

[Cite as *State ex rel. Samara v. Byrd*, 2016-Ohio-5518.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 103621

**STATE OF OHIO, EX REL.
ROBYN SAMARA**

RELATOR

vs.

NAILAH K. BYRD, CLERK OF COURTS, ET AL.

RESPONDENTS

**JUDGMENT:
WRIT DENIED**

Writ of Mandamus
Order No. 498588

RELEASE DATE: August 19, 2016

FOR RELATOR

Robyn Samara, pro se
14837 Detroit Avenue #208
Lakewood, Ohio 44107

ATTORNEYS FOR RESPONDENTS

Timothy J. McGinty
Cuyahoga County Prosecutor
By: Charles E. Hannan
Assistant County Prosecutor
The Justice Center
1200 Ontario Street
Cleveland, Ohio 44113

EILEEN T. GALLAGHER, J.:

{¶1} On October 13, 2015, the relator, Robyn Samara, commenced this public records mandamus action, pursuant to the federal Freedom of Information Act and the Ohio Public Records Act, R.C. 149.43, against the following individuals to compel them to provide certified copies of their “necessary and required Oaths, Qualifications, and Bonds as required by law”: (1) Cuyahoga County Clerk of Courts Nailah Byrd, (2) Cuyahoga County Sheriff Clifford Pinkney, (3) Cuyahoga County Prosecutor Timothy McGinty, (4) Assistant Cuyahoga County Prosecutor Adam D. Jutte, (5) Administrative Judge John J. Russo, (6) Judge Ronald Suster, (7) Cuyahoga County Fiscal Officer Dennis G. Kennedy, and (8) Fiscal Department Program Officer 2 Michelle Spaqi.

{¶2} Previously, the respondents had moved for summary judgment on the grounds of mootness, pleading defects, and lack of duty. This court granted summary judgment on the grounds that the federal Freedom of Information Act did not apply to an Ohio public records mandamus and that there was no duty to provide Samara with certified copies of the records. The court declined to grant the respondents summary judgment on the grounds of mootness that all of the records had been provided. The respondents did not submit or even list the records that they had sent Samara, nor had they provided this court with any of the transmittal correspondence. Samara had provided this court with at least some of the records in her brief in opposition to a motion to dismiss. Nevertheless, the uncertainty as to what records were released created a genuine issue of material fact precluding summary judgment. To resolve this uncertainty, this court ordered the respondent to certify what records had been produced in what form and including any cover letters or correspondence explaining any details or redactions for the request. The court further ordered Samara to certify whether she considered her request

fulfilled, and if not, what remains to be done and why she thought the request had not been fulfilled.

{¶3} On May 3, 2016, the respondents filed their certification. For Sheriff Pinkney, there is a copy of his bond dated March 12, 2015, for the period March 9, 2015, to March 9, 2019, in the amount of \$60,000, attached to which is a copy of his oath of office dated April 14, 2015. There is also another bond dated March 12, 2015, in the amount of \$118,000, and attached to that is another copy of his oath of office dated April 14, 2015. For Prosecutor McGinty, there is his bond, number 601066419, covering the period from October 1, 2013, to “continuous,” and attached to that is his oath of office as prosecutor, dated September 17, 2013. There is also another bond, number 601066421, in the amount of \$100,000 covering the period October 1, 2013 to “continuous.” For Judge John J. Russo, there is his oath of office dated January 3, 2011, for the full term commencing January 9, 2011. For Judge Suster, there is his oath of office taken on December 29, 2006, for the full term commencing January 3, 2007. For Clerk Byrd, there is a copy of her oath of office taken February 2015, and a copy of her bond dated February 25, 2015, for the period February 24, 2015, to February 24, 2019. For Fiscal Officer Kennedy, there is his oath of office, dated March 30, 2015, and his bond dated March 25, 2015, and signed on March 30, 2015, for the period March 25, 2015, through March 25, 2019. For Ms. Spaqi, there is a two-page “Cuyahoga County Classification Specification” for Program Officer 2, listing the minimum training and experience for the job. For Assistant Prosecutor Jutte, there is the “Job Posting” for the position of Assistant Prosecuting Attorney, which states the required experience and skills for that position. The respondents certified that they believed these records to be all the records responsive to Samara’s request, and that no requests were denied and no documents withheld.

