

ORIGINAL

Case No. 12-1893

**Supreme Court
of the State of Ohio**

STATE OF OHIO *ex rel.* EMILIE DiFRANCO,

Relator-Appellant,

v.

CITY OF SOUTH EUCLID, OHIO,

and

**KEITH A. BENJAMIN,
Director of Community Services and
Clerk of Council, City of South Euclid, Ohio,**

Respondents-Appellees.

**NOTICE OF APPEAL OF
RELATOR-APPELLANT EMILIE DiFRANCO**

APPEAL OF RIGHT (CASE ORIGINATING IN COURT OF APPEALS)

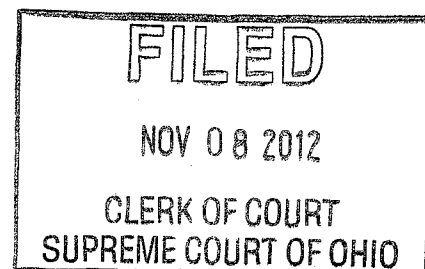
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and Keith A. Benjamin*



NOTICE OF APPEAL OF RELATOR-APPELLANT EMILIE DiFRANCO

Relator-Appellant Emilie DiFranco, on relation and behalf of the State of Ohio, hereby gives notice of appeal to the Supreme Court of the State of Ohio from the judgment of the Cuyahoga County Court of Appeals, Eighth Appellate District, entered on October 22, 2012, in *State ex rel. DiFranco v. City of South Euclid, Ohio, et al.*, Court of Appeals Case No. CA-12-097823, said case originating in the court of appeals. A copy of the Journal Entries denying a writ of mandamus, denying Relator's motion for summary judgment, granting Respondents' motion to supplement its previously filed motion for summary judgment, and granting Respondents' motion for summary judgment, together with Judgment and associated Decision are attached hereto.


~~Respectfully submitted,~~

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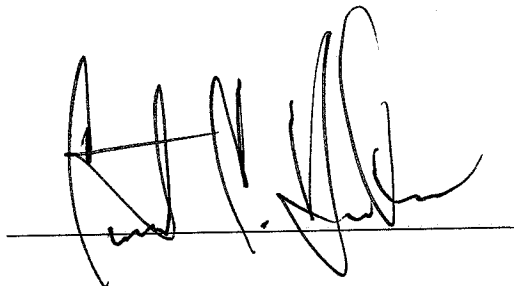
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*Attorney for Relator-Appellant
Emilie DiFranco*

CERTIFICATE OF SERVICE

gml I certify that a copy of the foregoing will be served, via e-mail, upon the following on the 5th day of November 2012:

Michael P. Lograsso
Law Director, City of South Euclid
1349 South Green Road
South Euclid, Ohio 44121

A handwritten signature in black ink, appearing to read "Michael P. Lograsso", is written over a horizontal line.

Court of Appeals of Ohio, Eighth District

County of Cuyahoga
Gerald E. Fuerst, Clerk of Courts

S/O EX REL., EMILIE DIFRANCO

Relator

COA NO.
97823

ORIGINAL ACTION

-VS-

CITY OF SOUTH EUCLID, OHIO, ET AL.

Respondent

MOTION NO. 459142

Date 10/22/12

Journal Entry

Writ denied. See Journal Entry and Opinion of same date.

FILED AND JOURNALIZED
PER APP.R. 22(C)

OCT 22 2012

GERALD E. FUERST
CLERK OF THE COURT OF APPEALS
BY [Signature] DEP.

Presiding Judge MELODY J. STEWART,
CONCURS IN JUDGMENT ONLY

Judge COLLEEN CONWAY COONEY, Concur

[Signature]
Judge KENNETH A. ROCCO

COURTS MAILED TO COUNSEL FOR
ALL PARTIES.-COSTS TAXED

Court of Appeals of Ohio, Eighth District

County of Cuyahoga
Gerald E. Fuerst, Clerk of Courts

S/O EX REL., EMILIE DIFRANCO

Relator

COA NO.
97823

ORIGINAL ACTION

-VS-

CITY OF SOUTH EUCLID, OHIO, ET AL.

