

IN THE SUPREME COURT OF OHIO

THE STATE ex rel. MARTIN, et al.

Relators,

**V.**

# TUSCARAWAS COUNTY JOB & FAMILY SERVICES

Respondent.

Case No. 2019-1377

## ORIGINAL ACTION IN MANDAMUS

RELATORS MORGAN MARTIN AND KENZIE APARIJO'S REPLY IN SUPPORT OF  
RELATORS' MERIT BRIEF

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## I. INTRODUCTION

On February 20, 2020, Relators Morgan Martin (“Ms. Martin”) and Kenzie Aparijo (“Ms. Aparijo”) (collectively referred to as the “Relators”) filed their Merit Brief arguing that Relators are entitled to a writ of mandamus compelling Tuscarawas County Job & Family Services (“TCJFS” or “Respondent”) to immediately produce copies of, or permit Relators access to and inspection of, TCJFS’s records pertaining to them. Director Haverfield’s affirmative finding of good cause created a clear legal duty for TCJFS to provide Relators with the requested records, or permit inspection of the same, and the Relators have a legal right to such records.

TCJFS then filed its Merit Brief on March 10, 2020. Much of TCJFS’s Merit Brief either belabors the uncontested point that Relators’ foster care records are not public records, or relies on inaccurate characterizations of case law. Accordingly, Relators hereby respectfully submit their Reply in Support of Relators’ Merit Brief.

## III. ARGUMENT

**Proposition of Law No. 1: Relators are entitled to a writ of mandamus compelling TCJFS to immediately produce copies of, or permit Relators access to and inspection of, TCJFS’s records pertaining to them.**

To be entitled to a writ of mandamus, Relators must establish “by clear and convincing evidence, (1) a clear legal right to the requested relief, (2) a clear legal duty on the part of the respondent to provide it, and (3) the lack of an adequate remedy in the ordinary course of the law.” *State ex rel. Bender v. Franklin County Board of Elections*, 157 Ohio St.3d 120, 2019-Ohio-2854, 132 N.E.3d 664, ¶ 7.

Applying this standard to the case at bar, it is clear that Relators are entitled to a writ of mandamus compelling TCJFS to immediately produce copies of, or permit

Relators access to and inspection of, TCJFS's records pertaining to them. For reasons more fully explained both herein and in Relators' Merit Brief, TCJFS has a clear legal duty to provide Relators with the requested records, or to permit inspection of the same, and Relators have the legal right to such records. Because TCJFS has unjustifiably refused their records request, despite an affirmative finding of good cause, relators lack an adequate remedy in the ordinary course of law.

**Proposition of Law No. 2: Director Haverfield's affirmative finding of good cause created a clear legal duty for TCJFS to provide Relators with the requested records, or permit inspection of the same, and the Relators have a legal right to such records.**

Relators recognize that the records they seek are not "public records" as that term is defined in the Ohio Revised Code. As such, Relators specifically brought this action pursuant to R.C. 5153.17 and never contended at any point during these proceedings that the requested records are public.

R.C. 5153 provides for the confidentiality of public children services agency records only under certain circumstances. "The confidentiality promised by 5153.17 is not absolute." *State ex rel. Renfro v. Cuyahoga Cty. Dept. of Human Servs.*, 54 Ohio St.3d 25, 29, 560 N.E.2d 230 (1990). Permission to inspect the records must be given when good cause is shown. *See In re Trumbull Cty. Children Servs. Bd.*, 32 Ohio Misc.2d 11, 11, 513 N.E.2d 360 (C.P.1986); 1991 Ohio Atty.Gen.Ops. No. 91-003, at 2-20 (finding that "[w]hen it is in the best interest of the child \* \* \* good cause may exist to require access to the records."). Good cause is established when the requester demonstrates that disclosure is in the best interest of the child or the due process rights of the requester are implicated. *State ex rel. Clough v. Franklin Cty. Children Servs.*, 144 Ohio St.3d 83, 2015-Ohio-3425, 40 N.E.3d 1132, ¶ 24. The "good cause"

determination does not run to the benefit of TCJFS; rather the protection of the statute runs to the individuals that are the subject of the file. See 1991 Ohio Atty.Gen.Ops. No. 91-003, at 2-20.

