

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

The State of Ohio, ex rel. Kelly Bensman

Court of Appeals No. L-08-1211

Relator

v.

The Lucas County Board of Elections

DECISION AND JUDGMENT

Respondent

Decided: August 16, 2011

* * * * *

Scott A. Ciolek, for relator

Julia R. Bates, Lucas County Prosecuting Attorney, and
Andrew K. Ranazzi, Assistant Prosecuting Attorney, for appellee.

* * * * *

OSOWIK, P.J.

{¶ 1} On March 2, 2010, we issued a decision in which we found that all matters concerning a petition in mandamus filed by relator, Kelly Bensman, seeking public records from respondent, the Lucas County Board of Elections, had been resolved. Accordingly, we dismissed the petition for lack of jurisdiction; however, we reserved

jurisdiction over the unresolved issues of attorney's fees and statutory damages pursuant to R.C. 149.43.

{¶ 2} On March 22, 2010, relator filed a "Motion for Statutory Damages and Attorney Fees." On April 21, 2010, the Supreme Court of Ohio certified relator's appeal from our March 2, 2010 decision. On April 26, 2010, respondent filed a motion to stay proceedings in this court pending the resolution of relator's appeal, along with a memorandum in opposition to relator's motion for statutory damages and attorney fees.

{¶ 3} On May 4, 2010, this court issued a decision in which we granted respondent's request for a stay of all unresolved matters, "pending resolution of the relator's appeal to the Ohio Supreme Court of our decision issued on March 2, 2010." On September 16, 2010, the Ohio Supreme Court dismissed relator's appeal, pursuant to the parties' joint stipulation that the order on appeal was not final and appealable, since this court had not yet ruled on relator's request for attorney fees and/or statutory damages. *State ex rel. Bensman v. Lucas Cty. Bd. of Elections*, 126 Ohio St.3d 1555, 2010-Ohio-4082. On April 19, 2011, relator renewed her motion for attorney fees, and requested a hearing on the matter. On April 22, 2011, respondent filed a memorandum in opposition.

{¶ 4} On June 30, 2011, this court issued a decision in which we made the relevant findings: (1) pursuant to R.C. 149.43(C) and *State ex rel. Gibbs v. Concord Twp. Trustees*, 152 Ohio App.3d 387, 2003-Ohio-1586, we are not required to hold a hearing on the issue of reasonable attorney's fees, and (2) relator is not entitled to statutory damages or court costs because "the record does not show, and relator does not claim,

that her requests for records were either hand-delivered or sent by certified mail as required by R.C. 149.43(C)(1)."

{¶ 5} In addition to the above findings, we also concluded that relator filed this mandamus action in an attempt to obtain records that were not immediately produced by respondent, and that the hearing held by this court on August 31, 2009, was necessary to determine exactly what records were sought by relator and to narrow relator's request so that respondent could produce those records. Accordingly we found, preliminarily, that relator is entitled to attorney fees because she met all four prongs of the test for entitlement to such fees as articulated in *State ex rel. Pennington v. Gundler* (1996), 75 Ohio St.3d 171; R.C. 149.43(C)(2)(b). However, we found that evidence of relator's attorney fees, in the form of general statements by counsel as to the amount of hours worked and the hourly rate charged for those hours, was insufficient for us to determine the amount of such an award. We also found that "it was reasonable for respondents to believe that their conduct did not constitute a total failure to comply with R.C. 149.43(B), * * *" which allows for the statutory reduction of an attorney fee award under certain circumstances.

{¶ 6} Based on the above findings, we ordered relator to file a detailed, itemized account of all her attorney's fees, including a breakdown of the number of hours worked on each phase of these proceedings by her attorneys. We further ordered relator to include evidence as to the reasonableness and necessity of such fees. To date, relator has not filed a brief or otherwise responded to our order.

{¶ 7} Having found that relator is not entitled to attorney fees absent a showing as to how such fees were incurred and the reasonableness and necessity of such fees, we hereby deny relator's request for attorney's fees. We find further that all outstanding issues in this mandamus action have been resolved. Accordingly, we hereby dismiss this mandamus action. Costs are assessed to relator.

{¶ 8} The clerk is directed to serve on all parties, within three day, a copy of this decision in the manner prescribed by Civ.R. 5(B).

{¶ 9} It is so ordered.

PETITION DISMISSED.

Mark L. Pietrykowski, J.

JUDGE

Arlene Singer, J.

JUDGE

Thomas J. Osowik, P.J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at: http://www.sconet.state.oh.us/rod/newpdf/?source=6.