The only information redacted concerned residential information as specified by statutory exemptions, R.C. 149.011(G) and 149.43(A)(1)(p).

{¶4} On May 17, 2016, Samara filed her brief in response to the respondents' certification and opined that their "documentation falls well below any threshold of acceptability." (Br. 2.) The gravamen of the brief is that the proffered records are so deficient or non-existent that the respondents never really held their offices and that consequently their actions are void.¹

Specifically, she objects that several of the bonds state at the bottom, "Page one of two," but there is no "Page two of two." Samara notes inconsistencies between the dates of the bonds and the dates of the oath of office. She complains that some of the oaths do not appear to be notarized, nor is there any indication that they have been filed or recorded, as required by R.C. 3.33. She further notes that it appears that the bonding companies are not authorized to do business in Ohio. Nor was there documentation that the individual fulfilled the statutory qualifications for the position. The records did not include a legal certificate of election or appointment and the governor's commission to fill the office. There are no certifications from the prosecutor that the bonds are sufficient as required by R.C. 309.11.

{¶5} For Sheriff Pinkney, she cites R.C. 311.01, Qualifications and Duties of Sheriff, and complains that there were no records showing that he is a U.S. citizen, a resident of Cuyahoga County, a qualified elector, a high school graduate, has not been convicted of a felony or a first-degree misdemeanor, and has the educational and/or experiential requisites for sheriff,

¹As this court noted in its earlier entry, the catalyst for this public records mandamus action was the foreclosure on Samara's property to collect delinquent taxes. *Treasurer of Cuyahoga Cty. v. Samara*, 8th Dist. Cuyahoga No. 99977, 2014-Ohio-2974. She submitted her public records request after learning that the property had been sold pursuant to a tax forfeiture sale.

including continuing education. Nor were there any board of election certificates showing the person qualified.

{¶6} For the prosecutor, she complains that there were no records showing that he is licensed to practice law or for his first year as prosecutor. Samara did find the oaths of office for the judges acceptable.

{¶7} For the clerk of courts and the county fiscal office, she complains that the records are incomplete and defective. Additionally, she complains that there was no certificate of commission for the fiscal office. For the assistant prosecutor and the program officer 2, Samara complains that there are no oaths or bonds.

{¶8} Samara concluded her brief with a prayer for relief. She first notes that the bond and qualifications do not meet the requirements to enter into the offices. The bonds are not to the form and content as required by law and issued by surety companies not authorized to do business in Ohio. She then requested this court to order the respondents “to produce copies stamped within the records book and produce the warrants that were issued by the Auditor to prove that the bonds are real.” (Br. 20.) She further requests this court to reopen her writ of prohibition in Appeal No. 103543 and correct the defects in office as the law requires.²

{¶9} On June 2, 2016, the respondents filed a reply brief. On July 5, 2016, Samara filed “Judicial Notice per Ohio Rules of Evidence 102 and 902(1) and (2).”

{¶10} A writ of mandamus is an extraordinary writ. To be entitled to a writ of mandamus, the relator must establish by clear and convincing evidence a clear, legal right to the

² In *State ex rel. Samara v. Suster*, 8th Dist. Cuyahoga No. 103543, 2016-Ohio-818, Samara sought a writ of prohibition to correct the injustice in her foreclosure case on the grounds that all of the officers and officials involved did not have their proper oaths and bonds, and thus were unable to exercise any authority in her case. This court dismissed the case.

requested relief, and a clear, legal duty to performance by the respondent. Because this is a public records mandamus, the statute eliminates the need to establish a lack of an adequate remedy at law. *State ex rel. Morgan v. New Lexington*, 112 Ohio St.3d 33, 2006-Ohio-6365, 857 N.E.2d 1208; and *State ex rel. Pressley v. Indus. Comm. of Ohio*, 11 Ohio St.2d 141, 228 N.E.2d 631 (1967). Furthermore, “R.C. 149.43 must be construed liberally in favor of broad access to records kept by public offices, and any doubt is to be resolved in favor of disclosure of records.” *State ex rel. Wallace v. State Med. Bd. of Ohio*, 89 Ohio St.3d 431, 433, 732 N.E.2d 960 (2000). The government has the burden of demonstrating that a record is exempt from disclosure. *State ex rel. White v. Watson*, 8th Dist. Cuyahoga No. 86737, 2006-Ohio-5234. However, if a request is too indefinite or too vague, there is no duty enforceable in mandamus to produce the records. *State ex rel. Dillery v. Icsman*, 92 Ohio St.3d 312, 2001-Ohio-193, 750 N.E.2d 156; *State ex rel. Zauderer v. Joseph*, 62 Ohio App.3d 752, 577 N.E.2d 444 (10th Dist.1989); and *Capers v. White*, 8th Dist. Cuyahoga No. 80713, 2002 Ohio App. LEXIS 1962 (Apr. 17, 2002).

