

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

February 6, 1996

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 94-3413

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

**JOHN JELKS and
VELORIA JELKS,**

Petitioners-Respondents,

v.

PHILIP ARREOLA,

Respondent-Appellant.

APPEAL from orders of the circuit court for Milwaukee County:
LOUISE M. TESMER, Judge. *Order dismissed; order affirmed.*

Before Wedemeyer, P.J., Fine and Schudson, JJ.

PER CURIAM. Philip Arreola, City of Milwaukee Police Chief, appeals from two orders granting John and Veloria Jelks's writ of mandamus. The writ sought access to the police file surrounding the homicide of the Jelks's son on July 7, 1991. Arreola claims the trial court erred in granting the writ because the homicide investigation was ongoing and, therefore, the public should not have access to the police file until the case is closed. Because Jelks's counsel has already received 102 pages of the file, the appeal from the trial court's October 18, 1994, order granting access to these pages is moot and the appeal from this order is dismissed. Because the trial court did not err in

granting access to the remaining 50 pages in the police file, by order dated November 11, 1994, we affirm that order.

I. BACKGROUND

On July 7, 1991, the Jelks's son, Byron, was a passenger in an automobile which was insured by American Family Insurance Company. Byron was shot in the leg by an unknown person and died as a result of the gunshot. As of the date of this appeal, no one has been charged for Byron's death.

The Jelkses retained attorney Thomas M. Croke to investigate the possibility of a civil suit against the driver of the car and American Family for the death of their son. Croke made an open records request on December 1, 1992, seeking access to the police file relating to Byron's death. The request was denied on the basis that this homicide investigation was still ongoing and, therefore, the file could not be released to the public. On January 27, 1993, the Jelkses, by their attorney, filed a petition for a writ of mandamus in Milwaukee County Circuit Court. The writ sought access to the police file surrounding Byron's death, and/or requested that the court perform an *in camera* inspection of the records to determine whether

they could be released. The trial court held numerous hearings on the matter, but repeatedly postponed its ruling. During this time, the Jelks's attorney discovered that American Family had somehow obtained 102 pages of the police file. Upon request, American Family provided a copy of these 102 pages to attorney Croke.

On October 18, 1994, the trial court issued a decision on the writ. It conducted an *in camera* inspection of the entire file, and granted the writ with respect to the 102 pages that had already been disclosed. The trial court issued a second order on November 11, 1994, which provided that the remaining 50 documents could be examined by attorney Croke because the investigation was no longer an ongoing one. This order was stayed pending appeal. Arreola now appeals.

II. DISCUSSION

A. October 18, 1994, order.

Arreola's appeal from the October 18, 1994, order is moot. The October 18, 1994, order grants the writ of mandamus with respect to the 102 pages of the police file that was in some manner released to American Family. The trial court specifically found that because the records had been released, Arreola waived his privilege to deny access to those records. This finding is not clearly erroneous. See *Noll v. Dimiceli's, Inc.*, 115 Wis.2d 641, 643, 340 N.W.2d 575, 577 (Ct. App. 1983).

Because these 102 pages have already been released, Arreola's appeal with respect to these pages is moot, and we therefore dismiss it. See *Zieman v. Village of North Hudson*, 102 Wis.2d 705, 712, 307 N.W.2d 236, 240 (1981); *Racine Educ. Ass'n v. Racine Bd. of Educ.*, 129 Wis.2d 319, 322-25, 385 N.W.2d 510, 511-12 (Ct. App. 1986).

B. November 11, 1994, order.

Arreola also appeals from the November 11, 1994, order. This order indicates that the trial court conducted an *in camera* review of the remaining 50 pages of the police file and determined from this review that the "criminal investigation [into Byron's death] is not an active investigation" and that Arreola "has failed to meet his burden with regard to supporting his denial of access to the subject criminal investigation file." Accordingly, the trial court ordered the police to provide attorney Croke the opportunity to examine the remaining 50 pages of the police file.

Arreola makes essentially three arguments with regard to this order: (1) the trial court erred in granting attorney Croke access to the remaining documents; (2) the trial court should have decided the writ when it was first filed instead of continually adjourning it; and (3) the trial court should have dismissed the writ as moot. We reject all three arguments.

We review whether the trial court erred in granting the writ of mandamus under the erroneous exercise of discretion standard. *Appleton Post-Crescent v. Janssen*, 149 Wis.2d 294, 302-03, 441 N.W.2d 255, 258 (Ct. App. 1989). Accordingly, we will not reverse the trial court's order if it "examined the relevant facts, applied a proper standard of law, and using a demonstrated rational process, reached a conclusion that a reasonable judge could reach." *Id.* In the instant case, the trial court reviewed the relevant documents and heard repeated argument regarding the facts particular to this case. After having done so, the trial court concluded that the homicide investigation into Byron's death was no longer an active, i.e., ongoing one. We cannot say that this finding is clearly erroneous. The homicide occurred over three years prior to the trial court's ruling. Further, testimony in the record documents that there has been very little activity with respect to this file for some time. Our independent review of the police file confirms this testimony.

In addition, the trial court balanced the interests of the police in keeping the remaining 50 pages of the file confidential versus the interests of the public to have access to the public records. In doing so, the trial court reached a very rational conclusion: attorney Croke will be able to examine these 50 pages under a strict secrecy order. Based on the foregoing, we conclude that the trial court did not erroneously exercise its discretion and we affirm the November 11, 1994, order.

Regarding Arreola's claim that the order should be reversed because of the repeated adjournments, Arreola offers no legal authority to support his proposition that a trial court cannot adjourn a decision on a writ of mandamus. Accordingly, we reject his proposition. See *State v. Pettit*, 171 Wis.2d 627, 646-47, 492 N.W.2d 633, 642 (Ct. App. 1992).

We also reject Arreola's argument that the mandamus action is moot. Essentially, Arreola argues that since attorney Croke obtained the "heart of the homicide investigation, namely the 102 pages" the mandamus action is moot. We cannot agree. Attorney Croke requested the entire file. There are still some 50 odd pages that he has not seen. This comprises one-third of the file. Such obvious practical effect can hardly be defined as moot. *DeLaMatter v. DeLaMatter*, 151 Wis.2d 576, 591, 445 N.W.2d 676, 683 (Ct. App. 1989) ("A matter is moot [only] if a determination is sought which cannot have a practical effect on an existing controversy.").

By the Court. – Order dismissed; order affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)5, STATS.