[Cite as *State ex rel. Meadows v. Louisville City Council*, 2015-Ohio-4126.]

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO, EX REL: RODNEY W. MEADOWS Appellant -vs- LOUISVILLE CITY COUNCIL, ET AL. Appellees	JUDGES: Hon. William B. Hoffman, P.J. Hon. John W. Wise, J. Hon. Patricia A. Delaney, J. Case No. 2015CA00040 O P I N I O N

CHARACTER OF PROCEEDING:	Appeal from the Stark County Court of Common Pleas, Case No. 2014CV01273
JUDGMENT:	Affirmed
DATE OF JUDGMENT ENTRY:	September 28, 2015

APPEARANCES:

For Appellant	For Appellees
CHARLES D. HALL, III Hall Law Firm 610 Market Avenue North Canton, Ohio 44702	JAMES M. LYONS, JR. Hanna, Campbell & Powell, LLP 3737 Embassy Parkway, Suite 100 Akron, Ohio 44333

Hoffman, P.J.

{¶1} Appellant Rodney W. Meadows appeals the February 20, 2015 Judgment Entry entered by the Stark County Court of Common Pleas, which denied his motion for summary judgment, granted appellee Louisville City Council, et al.'s motion for summary judgment, and dismissed Appellant's complaint with prejudice. Appellees cross-appeal the same entry with respect to the trial court's decision not to dismiss Appellant's complaint due to his failure to file the appropriate security.

STATEMENT OF THE FACTS AND CASE

{¶2} Appellant is a resident taxpayer of the City of Louisville. In late 2012, the City of Louisville sought options with respect to the construction of a police-fire combination building. It was ultimately determined such a building would be cost prohibitive; therefore, the City decided to perform work to renovate existing city buildings. Specifically, the City decided to convert a former parks building into the police station, and renovate the police station into the fire station.

{¶3} After reading an article in *The Canton Repository* regarding the City's decision to renovate the police and fire stations, Appellant emailed Appellee Louisville Police Chief Andrew Turowski on January 31, 2013. Capt. Turowski responded to the email, addressing each of Appellant's questions. Appellant sent another email to Capt. Turowski. In his emails, Appellant expressed his awareness of the proposed building renovation plans as well as his concerns.

{¶4} On July 18, 2013, Appellant emailed Appellee E. Thomas Ault, Louisville City Manager, requesting an asbestos report as well as building permits. Appellant

emailed Ault again on July 24, and July 29, 2013. Ault responded, advising Appellant he had been on vacation, and provided Appellant with an update on the fire department.

{¶5} On Friday, September 20, 2013, at 7:51 p.m., Appellant emailed Ault, requesting the following information concerning the new police station, parking lot, and recycling center:

1. The bid documents;

2. The public advertisement for bids;

3. The advertised construction estimate for the construction project;

4. All bids that were received; and, publicly opened and recorded;

5. A listing of who was awarded contracts for the construction project;

6. Each contractors' schedule of values;

7. Copies of all certificates of payment for those contractors performing the construction work; and, all invoices for work performed by City of Louisville employees; and

8. Copies of all checks made for payment to contractors and material suppliers, including all checks made payable to City of Louisville employees relating to work on the new police station.

{¶6} Between September 25, and September 30, 2013, Appellant was provided with almost sixty pages of records. Appellant was advised there were no bid documents because the bidding threshold had not been met. Appellant contacted Ault on October 18, 2013, noting the records provided on September 25, 2013, referenced an expense for architectural drawings, but he had not received the “requested bid documents”

relative thereto. Several days later, Appellant sent an email to Ault, indicating he still had not received the records he requested on September 20th. Peggy Howald, who is the City's public records respondent, promptly emailed Appellant, informing him the drawings were too large to copy, and he could either review them at City Hall or she could have them sent out for copying at Appellant's expense. Ault also emailed Appellant that day notifying Appellant he had been assured all records had been sent to Appellant except for the oversized drawings. Ault further explained to Appellant some of the records he requested did not exist, but Ault was willing to send City of Louisville employee timecards to him.

{¶7} On October 22, 2013, Appellant emailed Ault, requesting the following information relative to the "renovated fire station" construction project:

1. The bid documents;

2. The public advertisement for bids;

3. The advertised construction estimate for the construction project;

4. All bids that were received; and, publicly opened and recorded;

5. A listing of who was awarded contracts for the construction project;

6. Each contractors' schedule of values;

7. Copies of all certificates of payment for those contractors performing the construction work; and, all invoices for work performed by City of Louisville employees; and

8. Copies of all checks made for payment to contractors and material suppliers, including all checks made payable to City of Louisville employees relating to work on the *new police station*. [Emphasis added].

