[Cite as *State ex rel. Bennett v. Parma Hts.*, 2011-Ohio-943.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 96000

STATE OF OHIO, EX REL. LOGAN BENNETT

RELATOR

vs.

CITY OF PARMA HEIGHTS

RESPONDENT

JUDGMENT:
COMPLAINT DISMISSED

Writ of Mandamus
Motion No. 440045
Order No. 441576

RELEASE DATE: March 2, 2011

ATTORNEY FOR RELATOR

James G. Dawson
4881 Foxlair Trail
Richmond Hts., Ohio 44143

ATTORNEY FOR RESPONDENT

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City of Parma Heights
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Parma Heights, Ohio 44130

SEAN C. GALLAGHER, P.J.:

{¶ 1} On November 10, 2010, the relator, Logan Bennett, commenced this mandamus action against the respondent, the City of Parma Heights, to compel Parma Heights to provide Bennett with an administrative hearing to contest the civil citation issued to him and to refund the $200.00 that Bennett was required to pay in order to obtain an administrative hearing. On December 10, 2010, Parma Heights filed a motion to dismiss. Bennett never opposed this motion. For the following reasons, this court grants the motion to dismiss.

{¶ 2} Bennett asserts that on June 4, 2010, he was operating a motor vehicle in Parma Heights and that a speed camera "caught" the vehicle going 40 miles per hour in a 25 miles per hour zone. Pursuant to Parma Heights Codified Ordinances, Chapter 315, this subjects

the responsible party to a $200.00 civil penalty, and Parma Heights issued a "Notice of Liability" to Bennett. The Codified Ordinances further provide that upon payment of $200.00 and filing a written request for review, the charged party may contest the "Notice of Liability" and receive a hearing on the matter by the Parma Heights Mayor's Court Magistrate or his designee.

{¶ 3} Bennett further states that he prepaid the $200.00 and filed a written request for review. Parma Heights scheduled the hearing for September 29, 2010. Bennett continues that when he and his attorney, James Dawson, appeared on September 29, 2010, the Hearing Officer, Mark Stanton, could not attend. Instead, the Parma Heights Law Director conducted a settlement conference. Bennett maintains that the Law Director did not present evidence in support of the "Notice of Liability." When Bennett and his attorney declined the settlement offer, Dawson requested that Parma Heights provide Bennett with a hearing. The Law Director instructed the Clerk of Court to schedule such a hearing, and she did so for October 20, 2010. On October 7, 2010, Dawson mailed a letter to the Hearing Officer requesting that the Mayor be subpoenaed and that the hearing be recorded.

{¶ 4} On October 13, 2010, the Hearing Officer responded in a letter stating that upon conducting interviews with the relevant individuals present on September 29, 2010, he concluded that a hearing had actually been conducted, that Bennett and his attorney had declined to participate, and that a finding was declared. Moreover, there had been no prior

motions for continuance, for subpoenas, or for a recording of the hearing. Thus, there would be no hearing on October 20, 2010. The Hearing Officer then advised: "Your available remedy is well known to you and you many [sic] avail yourself and your client of this procedure if you believe it is appropriate and/or essential." (Exhibit F to the complaint.)[1]

{¶ 5} This mandamus action followed. In Bennett's first count he seeks this court to compel the hearing that was promised for October 20, 2010. He asserts that pursuant to the Codified Ordinances and Article I, Section 16 of the Ohio Constitution, Parma Heights has the duty to provide the hearing. In the second count he argues that the requirement to prepay the civil penalty in order to obtain an administrative hearing constitutes a denial of due process and an involuntary taking of property without just compensation in violation of the United States and Ohio Constitutions.

{¶ 6} The requisites for mandamus are well established: (1) the relator must have a clear legal right to the requested relief, (2) the respondent must have a clear legal duty to perform the requested relief and (3) there must be no adequate remedy at law. *State ex rel.*

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[1] The October 13, 2010 letter does not state what the finding of the Hearing Officer was. Therefore, this letter does not constitute the written "entry of a final order" required by R.C. 2505.07 which is necessary to pursue an administrative appeal under R.C. Chapter 2506. Moreover, notice of such entry, via service such as mail, must be given to the party or his attorney in order to perfect an appeal. *Cornacchione v. Akron Bd. Of Zoning Appeals* (1997), 118 Ohio App.3d 388, 692 N.E.2d 1083; and *State ex rel. Hanley v. Roberts* (1985), 17 Ohio St.3d 1, 476 N.E.2d 1019. It is not certain from the materials before this court that Parma Heights has made service of such a written entry upon Bennett or his attorney.