In contrast to the case law that TCJFS discusses in its Merit Brief where good cause was not found, Director Haverfield made an affirmative determination that Ms. Martin has shown good cause. Ms. Aparijo, having been in foster care with Ms. Martin, similarly has good cause to inspect the TCJFS records pertaining to her as doing so will further their efforts to gain closure and move forward from the trauma experienced under TCJFS's care. TCJFS has not even attempted to argue otherwise before this Court.

TCJFS's concern that Relators did not submit an affidavit from a professional confirming the same is inconsequential. Relators are qualified to testify as to their own state of mind. Accordingly, both TCJFS's duty to provide copies of the requested records or allow inspection of the same, **and** Relators' legal right to the requested records, result from Director Haverfield's affirmative finding of good cause.

Although TCJFS contends that its refusal to provide access to the records and decision to provide Ms. Martin with only a brief summary containing practically no useful information was not based on a perceived burden of redaction, the facts suggest otherwise. TCJFS's apparent concern regarding confidentiality as it relates to identities of other people mentioned in the records can be solved simply via redaction. Ohio law grants Director Haverfield discretion in determining when good cause exists, it does not grant Director Haverfield the right to refuse access to the records based upon the

burden to redact and copy the same. Once good cause is established, permission to inspect the records must be given. Relators have a legal right to the records.

Further, Ohio Adm.Code 5101:2-33-21 imposes a mandatory duty upon TCJFS to disseminate the requested records to the Relators. Ohio Adm.Code 5101:2-33-21(H) provides that with the exception of the identities of the referent/reporter and any person providing information during the course of an assessment/investigation, “the [public children services agency] shall promptly disseminate all information \* \* \* when it is believed to be in the best interest of \* \* \* a child subject of the report\* \* \*.” The Supreme Court of Ohio has recognized that the term “shall” in a statute or rule connotes a mandatory obligation unless other language evidences a clear and unequivocal intent to the contrary. See *State ex rel. Cincinnati Enquirer v. Lyons*, 140 Ohio St.3d 7, 2014-Ohio-2354, 14 N.E.3d 989, ¶ 28.

Although Ohio Adm.Code 5101:2-33-21(H) grants TCJFS the discretion to determine what information is relevant, all records are clearly relevant to Relators’ requests as Relators are the subjects of the requested records. They are not requesting records of other people, just their own records. Moreover, TCJFS has failed to file any evidence showing that Director Haverfield’s refusal to disseminate the records was based on a determination of relevancy.

Further, a recent opinion letter, dated June 28, 2017, from the Office of the Ohio Attorney General to the Director of the Ohio Department of Job and Family Services has also weighed in on the mandatory nature of other divisions under Ohio Adm.Code 5101:2-33-21. 2017 Ohio Atty.Gen.Ops. No. 2017-019. The topic of this opinion letter was whether a county public children services agency (“PCSA”) may furnish to a local

law enforcement agency a photograph of a child in the custody of the PCSA that is or may be missing. *Id.* In the opinion, the Ohio Attorney General stated that Ohio Adm.Code 5101:2-33-21 governs the confidentiality and dissemination of information contained in the uniform statewide automated child welfare information system (“SACWIS”), PCSA case records, and PCSA case information. *Id.* The Ohio Attorney General reasoned that the duty imposed upon a PCSA by Ohio Adm.Code 5101:2-33-21(G)(1) is mandatory based upon its use of the word “shall.” *Id.* Accordingly, the Ohio Attorney General advised that a PCSA that files a missing child report has a mandatory duty under Ohio Adm.Code 5101:2-33-21(G)(1) to furnish a photograph of the missing child to the local law enforcement agency when it is relevant to the investigation and is in SACWIS or maintained by the PCSA. *Id.*

Likewise, Ohio Adm.Code 5101:2-33-21(H), which is applicable to the instant matter, creates a mandatory obligation that TCJFS shall promptly disseminate to the Relators all records pertaining to them, because Director Haverfield’s affirmative determination of good cause was necessarily predicated upon such dissemination being in the best interest of Ms. Martin. Relators requested the records on file with TCJFS pertaining to them, and Ms. Martin has physically seen that a large file does in fact exist and is being maintained with TCJFS. Accordingly, TCJFS cannot now simply decide to withhold the records, ostensibly based on their unwillingness to perform redactions. Nevertheless, and despite the existence of good cause, TCJFS has refused to provide copies of the records or permit inspection of the same.