{¶8} Several emails were exchanged in order to clarify the nature of Appellant's requests. Howald provided Appellant with a printout of costs for the fire department project, and updated him on the status of other documents and information he had requested, including the information regarding the costs associated with the fire department upgrades which was being compiled by the Finance Department. Howald informed Appellant he would be contacted when the information was available. The information was forwarded to Appellant on October 30, 2013. The next day, October 31, 2013, Appellant repeated his request for certain information including fire department drawings. Appellant also requested the architect's square foot estimate. On November 1, 2013, thirty-two pages of information relative to the costs for the fire department were provided to Appellant. Thereafter, Appellant requested the architect's invoice for the police station drawings. On November 4, 2013, Howald sent Appellant one hundred seventy-nine pages of additional, requested material. On November 12, 2013, Appellant was informed he could pick up the fire department drawings.

{¶9} On May 28, 2014, Appellant refiled a tax payer's lawsuit, which had been voluntarily dismissed on May 6, 2014, against elected and appointed officials of the City of Louisville for failing to produce public records in their possession and for being dilatory in the production of the requested records; for evading the Ohio public bidding statutes; and for evading the Ohio prevailing wage statutes.

{¶10} As discovery had been concluded in the original case, Appellant filed a motion for summary judgment on June 26, 2014. Appellees filed a cross-motion for summary judgment. The parties filed their respective reply briefs.

{¶11} Via Judgment Entry filed February 20, 2015, the trial court denied Appellant's motion for summary judgment, granted Appellees' motion for summary judgment, and dismissed Appellant's complaint with prejudice. The trial court found, "Whether or not the defendants have properly and timely complied with [Appellant's] public records request, [Appellant] is now in possession of all records requested." The trial court further found Appellant's only available remedy would be an injunction ordering Appellees to obey law, but found such a remedy was unavailable.

{¶12} It is from this judgment entry Appellant appeals, raising the following assignments of error:

{¶13} "I. THE TRIAL COURT ERRED AS A MATTER OF LAW AND IGNORED MATERIAL DISPUTED FACTS WHEN, ON SUMMARY JUDGMENT, IT DETERMINED THAT PLAINTIFF'S PUBLIC RECORD REQUESTS WERE A '...CONVOLUTED MORASS IMPOSSIBLE FOR THIS COURT TO DECIPHER. WHETHER OR NOT THE DEFENDANTS HAVE PROPERLY AND TIMELY COMPLIED WITH PLAINTIFF'S PUBLIC RECORDS REQUEST, PLAINTIFF IS NOW IN POSSESSION OF ALL RECORDS REQUESTED.' (FEBRUARY 20, 2015, JUDGMENT ENTRY, FINDINGS OF FACTS 3.)

{¶14} "II. THE TRIAL COURT ERRED AS A MATTER OF LAW BY REFUSING TO ENFORCE THE OHIO PUBLIC BIDDING STATUTES APPLICABLE TO THE RENOVATION OF A PARK BUILDING INTO A POLICE STATION AT A COST IN

EXCESS OF $328,692.83, AND FAILING TO ISSUE AN INJUNCTION AGAINST EVADING THE PUBLIC BIDDING REQUIREMENTS ON ANY APPLICABLE FUTURE PROJECTS.

{¶15} "III. THE TRIAL COURT ERRED AS A MATTER OF LAW BY REFUSING TO APPLY THE OHIO PREVAILING WAGE RATE ACT TO THE PUBLIC IMPROVEMENT PROJECT AND BY FINDING THAT: 'WHETHER DEFENDANTS' USE OF 'IN HOUSE' EMPLOYEES EVADED THE LAW IS UNCLEAR, AS IS THE TRUE COST OF LABOR AT PREVAILING MARKET RATES.' (FEBRUARY 20, 2015 JUDGMENT ENTRY, FINDINGS OF FACTS 5).

{¶16} "IV. THE TRIAL COURT ERRED AS A MATTER OF LAW WHEN IT DETERMINED '…THE ONLY AVAILABLE REMEDY WOULD BE AN INJUNCTION ORDERING THE DEFENDANTS TO OBEY THE LAW. THERE IS NO SUCH REMEDY SINCE THE LAW SPEAKS FOR ITSELF.' (FEBRUARY 20, 2015, JUDGMENT ENTRY, COURT FINDINGS 1.) AS A MATTER OF LAW, THE PURPOSE OF A 'TAXPAYER'S LAWSUIT', WHETHER UNDER STATUTE OR COMMON LAW INCLUDES REMEDIES OTHER THAN 'AN INJUNCTION ORDERING THE DEFENDANTS TO OBEY THE LAW'."

{¶17} On cross-appeal, Appellees assign as error:

{¶18} "I. THE TRIAL COURT INCORRECTLY FAILED TO DISMISS APPELLANT'S ACTION ON THE BASIS THAT THE APPROPRIATE SECURITY WAS NOT FILED."

APPEAL

I, II, III, IV

{¶19} Because Appellant's four assignments of error require similar and interrelated analysis, we shall address said assignment of error together.

{¶20} Mandamus is the appropriate remedy to compel compliance with Ohio's Public Records Act, R.C. 149.43. *State ex rel. Steckman v. Jackson* (1994), 70 Ohio St.3d 420, 426.

