

[Cite as *State ex rel. Hazel v. Smith*, 2009-Ohio-5092.]

IN THE COURT OF APPEALS OF OHIO  
TENTH APPELLATE DISTRICT

State of Ohio ex rel. Corey Hazel,	:	
Relator,	:	
v.	:	No. 09AP-289
Franklin County Prosecutor, Scott Smith, Assistant Prosecuting Attorney,	:	(REGULAR CALENDAR)
Respondent.	:	

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D E C I S I O N

Rendered on September 17, 2009

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*Corey Hazel*, pro se.

*Ron O'Brien*, Prosecuting Attorney, and *Paul Thies*, for respondent.

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IN MANDAMUS  
ON RESPONDENT'S MOTION FOR SUMMARY JUDGMENT

TYACK, J.

{¶1} Corey Hazel filed this action in mandamus, seeking a writ to compel assistant prosecuting attorney Scott Smith to release corrupt activity liens related to criminal case number 05CR-7105.

{¶2} In accord with Loc.R. 11, the case was referred to a magistrate to conduct appropriate proceedings. Respondent, Scott Smith, filed a motion for summary judgment.

The magistrate issued a magistrate's decision containing findings of fact and conclusions of law, which is appended to this decision. The magistrate's decision includes a recommendation that we grant summary judgment and deny the request for a writ because the liens have been released.

{¶3} Hazel has not filed objections to the magistrate's decision. The case is now before the court for review.

{¶4} No error of law or fact is present on the face of the magistrate's decision. We, therefore, adopt the findings of fact and conclusions of law contained in the magistrate's decision. As a result, we grant summary judgment for the respondent and deny the request for a writ of mandamus.

*Summary judgment granted;  
writ of mandamus denied.*

SADLER and CONNOR, JJ., concur.

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**APPENDIX**

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio ex rel. Corey Hazel,	:	
	:	
Relator,	:	
	:	
v.	:	No. 09AP-289
	:	
Franklin County Prosecutor, Scott Smith,	:	(REGULAR CALENDAR)
Assistant Prosecuting Attorney,	:	
	:	
Respondent.	:	
	:	

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MAGISTRATE'S DECISION

Rendered on May 28, 2009

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*Corey Hazel, pro se.*

*Ron O'Brien, Prosecuting Attorney, and Paul Thies, for respondent.*

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IN MANDAMUS  
ON RESPONDENT'S MOTION FOR SUMMARY JUDGMENT

{¶5} Relator, Corey Hazel, has filed this original action requesting that this court order respondent, Assistant Prosecuting Attorney, Scott Smith, to release the corrupt activity liens related to certain property involved in case No. 05CR-7105, a criminal action filed against relator in the Franklin County Court of Common Pleas.

Findings of Fact:

{¶6} 1. Relator is an inmate currently incarcerated at Chillicothe Correctional Institute.

{¶7} 2. Relator is serving time following a guilty plea to counts of engaging in a pattern of corrupt activity, forgery, and securing writings by deception.

{¶8} 3. Pursuant to the judgment entry, the state of Ohio withdrew its forfeiture request as to certain real property based upon a finding that there was no basis for the forfeiture of relator's right, title or interest in that property including the properties which are the subject of this action: "748-754 S. Eighteenth, Columbus, Ohio" and "749-751 S. Eighteenth, Columbus, Ohio."

{¶9} 4. Relator filed this mandamus action on March 23, 2009, asserting that the corrupt activity lien on the above-listed properties had not been released as required by the trial court's judgment entry.

{¶10} 5. On April 27, 2009, respondent filed a motion to dismiss asserting that, as of April 22, 2009, the liens had been removed from the subject properties. Respondent attached a notice of termination of corrupt activity liens filed in the Franklin County Court of Common Pleas. This document referenced the following instrument: 200510210222554 ("2554"). The properties which were the subject of the corrupt activity liens were identified as follows:

1. Real estate commonly known as 204 N. 20th St., Columbus, Franklin County, Ohio 43203; and described as: Lot no. (31) in Henry E. Gill's Subdivision, as the same that is numbered and delineated upon the recorded plat thereof, of record in Plat Book 2, Page 332, Recorder's Office, Franklin County, Ohio. Parcel no. 010-030580-00.