TCJFS cites to *State ex rel. Edinger v. Cuyahoga Cty. Dept. of Children & Family Serv.*, apparently in support of its contention that Director Haverfield’s affirmative finding



of good cause does not create a duty for TCJFS to provide copies of the records to Relators or permit inspection of the same. 8th Dist. Cuyahoga No. 86341, 2005-Ohio-5453. However, TCJFS inaccurately characterizes *Edinger* in its analysis to support its contention. In *Edinger*, the relators filed a complaint for a writ of mandamus to gain access to the foster care reports held by the County, arguing that such records were public records, as defined by R.C. 149.43, and thus subject to immediate release and review. *Id.* at ¶ 3. This concise opinion does not include any discussion, whatsoever, of good cause. Instead, the 8th District Court of Appeals focused on explaining that the records sought are not “public records.” *Id.* at ¶ 6. The Court concluded that relators’ incorrect argument that the records sought were “public records” was insufficient to establish that the relators possessed a legal right to inspect the records or that the County possessed a legal duty to allow the relators to inspect such records and dismissed the relators’ complaint. *Id.* at ¶¶ 7-8. *Edinger* did not discuss or even mention good cause and thus, cannot be characterized as supporting TCJFS’s position.

Moreover, TCJFS’s policy arguments are flawed. If TCJFS is referring to R.C. 5153.17 when it contends that a finding in Relators’ favor would render that statute illusory and the confidential nature of children services records non-existent, then TCJFS fails to recognize that an affirmative finding of good cause merely operates as an exception to the confidentiality. Exceptions to rules are common and the existence thereof does not automatically render a statute illusory. Likewise, a finding in Relators’ favor will not render any statutes illusory, as Director Haverfield exercised his statutorily and administratively mandated discretion when he made an affirmative finding of good cause. Accordingly, both TCJFS’s duty to provide copies of the requested records or

allow inspection of the same, and Relators' legal right to the requested records, result from Director Haverfield's affirmative finding of good cause. TCJFS further argues that a finding in Relators' favor will lead to a blanket "no finding of good cause" across the State. However, this argument unfairly imposes upon other county public children services agencies TCJFS's own unwillingness to provide copies of requested records, or allow inspection of the same, when redactions may be required. Simply put, TCJFS's own bad faith actions in this case should not be imputed to other agencies.

#### **IV. CONCLUSION**

TCJFS's duty to provide copies of the requested records, or allow inspection of the same, and Relators' legal right to the requested records, result from Director Haverfield's affirmative finding of good cause. Despite this finding of good cause, TCJFS has unjustifiably refused to provide Relators with copies of the requested records or permit their inspection. Relators lack an adequate remedy in the ordinary course of the law and are entitled to a writ of mandamus compelling TCJFS to immediately produce copies of or permit Relators access to and inspection of TCJFS's records pertaining to them.

Respectfully submitted,

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### **PROOF OF SERVICE**

I hereby certify that on this date, March 17, 2020, I have served a copy of the foregoing on Lisa Vitale Arnold, Counsel for Tuscarawas County Job & Family Services, 389 16<sup>th</sup> Street, S.W., New Philadelphia, Ohio 44663, via electronic mail delivery, in compliance with S.Ct.Prac.R. 3.11(C) and (D), at the following email address as provided by counsel for Respondent in the Motion to Dismiss: [lisa.vitale@jfs.ohio.gov](mailto:lisa.vitale@jfs.ohio.gov)

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