{¶21} During his deposition, Appellant testified regarding the records he had requested, but which Appellees never provided. Appellant stated he requested copies of the building plans, but was provided with only one set from Appellees. However, Appellant's attorney was provided with three sets of building plans from the Stark County Building Department. Appellant also testified he requested, but did not receive, copies of all building permits; receipts for the building permit applications; police station plans and drawings; email correspondence between the City Manager and City Council members on the cost of the project; plans, designs, and costs related to the police department parking lot. There is no dispute the requested documents are "records" for purposes of R.C. 149.43 and subject thereto.

{¶22} In his motion for summary judgment and Brief to this Court, Appellant contends, "None of the specifically testified to documents were produced by [Appellees] *before* this lawsuit was filed and a formal Request for Production of Documents was tendered to [Appellees'] lawyers." Plaintiff's Motion for Summary Judgment at

4[1](Emphasis added). The trial court, in denying Appellant's motion for summary judgment found, "Whether or not the defendants have properly and timely complied with [Appellant's] public records request, [Appellant] is now in possession of all records requested." Appellant did not appeal this finding nor has Appellant, in any way, refuted this statement.

{¶23} Generally, provision of the requested records to the relator in a mandamus action brought under R.C. 149.43 renders the mandamus claim moot. *State ex rel. Findlay Publishing Co. v. Schroeder* (1996), 76 Ohio St.3d 580, 581, 669 N.E.2d 835, 837 (relator's mandamus action is moot as to records it had been provided); *State ex rel. Pennington v. Gundler* (1996), 75 Ohio St.3d 171, 172-173 (person requesting records receives them only after mandamus action is filed, thereby rendering mandamus claim moot); *State ex rel. Mancini v. Ohio Bur. of Motor Vehicles* (1994), 69 Ohio St.3d 486, 488, 633 N.E.2d 1126, 1128; *State ex rel. Fant v. Sykes* (1987), 29 Ohio St.3d 18, 29 OBR 236, 504 N.E.2d 1114.

{¶24} Because Appellant was provided with all the records he requested, regardless of whether such were received only after he filed the mandamus action, the mandamus claim is moot. *State ex rel. Pennington v. Gundler*, supra at 172-173.

{¶25} We now turn to Appellant's arguments with respect to the trial court's denial of injunctive relief.

{¶26} Civ. R. 65(D) provides:

> Every order granting an injunction and every restraining order shall set forth the reasons for its issuance; shall be specific in terms; shall

[1] Appellant reiterated this exact statement twice in his Brief to this Court. See, Brief of Appellant at 8, 12.

> describe in reasonable detail, and not by reference to the complaint or other document, the act or acts sought to be restrained; and is binding upon the parties to the action, their officers, agents, servants, employees, attorneys and those persons in active concert or participation with them who receive actual notice of the order whether by personal service or otherwise.

{¶27} An injunction is an extraordinary remedy in equity where there is no adequate remedy at law. *Garono v. State* (1988), 37 Ohio St.3d 171, 173, 524 N.E.2d 496. The grant or denial of an injunction depends largely on the character of the case, the particular facts involved, and factors relating to public policy and convenience. *Perkins v. Quaker City* (1956), 165 Ohio St. 120, 125, 59 O.O. 151, 133 N.E.2d 595.

{¶28} In the instant action, the work on the police and fire stations had been completed prior to Appellant's requesting injunctive relief. Rather than seeking an injunction during the pendency of the project or prior to the commencement of the project, Appellant sought an after-the-fact injunction requesting the trial court order Appellees to obey the law in any future public records, public bidding, and prevailing wage situations. We find such remedy does not exist under the law; therefore, the trial court could not issue such an injunction.

{¶29} Requests for injunctions that command parties to obey the law are improper and unnecessary. *In re* Krause, 414 B.R. 243, 265 (Bankr. S.D. Ohio 2009). An injunction which does no more than instruct a party to "obey the law" violates Civ. R. 65(D). See, *United States v. Matusoff Rental Co.* (S.D.Ohio 2007), 494 F.Supp.2d 740, 756, 755-757; *E.E.O.C. v. Wooster Brush Co. Employees Relief Ass'n* (6th Cir.1984),

727 F.2d 566, 577. Accordingly, we find the trial court correctly declined to enter such an order.

{¶30} Based upon the foregoing, we overrule Appellant's first, second, third, and fourth assignments of error.

CROSS-APPEAL

I

{¶31} In their sole cross-assignment of error, Appellees argue the trial court incorrectly failed to dismiss Appellant's action on the basis the appropriate security was not filed.

{¶32} In light of our disposition of Appellant's assignments of error, we find Appellee's cross-assignment of error to be moot.

{¶33} The judgment of the Stark County Court of Common Pleas is affirmed.

By: Hoffman, P.J.

Wise, J. and

Delaney, J. concur