Respondent

MOTION NO. 453507

Date 10/22/12

Journal Entry

Motion by Relator for partial summary judgment is denied.

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GERALD E. FUERST
CLERK OF THE COURT OF APPEALS
BY SAUB DEP.

Presiding Judge MELODY J. STEWART,
Concurs

Judge COLLEEN CONWAY COONEY, Concurs


Judge KENNETH A. ROCCO

Court of Appeals of Ohio, Eighth District

County of Cuyahoga
Gerald E. Fuerst, Clerk of Courts

S/O EX REL., EMILIE DIFRANCO

Relator

COA NO.
97823

ORIGINAL ACTION

-VS-

CITY OF SOUTH EUCLID, OHIO, ET AL.

Respondent

MOTION NO. 454518

Date 10/22/12

Journal Entry

Motion by Respondents to supplement its previously filed motion for summary judgment is granted.

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GERALD E. FUERST
CLERK OF THE COURT OF APPEALS
BY [Signature] DEP.

Presiding Judge MELODY J. STEWART,
Concurs

Judge COLLEEN CONWAY COONEY, Concurs

[Signature]
Judge KENNETH A. ROCCO

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ATTENTION OF THE COMMITTEE

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 97823

STATE EX REL. EMILIE DIFRANCO

RELATOR

vs.

CITY OF SOUTH EUCLID, OHIO, ET AL.

RESPONDENTS

**JUDGMENT:
WRIT DENIED**

Writ of Mandamus
Motion Nos. 453507, 454368 and 454949
Order No. 459142

RELEASE DATE: October 22, 2012

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FILED AND JOURNALIZED
PER APP.R. 22(C)

OCT 22 2012

GERALD E. FUERST
CLERK OF THE COURT OF APPEALS
BY SM DEP.

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ALL PARTIES - 10/22/12
GARY L. BROWN, CLERK

KENNETH A. ROCCO, J.:

{¶1} On January 11, 2012, the relator, Emilie DiFranco, commenced this public records mandamus against the respondents, the city of South Euclid and Keith A. Benjamin, Director of Community Services and Clerk of Council of the city of South Euclid. DiFranco seeks “copies of all legal spending for the time period: January 2010 thru June 2011 * * * include detailed spread sheets * * * which includes: date of payments, payee, and amounts paid to outside contractual legal firms, and salaries.” In addition, DiFranco seeks the award of attorney fees, per R.C. 149.43(C)(2)(b), and the award of statutory damages as allowable pursuant to R.C. 149.43(C)(1). For the following reasons, we find that DiFranco’s request for a writ of mandamus is moot and decline to award DiFranco either attorney fees or statutory damages.

{¶2} DiFranco’s request for a writ of mandamus is moot. DiFranco, in footnote five, as contained within her motion for partial summary judgment of March 22, 2012, states that: “Relator is willing to stipulate that all responsive records were received on Friday, January 13, 2012, at 7:56 PM, the same day the complaint was served * * * .” All requested public records have been provided to DiFranco. *State ex rel. Striker v. Smith*, 129 Ohio St.3d 168, 2011-Ohio-2878, 950 N.E.2d 952, ¶ 22, quoting *State ex rel. Toledo Blade Co. v. Toledo-Lucas Cty. Port Auth.*, 121 Ohio St.3d 537, 2009-Ohio-1767, 905 N.E.2d 1221, ¶ 14. Thus,

the only remaining issues that this court must address are DiFranco's request for statutory damages and attorney fees.

{¶3} DiFranco's request for statutory damages must be summarily denied. R.C. 149.43(C)(1) provides that "[i]f a requestor transmits a written request by hand delivery or certified mail to inspect or receive copies of any public records * * *, the requestor shall be entitled to recover the amount of statutory damages set forth in this division." In the case sub judice, DiFranco did not transmit a written request by hand delivery or certified mail to inspect or receive copies of any public record. DiFranco made her request for public records through email. Email does not constitute a written request or certified mail, and thus, DiFranco has failed to comply with the mandatory requirements of R.C. 149.43(C)(1). *State ex rel. Mahajan v. State Med. Bd. of Ohio*, 127 Ohio St.3d 497, 2010-Ohio-5995, 940 N.E.2d 1280.

