim for an award of crime victim reparations and to rule on various motions relator filed in connection therewith.

{¶2} Pursuant to Civ.R. 53 and Loc.R. 12(M) of the Tenth District Court of Appeals, this matter was referred to a magistrate. Thereafter, respondent filed a motion to dismiss relator's complaint for failure to state a claim. Because respondent relied

upon evidence outside the pleadings, the magistrate converted respondent's motion to dismiss into a motion for summary judgment.

{¶3} On November 2, 2009, the magistrate issued a decision, including findings of fact and conclusions of law, which is appended hereto. The magistrate found that respondent ruled on the merits of relator's reparations claim. Therefore, relator already has been accorded the relief he seeks in this mandamus action. The magistrate also found that to the extent relator challenged respondent's action or inaction regarding any pending motion, relator had an adequate remedy at law barring relief in mandamus. Based upon these findings, the magistrate has recommended that we grant respondent's motion for summary judgment.

{¶4} Relator, an inmate of the Allen Correctional Institution acting pro se, has filed an objection to the magistrate's decision. Relator's objection ignores the basis of the magistrate's decision. Relator does not dispute the fact that he has already been afforded the relief he seeks in this action, namely a decision from respondent on his reparations claim. Rather than advancing an objection that relates to the basis of the magistrate's decision, relator argues that the magistrate erred by ignoring various motions filed by relator in this mandamus action. We disagree.

{¶5} The magistrate did not ignore relator's motions. The magistrate denied those motions in his November 2, 2009 order. Nor has relator set forth any reason why the magistrate's denial of those motions was improper. Therefore, we overrule relator's objection.

{¶6} However, we modify paragraph 31 of the magistrate's decision. To the extent that relator challenged in mandamus respondent's inaction with respect to any

pending motion, relator's claim is not barred because of an adequate remedy at law. Rather, relator is not entitled to relief in mandamus because these motions were effectively denied or rendered moot when respondent denied relator's reparations claim. Therefore, relator has been accorded the relief he seeks with respect to these motions.

{¶7} Following an independent review of this matter, we find that the magistrate has properly determined the facts and applied the appropriate law. Therefore, we adopt the magistrate's decision as our own, including the findings of fact and conclusions of law contained therein, except for paragraph 31. In accordance with the magistrate's decision, we grant respondent's motion for summary judgment.

{¶8} We also deny relator's "motion to notify respondent counsel of cease correspondence" and relator's "petition to find notice of appeal was timely filed." These motions do not raise any issue relevant to this mandamus action.

*Objection overruled;
respondent's motion for summary judgment granted;
and relator's motions denied.*

BRYANT and McGRATH, JJ., concur.

APPENDIX

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State ex rel. Daniel L. Rittner, Sr.,	:	
	:	
Relator,	:	
	:	
v.	:	No. 09AP-774
	:	
The Court of Claims for Ohio et al.,	:	(REGULAR CALENDAR)
	:	
Respondents.	:	

MAGISTRATE'S DECISION

Rendered on November 2, 2009

Daniel L. Rittner, Sr., pro se.

*Richard Cordray, Attorney General, Robert Eskridge and
Craig A. Calcaterra, for respondent Court of Claims of Ohio.*

IN MANDAMUS
ON RESPONDENT'S MOTION FOR SUMMARY JUDGMENT

{¶9} Relator, Daniel L. Rittner, Sr., an inmate of the Allen Correctional Institution, is the applicant in a case pending before respondent the Court of Claims of Ohio. In this original action, relator requests a writ of mandamus ordering respondent to rule upon motions he has filed in that case involving relator's claim for an award of reparations.

Findings of Fact:

{¶10} 1. According to the complaint filed in this original action ("complaint"), relator is incarcerated at the Allen Correctional Institution. The complaint consists of 41 enumerated paragraphs.

{¶11} 2. According to the complaint, pursuant to R.C. 2743.56, relator filed an application for an award of reparations with the Ohio Attorney General. In that application, relator claimed that he was the victim of criminally injurious conduct by his "caretaker" (his wife at the time). (Complaint at ¶7.)

{¶12} 3. Following the denial of relator's claim for reparations by the Ohio Attorney General, relator appealed that decision to a panel of commissioners of the Court of Claims of Ohio pursuant to R.C. 2743.61. The appeal is assigned case No. V2008-30499.

{¶13} 4. At paragraph 11 of his complaint, relator alleges:

The cause[s] of action herein are the multiple motions that are outstanding and awaiting disposition before the Court of Claim[s], or before the Respondents. The last act by the Court of Claims to be performed was the ORDER issued to Rittner on December 5, 2008 in which Rittner was ordered to submit the costs for postage to mail evidentiary documents to the Respondents and the Respondents would, in turn, order the State of Ohio to pay the costs of the postage incurred by Rittner to mail the evidence to the Court of Claims.

(Emphasis sic.)