2. Real estate commonly [sic] known as 748-754 S. 18th St., Columbus, Franklin County, Ohio; and described as: Lot number (20) and 14.4 feet off the entire south side of Lot number (19) and Theo Butler's Amended Subdivision, as the same is numbered and delineated upon the recorded plat thereof, of record in Plat Book 4, Page 242, Recorder's Office, Franklin County, Ohio. Parcel No. 010-044397-00.

3. Real estate commonly known as 749-751 S. 18th St., Columbus, Franklin County, Ohio; and described as: Lot (275) in Swayne's Addition as the same is numbered and delineated upon the recorded plat thereof, of record in Plat Book 2, Page 35, Recorder's Office, Franklin County, Ohio. Parcel No. 010-049954-00.

{¶11} 6. Because respondent attached evidence, the motion to dismiss was converted to a motion for summary judgment.

{¶12} 7. In his memorandum contra, relator acknowledges that the corrupt activity lien identified by instrument No. 2554 was, in fact, released. However, relator argues that the corrupt activity lien filed against Marlene Hansard and referenced by instrument No. 200510210222553 ("2553"), which was also subject to the court's order, has not been released.

{¶13} 8. On May 18, 2009, the motion for summary judgment came before the magistrate for non-oral hearing.

{¶14} 9. In an effort to verify respondent's information contained within the notice of termination of corrupt activity liens, the magistrate accessed the websites of both the Franklin County Auditor and the Franklin County Recorder to compare the parcel numbers listed in the notice of release with the instrument numbers referenced in the documents.

{¶15} 10. According to the website of the Franklin County Recorder, corrupt activity liens were filed on October 12, 2005 regarding the properties identified in

respondent's evidence. Although respondent had only listed instrument No. 2554, the records indicate that a corrupt activity lien was also filed by instrument No. 2553. As noted previously, those properties were identified in respondent's evidence and were included in the notice of release.

{¶16} 11. Searching forward, the records of the Franklin County Recorder indicate that, on April 22, 2009, the corrupt activity liens with regards to both previous instrument numbers were, in fact, released. As such, records establish that the lien which is the subject of this action has, in fact, been released.

{¶17} 12. The magistrate takes judicial notice of these public records. Further, relator is specifically listed in the records regarding instrument No. 2554 but he is not listed in the records identifying instrument No. 2553. Instead, Hansard is listed with regards to instrument No. 2553.

{¶18} 13. The matter is currently before the magistrate.

#### Conclusions of Law:

{¶19} A motion for summary judgment requires the moving party to set forth the legal and factual basis supporting the motion. To do so, the moving party must identify portions of the record which demonstrate the absence of a genuine issue of material fact. *Dresher v. Burt* (1996), 75 Ohio St.3d 280. Accordingly, any party moving for summary judgment must satisfy a three-prong inquiry showing: (1) that there is no genuine issue as to any material facts; (2) that the parties are entitled to judgment as a matter of law; and (3) that reasonable minds can come to but one conclusion, which conclusion is adverse to the party against whom the motion for summary judgment is made. *Harless v. Willis Day Warehousing Co.* (1978), 54 Ohio St.2d 64.

{¶20} As indicated in the findings of fact, the corrupt activity liens with regards to both properties identified by instruments ending in 2553 and 2554 have, in fact, been released. The magistrate notes that relator is specifically listed in the records pertaining to instrument ending in 2554 but not in records regarding the instrument listing of 2553. Instead, Hansard is listed. One could speculate that relator's family received notice regarding the release referenced by instrument ending in 2554 and forwarded that information on to relator but did not receive notice of the release of the lien identified by instrument ending in 2553.

{¶21} Based upon the documentation submitted by respondent indicating that the corrupt activity liens had been released against the subject properties and after utilizing the Franklin County Recorder's website to confirm respondent's information by instrument number instead of parcel number, the magistrate finds that the act which relator seeks to compel respondent to perform has, in fact, been performed. As such, relator has obtained the relief which he sought. Because there is no further action that relator is requesting from respondent, it is this magistrate's decision that this court should grant respondent's motion for summary judgment and dismiss relator's action.

Stephanie Bisca Brooks  
STEPHANIE BISCA BROOKS  
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).