{¶4} Finally, we find that DiFranco is not entitled to attorney fees. DiFranco argues that she has established the necessary grounds for attorney fees pursuant to R.C. 149.43(C)(2)(b). In support of her claim for attorney fees, DiFranco states in her complaint for a writ of mandamus that:

The issuance of a writ of mandamus will serve the public interest and provide a public benefit by, inter alia, encouraging and promoting compliance in the future by public officials with the mandates of the Public Records Act, as well as court decisions thereon.

Furthermore, the issuance of a writ of mandamus will serve the

public interest and provide a public benefit by, inter alia, exposing the financial operations of the City of South Euclid to public exposure.

Furthermore, the issuance of a writ of mandamus will serve the public interest and provide a public benefit by, inter alia, subjecting the organization, functions, policies, decision, operations, or other activities of the City of South Euclid to public exposure, review and criticism.

{¶5} The Supreme Court of Ohio has recently established that the award of attorney fees is dependent upon demonstrating that the release of the requested public records provides a public benefit that is greater than the benefit that enures to the requester. *State ex rel. Dawson v. Bloom-Carroll Local School Dist.*, 131 Ohio St.3d 10, 2011-Ohio-6009, 959 N.E.2d 524, ¶ 34; *State ex rel. Beacon Journal Publishing Co. v. Akron*, 104 Ohio St.3d 399, 2004-Ohio-6557, 819 N.E.2d 1087; compare *State ex rel. Data Trace Information Servs., L.L.C. v. Cuyahoga Cty. Fiscal Officer*, 131 Ohio St.3d 255, 2012-Ohio-753, 963 N.E.2d 1288, ¶ 69 (failure to establish right to statutory damages and attorney fees throughout the case resulted in waiver).

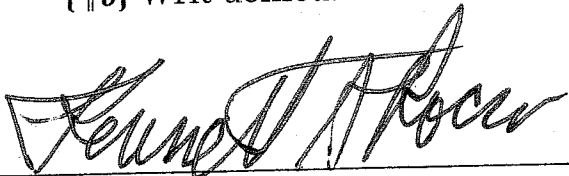
{¶6} This court, in *State ex rel. Petranek v. Cleveland*, 8th Dist. No. 98026, 2012-Ohio-2396, held that encouraging and promoting compliance with the Ohio Public Records Act and on subjecting the public records keeper to public exposure, review, and criticism does not establish sufficient public benefit to allow for the award of attorney fees.

In her complaint, [relator] states that her public records request would serve the public benefit by encouraging and promoting compliance with the Ohio Public Records Act and by subjecting the [respondent] to public exposure, review, and criticism. [Footnote omitted.] This does not state a sufficient public benefit to support an award of attorney fees or statutory damages, *because any and all public records requests would provide these minimal benefits.* (Emphasis added.) *Id.* at ¶ 8. See also *State ex rel. DiFranco v. South Euclid*, 8th Dist. No. 97713, 2012-Ohio-4399.

{¶7} As in *Petranek*, we find that DiFranco has failed to establish any viable public benefit that would permit this court to an award of attorney fees. The benefit claimed by DiFranco is simply an argument that the Ohio Public Records Act be enforced against the respondents. Thus, we find that DiFranco is not entitled to an award of attorney fees.

{¶8} Accordingly, we grant the respondents' joint motions for summary judgment and deny DiFranco's partial motion for summary judgment. Respondents to pay costs. This court directs the Clerk of 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).

{¶9} Writ denied.

A handwritten signature in black ink, appearing to read "Kenneth A. Rocco", written over a horizontal line.

KENNETH A. ROCCO, JUDGE

COLLEEN CONWAY COONEY, J., CONCURS;
MELODY J. STEWART, P.J., CONCURS IN JUDGMENT ONLY