

[Cite as *Davis v. Turner*, 2019-Ohio-874.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 107776

DWAYNE DAVIS

RELATOR

vs.

EARLE B. TURNER

RESPONDENT

JUDGMENT:
COMPLAINT DISMISSED

Writ of Mandamus
Motion No. 524508
Order No. 525584

RELEASE DATE: March 13, 2019

FOR RELATOR

Dwayne Davis, pro se
Inmate No. 644653
Lake Erie Correctional Institution
P.O. Box 8000
Conneaut, Ohio 44030

ATTORNEYS FOR RESPONDENT

Barbara A. Langhenry
Law Director
By: Craig J. Morice
Assistant Director of Law
City of Cleveland - Law Department
601 Lakeside Avenue, Room 106
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EILEEN T. GALLAGHER, J.:

{¶1} Dwayne Davis has filed a complaint for a writ of mandamus, pursuant to R.C. 149.43(C)(1)(b), in order to compel Earle B. Turner, Clerk of Court for the Cleveland Municipal Court (“Turner”), to provide him with copies of “Municipal Court Case #CRA-011351 case file; all journals; full name of all counsel with American Bar Association Numbers; all complaints; affidavits; warrants; verdicts and extended record of case CRA-011351. Also CIF #CL 133404A1 — case file/bindover CR-13-574008-A.” Turner has filed a Civ.R. 12(C) motion for judgment on the pleadings, which is granted for the following reasons.

{¶2} In the case sub judice, Davis has made a request for the release of public records, specifically court records, based upon the application of R.C. 149.43, the Public Records Act. However, R.C. 149.43 is not applicable to this original action. The Supreme Court of Ohio has established that a request for court records must be made through Sup.R. 47(B).

However, the Public Records Act is inapplicable to this case. “Sup.R. 44 through 47 deal specifically with the procedures regulating public access to court records and are the *sole* vehicle for obtaining records in actions commenced after July 1, 2009.” (Emphasis added.) *State ex rel. Richfield v. Laria*, 138 Ohio St.3d 168, 2014-Ohio-243, 4 N.E.3d 1040, ¶ 8. Because the Public Records Act is inapplicable to his request for court records, [relator] must seek relief under the Rules of Superintendence.

Under those rules, court records are presumed to be open to public access.

Sup.R. 45(A). A person aggrieved by the failure of a court or clerk of courts to comply with the Rules of Superintendence regarding access to court records may pursue an action in mandamus. Sup.R. 47(B); *State ex rel. Cincinnati Enquirer v. Lyons*, 140 Ohio St.3d 7, 2014-Ohio-2354, 14 N.E.3d 989, ¶ 13. But mandamus is the only remedy provided by Sup.R. 47(B). The Rules of Superintendence do not authorize statutory damages under any circumstances. *See Cleveland Constr., Inc. v. Villanueva*, 186 Ohio App.3d 258, 2010-Ohio-444, 927 N.E.2d 611, ¶ 18 (8th Dist.), fn. 8.

State ex rel. Harris v. Pureval, Slip Opinion No. 2018-Ohio-4718, ¶ 10.

{¶3} Thus, Turner possesses no clear legal duty to provide Davis with the requested records under R.C. 149.43, and a writ of mandamus will not issue. *State ex rel. Yambrisak v. Richland County Adult Court*, 5th Dist. Richland No. 15CA66, 2016-Ohio-4622.

{¶4} It must also be noted that attached to Turner’s answer, filed on November 16, 2018, is a sworn affidavit which demonstrates that no request for public records was received by any individual in the office of the Clerk of Court for the Cleveland Municipal Court. The sworn affidavit of Kim Bates, Chief Executive Officer for Earle B. Turner, provides that:

1. That I am the Chief Executive Officer for Earle B. Turner, clerk of the Cleveland Municipal Court;

2. That Earle B. Turner has been named as the Respondent in a Petition for a Writ of Mandamus filed by Dwayne Davis, carrying case number CA 18 107776, in the Eighth District Court of Appeals;

3. That after reading said petition, I made inquiry of the personnel in Respondent Turner's Office as well as the Public Information Officer for the Cleveland Municipal Court as to whether any department, section, or person within Respondent Turner's office received a public records request from Relator Davis;

4. That based upon such investigation, information gathered, and statements of Clerk's office personnel, I can confirm that Dwayne Davis has not, and did not, make any form of public records request of Earle B. Turner, Clerk of the Cleveland Municipal Court, or any of his agents and/or employees.

Because Davis has not filed a request for public records with Turner, that is the subject of relators' mandamus claim, he is not entitled to a writ of mandamus. *State ex rel. Cincinnati Enquirer v. Deter*, 148 Ohio St.3d 595, 2016-Ohio 8195, 71 N.E.3d 1076; *State ex rel. Hammons v. Chisholm*, 99 Ohio St.3d 405,

2003- Ohio-4125, 792 N.E.2d 1120. *See also State ex rel. Carr v. Akron*, 112 Ohio St.3d 351, 2006-Ohio-6714, 859 N.E.2d 948; *State ex rel. Taxpayers Coalition v. Lakewood*, 86 Ohio St.3d 385, 1999-Ohio-114, 715 N.E.2d 179.

{¶5} Accordingly, we grant Turner's Civ.R. 12(C) motion for judgment on the pleadings. Costs to Davis. The court directs the clerk of courts to serve all parties with notice of this judgment and the date of entry upon the journal as required by Civ.R. 58(B).

{¶6} Complaint dismissed.

EILEEN T. GALLAGHER, JUDGE

MARY EILEEN KILBANE, A.J., and
SEAN C. GALLAGHER, J., CONCUR