Ney v. Niehaus (1987), 33 Ohio St.3d 118, 515 N.E.2d 914. Furthermore, mandamus is not a substitute for appeal. *State ex rel. Keenan v. Calabrese* (1994), 69 Ohio St.3d 176, 631 N.E.2d 119; *State ex rel. Daggett v. Gessaman* (1973), 34 Ohio St.2d 55, 295 N.E.2d 659; and *State ex rel. Pressley v. Indus. Comm. of Ohio* (1967), 11 Ohio St.2d 141, 228 N.E.2d 631, paragraph three of the syllabus. Thus, mandamus does not lie to correct errors and procedural irregularities in the course of a case. *State ex rel. Jerninghan v. Gaughan* (Sept. 26, 1994), Cuyahoga App. No. 67787. Furthermore, if the relator had an adequate remedy, regardless of whether it was used, relief in mandamus is precluded. *State ex rel. Tran v. McGrath*, 78 Ohio St.3d 45, 1997-Ohio-245, 676 N.E.2d 108 and *State ex rel. Boardwalk Shopping Ctr., Inc. v. Court of Appeals for Cuyahoga Cty.* (1990), 56 Ohio St.3d 33, 564 N.E.2d 86. Moreover, mandamus is an extraordinary remedy which is to be exercised with caution and only when the right is clear. It should not issue in doubtful cases. *State ex rel. Taylor v. Glasser* (1977), 50 Ohio St.2d 165, 364 N.E.2d 1; *State ex rel. Shafer v. Ohio Turnpike Comm.* (1953), 159 Ohio St. 581, 113 N.E.2d 14; *State ex rel. Connole v. Cleveland Bd. of Edn.* (1993), 87 Ohio App.3d 43, 621 N.E.2d 850; and *State ex rel. Dayton-Oakwood Press v. Dissinger* (1940), 32 Ohio Law Abs. 308.

{¶ 7} Moreover, if the allegations in a mandamus complaint indicate that the real object sought is a declaratory judgment, the complaint does not state a cause of action in mandamus. The court of appeals does not have jurisdiction over claims for declaratory

judgment. *State ex rel. Beane v. City of Dayton*, 112 Ohio St.3d 553, 2007-Ohio-811, 862 N.E.2d 97 and *State ex rel. Ministerial Day Care Assoc. v. Zelman*, 100 Ohio St.3d 347, 2003-Ohio-6447, 800 N.E.2d 21.

{¶ 8} Bennett's second claim for mandamus is a claim for declaratory judgment. It seeks a declaration that the Parma Heights statutory scheme for obtaining a hearing for a traffic camera violation violates the United States or Ohio Constitutions. Such a claim is beyond this court's jurisdiction.[2]

{¶ 9} The gravamen of Parma Heights's motion to dismiss is that Bennett has or had an adequate remedy at law through an administrative appeal under R.C. Chapter 2506 which precludes mandamus. Relator's failure to respond leaves the argument unrebutted and persuasive. Indeed, the failure to respond is sufficient grounds for dismissal. *State ex rel. White v. Enright* (1992), 65 Ohio St.3d 481, 605 N.E.2d 44; *State ex rel. Mancini v. Ohio Bureau of Motor Vehicles* (1994), 69 Ohio St.3d 486, 633 N.E.2d 1126; *State ex rel. Elgin v. Watzek* (1961), 172 Ohio St. 199, 174 N.E.2d 261; and *State ex rel. Crow v. Baynes* (1962), 173 Ohio St. 311, 181 N.E.2d 804.

{¶ 10} Accordingly, this court grants Parma Heights's motion to dismiss and dismisses the application for a writ of mandamus. Relator to pay costs. The Court directs the clerk

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[2] Accordingly, this court does not express any opinion on the merits of this claim.

for the Eighth District Court of Appeals to serve upon the parties notice of this judgment and its date of entry upon the journal. Civ.R. 58(B).

SEAN C. GALLAGHER, PRESIDING JUDGE

PATRICIA A. BLACKMON, J., and
LARRY A. JONES, J., CONCUR