{¶14} 5. Attached to the complaint as exhibit A is a purported copy of a December 5, 2008 order of the panel of commissioners in case No. V2008-30499. That order states:

THE COURT FINDS THAT

[One] On October 21, 2008, the applicant filed a motion to enlarge time for leave to submit evidence under Civ. R. 6(B). Plaintiff stated he wished to submit documentation to this court however he has insufficient funds in his prison account to accomplish this mailing;

[Two] On November 14, 2008, the applicant filed a leave to submit evidence with the court only and to serve appellee with expanded pleadings and evidence on the issue when funds become available;

[Three] On November 17, 2008, the applicant submitted additional documentation.

IT IS THEREFORE ORDERED THAT

[One] The applicant's October 21, 2008 motion for enlargement of time is GRANTED;

[Two] On or before **January 5, 2009**, the applicant shall file with this court a motion indicating the amount of postage necessary to mail all the documentation he believes this panel should view, so a justice [sic] and fair determination can be rendered in this matter;

[Three] When the motion is received, this court will issue an order directing the Attorney General to provide the applicant with amount for postage so directed by this panel;

[Four] Failure of the applicant to submit a cost motion to this court within the allotted time period will result in a decision being rendered based upon the evidence currently in the claim file and the information presented at the hearing;

[Five] All information sent to this panel will be duly considered prior to a decision being rendered in this case.

(Emphases sic.)

{¶15} 6. Attached to the complaint as exhibit B is a purported copy of a motion filed December 22, 2008 in case No. V2008-30499. The motion is captioned: "Instanter motion to order release of evidence and to also assess costs associated with copy service, to attorney general."

{¶16} 7. Attached to the complaint as exhibit C is a purported copy of a motion captioned: "Motion to order access to therapist and prison records and to rule upon Rittner's 'Instanter motion to order release of evidence []'."

{¶17} 8. Other exhibits are attached to the complaint purporting to be copies of correspondence relator sent to respondent urging a ruling on his pending motions.

{¶18} 9. On September 14, 2009, respondent filed a motion to dismiss in this action. In support, respondent submitted a certified copy of an "order of a three-commissioner panel" filed in case No. V2008-30499 on August 26, 2009. The eight-page commissioners' order affirms a May 15, 2008 decision of the Ohio Attorney General. The order states in part:

On October 21, 2008 Mr. Rittner filed a "Motion to Enlarge Time for Leave to Submit Additional Evidence." That motion was granted on December 5, 2008 providing Mr. Rittner until January 5, 2009 to submit additional evidence. This panel also filed a subpoena duces tecum to the Warden of the Allen County Correctional Institution for Mr. Rittner's file. The additional filings did not contain any evidence to support Mr. Rittner's claims of repressed memories, memory loss, or criminal conduct on the part of his ex-wife.

Since the October 2008 hearing, Mr. Rittner has filed several motions and letters of inquiry to this court, including a "Motion to Order the Attorney General to File and Investigate a Complaint of Criminally Injurious Conduct" which was responded to by the Attorney General. According to R.C. 2743.59(A), the attorney general shall fully investigate a claim for an award of reparations. Based upon the case file, it is the opinion of this court that the Attorney General fulfilled its duties under R.C. 2743.59 by fully investigating the claim made by Mr. Rittner. Mr. Rittner was then notified of such investigation by the Attorney General's Finding of Fact and Decision and its final decision.

* * *

The remainder of the motions including a "Motion to Release Evidence and Assess Costs to Attorney General"; "Motion to Order in Camera Hearing Regarding Ex Parte Protection Order and Sealing of Records"; "Motion to Order Access to Therapist and Prison Records"; and "Motion to File Exhibits with Court Only" are not well taken, therefore they will be denied.

From review of the file and with full and careful consideration given to all information presented at and after the hearing, we find the applicant's claim was properly denied pursuant to R.C. 2743.51(C)(1), 2743.56(B)(2), and 2743.60(A). Therefore, the May 15, 2008 decision of the Attorney General is affirmed.

IT IS THEREFORE ORDERED THAT

[One] The May 15, 2008 decision of the Attorney General is AFFIRMED;

[Two] This claim is DENIED and judgment is rendered for the state of Ohio;

[Three] The applicant's pending motions are hereby DENIED[.]

(Emphases sic.)

{¶19} 10. In further support of its motion, respondent submitted a certified copy of an August 15, 2008 commissioners' order that rules upon a multitude of motions in case No. V2008-30499.

{¶20} 11. On September 16, 2009, this magistrate issued an order converting respondent's motion to dismiss to one for summary judgment. The order also gave notice that respondent's September 14, 2009 motion for summary judgment is set for submission to the magistrate on October 5, 2009.