{¶11} The court has discretion in issuing mandamus. In *Pressley*, at paragraph seven of the syllabus, the Supreme Court of Ohio ruled that “in considering the allowance or denial of the writ of mandamus on the merits, [the court] will exercise sound, legal and judicial discretion based upon all the facts and circumstances in the individual case and the justice to be done.” The court elaborated that in exercising that discretion the court should consider

“the exigency which calls for the exercise of such discretion, the nature and extent of the wrong or injury which would follow a refusal of the writ, and other facts which have a bearing on the particular case. * * * Among the facts and circumstances which the court will consider are the applicant’s rights, the interests of third persons, the importance or unimportance of the case, the applicant’s conduct, the equity and justice of the relator’s case, public policy and the public’s interest, whether the performance of the act by the respondent would give the

relator any effective relief, and whether such act would be impossible, illegal, or useless.”

Id. at 161-162. *State ex rel. Bennett v. Lime*, 55 Ohio St.2d 62, 378 N.E.2d 152 (1978); *State ex rel. Dollison v. Reddy*, 55 Ohio St.2d 59, 378 N.E.2d 150 (1978); and *State ex rel. Mettler v. Commrs. of Athens Cty.*, 139 Ohio St. 86, 38 N.E.2d 393 (1941).

{¶12} The court has examined the records and concludes that the respondents have fulfilled their duty to provide the requested records.

{¶13} Addressing Samara’s concerns, the court finds that the absence of “Page two of two” does not establish that pages are missing. As explained by the respondents in their June 2, 2016 reply brief, the Oath/Affirmation of Office that follows “Page one of two” is page two. Another of the Oath-Bond combinations confirms that to the satisfaction of the court. To the extent that Samara complains that the bonds and oaths are not certified, that the dates are inconsistent, that some of them appear incomplete, that the bonding companies are not authorized to do business in Ohio, and that they are otherwise defective as to form and content, such objections are not relevant to a public records mandamus action. The scope and purpose of the public records mandamus action is to make sure the relator obtains the extant records, not to declare the propriety and sufficiency of the records. Employees, such as a program officer 2 and even an assistant prosecutor, do not take oaths or provide bonds. Therefore, as to the requests for the bonds and oaths, this court rules that the respondents have fulfilled their duty to provide the requested information.

{¶14} The request of other qualifications is problematic. As Samara indicates in her brief, this category raises a host of educational, statutory, and bureaucratic possibilities to fulfill this request to her satisfaction, which is to show that the individuals associated with her

foreclosure case were not qualified to hold their positions and, thus, her foreclosure judgment is void. Such possibilities include a high school diploma, an undergraduate diploma, a law school diploma, passage of the bar exam, admittance to the Ohio Bar, fulfillment of continuing legal education requirements, proof of payment of bar dues, proof of good standing in the bar, results of the board of elections, the commission from the governor, proper recording, criminal record checks, prosecutor's certification of the bond, appointment papers, council confirmation, other professional certification, and proof of experience. Such a vague and broad request presents a perpetual moving target to enlarge the scope of the request to satisfy eventually the requester's goal that something is insufficient. In the exercise of its discretion, this court will not indulge such a request. Thus, this court rules in this case that the request for qualifications is too vague and broad to be enforceable in mandamus and further rules that the respondents have fulfilled their duty to provide the requested records.

{¶15} Accordingly, this court denies the application for a writ of mandamus as moot. Respondents to pay costs. This court directs the clerk of courts to serve all parties notice of this judgment and its date of entry upon the journal as required by Civ.R. 58(B).

{¶16} Writ denied.

EILEEN T. GALLAGHER, JUDGE

LARRY A. JONES, SR., A.J., and
TIM McCORMACK, J., CONCUR