{¶21} 12. Subsequent to the issuance of the magistrate's September 16, 2009 order, relator has filed multiple motions in this action. However, none of the motions

present substantive evidence disputing the fact that respondent, through its three commissioner panel, issued its orders of August 26 and August 15, 2009 as described above. This magistrate shall rule upon relator's pending motions in an order separate from this magistrate's decision.

Conclusions of Law:

{¶22} It is the magistrate's decision that this court grant respondent's motion for summary judgment, as more fully explained below.

{¶23} Summary judgment is appropriate when the movant demonstrates that: (1) there is no genuine issue of material fact; (2) the moving party is entitled to judgment as a matter of law; and (3) reasonable minds can come to but one conclusion, and that conclusion is adverse to the party against whom the motion for summary judgment is made, said party being entitled to have the evidence construed most strongly in his favor. *Turner v. Turner* (1993), 67 Ohio St.3d 337, 339-340; *Bostic v. Connor* (1988), 37 Ohio St.3d 144, 146; *Harless v. Willis Day Warehousing Co.* (1978), 54 Ohio St.2d 64, 66. The moving party bears the burden of proving no genuine issue of material fact exists. *Mitseff v. Wheeler* (1988), 38 Ohio St.3d 112, 115.

{¶24} Civ.R. 56(E) states in part:

When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the party's pleadings, but the party's response, by affidavit or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the party does not so respond, summary judgment, if appropriate, shall be entered against the party.

{¶25} With respect to any claim for an award of reparations, a final decision of the attorney general may be appealed to a court of claims panel of commissioners who

shall determine the appeal. R.C. 2743.61(B). As earlier noted, that procedure was followed here. That is, relator did appeal a decision of the attorney general to a panel of commissioners. At the time of the filing of the instant complaint, relator's appeal was pending before a panel of commissioners. During the pendency of this action, relator's appeal was determined by a panel of commissioners through its order of August 26, 2009.

{¶26} Thereafter, relator was statutorily provided a right to appeal the August 26, 2009 decision of the panel of commissioners to a judge of the Court of Claims of Ohio. We do not know whether relator appealed to a judge of the Court of Claims.

{¶27} However, R.C. 2743.61(C) provided to relator an appeal to a Court of Claims judge:

The attorney general or a claimant may appeal an award of reparations, the amount of an award of reparations, or the denial of a claim for an award of reparations that is made by a panel of court of claims commissioners. If the determination of the panel of commissioners with respect to any claim for an award of reparations is appealed, a judge of the court of claims shall hear and determine the appeal on the basis of the record of the hearing before the commissioners, including the original award or denial made by the attorney general, any information or documents presented to the panel of commissioners, and any briefs or oral arguments that may be requested by the judge. If upon hearing and consideration of the record and evidence, the judge decides that the decision of the panel of commissioners is unreasonable or unlawful, the judge shall reverse and vacate the decision or modify it and enter judgment on the claim. The decision of the judge of the court of claims is final.

{¶28} Moreover, R.C. 2743.61(E) provides:

The attorney general or a claimant shall file a notice of an appeal concerning an order or decision of a panel of commissioners within thirty days after the date on which the

award or the denial of a claim is made by the panel of commissioners. If the attorney general or a claimant does not file a notice of appeal with respect to an award or denial within the thirty-day period, the award or denial of the claim is final unless a judge of the court of claims in the interests of justice allows the appeal.

{¶29} The August 26, 2009 order of the three commissioner panel shows that the panel ruled on the motions that are the subject of this original action. Accordingly, relator has been accorded the relief that he seeks in this action. Under such circumstances, summary judgment in favor of respondent is appropriate.

{¶30} That the August 26, 2009 decision of the panel of commissioners may not be a final order does not render summary judgment less than appropriate here. Given the status of the Court of Claims of Ohio docket at the time relator filed the mandamus action, the August 26, 2009 order of the panel of commissioners grants to relator all the relief to which he was allegedly entitled when this mandamus action was filed. See *State ex rel. Carter v. Ohio Court of Claims*, 10th Dist. No. 08AP-332, 2008-Ohio-6604.

{¶31} Moreover, to the extent that relator's complaint can be construed as a challenge to the action or inaction of the panel of commissioners with respect to any motion that was before them, R.C. 2743.61(C) provided relator with an appeal to a judge of the Court of Claims of Ohio that constitutes an adequate remedy at law barring relief in mandamus.

{¶32} Accordingly, for all the above reasons, it is the magistrate's decision that this court grant respondent's motion for summary judgment.

/s/ Kenneth W. Macke
KENNETH W. MACKE
MAGISTRATE

NOTICE TO THE PARTIES

Civ.R. 53(D)(3)(a)(iii) provides that a party shall not assign as error on appeal the court's adoption of any factual finding or legal conclusion, whether or not specifically designated as a finding of fact or conclusion of law under Civ.R. 53(D)(3)(a)(ii), unless the party timely and specifically objects to that factual finding or legal conclusion as required by Civ.R. 53(D)(3)(b).