

IN THE SUPREME COURT OF OHIO

STATE OF OHIO, ex rel.,)	
ED. DAVILA,	(CASE NO. 2021-1126
PRO SE, RELATOR/APPELLANT ,)	
-vs.-	(APPEAL FROM CASE
CLERK OF COURT)	ORIGINATING BEFORE THE
COMMON PLEAS COURT	(FIFTH DISTRICT COURT OF
STARK COUNTY, OHIO)	APPEALS
CLERK OF COURT,	(COURT OF APPEALS
RESPONDENT/APPELLEE.)	CASE NO. 2021 CA 00077

**APPELLANT'S BRIEF IN SUPPORT
OF APPEAL OF AN ORDER DENYING REQUEST
FOR WRIT OF MANDAMUS IN A CASE ORIGINATING
BEFORE THE COURT OF APPEALS (FIFTH DISTRICT)**

Edwin Davila
333 Erie Street, South #325
Massillon, Ohio 44648
(330) 412-2605
Email: davilaed70@aol.com

Pro Se Relator/Appellant

Stark County Prosecutor Kyle L. Stone
Stark County Assistant Prosecutor Melissa Bright
Stark County Prosecuting Attorney's Office
110 Central Plaza, South, Suite 510
Canton, Ohio 44702-1413
(330) 451-7897
(330) 451-7965 (Telefax)

Counsel for Respondent/Appellee

TABLE OF CONTENTS

<u>CONTENT</u>	PAGE NOS.
<u>TABLE OF AUTHORITES</u>	ii
<u>INTRODUCTION</u>	1
I. <u>STATEMENT OF THE FACTS AND CASE</u>	1
A. JURISDICTION	2
B. BACKGROUND	2
II. <u>ARGUMENT:</u>	4
A. THE COURT OF APPEALS ERRED IN DISMISSING RELATOR'S COMPLAINT FOR A WRIT OF MANDAMUS.	4
1. This Court of Appeals' Reliance upon <i>Miller v. Ohio</i> was Inapposite to this Matter Involving a Public Records Request.	5
2. Ohio Public Records Law Supersedes Any Common Law Arguments as the Statute Provides that Officials Who Maintain Public Records are Under Its Authority.	7
B. THE COURT OF APPEALS ERRED BECAUSE RELATORS HAD A CLEAR LEGAL RIGHT TO INSPECT AND COPY THE REQUESTED DOCUMENTS UNDER THE OHIO PUBLIC RECORDS ACT AND THE POLICY OF THE CLERK OF COURTS	9
C. THE COURT OF APPEALS ERRED BECAUSE THE CLERK OF COURTS SHOULD HAVE PROVIDED ACCESS TO THE PUBLIC RECORDS WITHIN A REASONABLE TIME	9
1. Relator was Entitled to a Peremptory Writ.	10

TABLE OF CONTENTS
(Continued)

<u>CONTENT</u>	PAGE NOS.
D. THE COURT OF APPEALS ERRED BECAUSE THE CLERK OF COURT FAILED TO DEMONSTRATE DELIVERY OF THE REQUESTED DOCUMENTS.	10
III. <u>CONCLUSION</u>	11
<u>CERTIFICATE OF SERVICE</u>	12
<u>APPENDIX</u>	13

TABLE OF AUTHORITIES

<u>AUTHORITY</u>	<u>PAGE NOS.</u>
 I. <u>CASES</u>	
<i>Miller v. Ohio</i> 5:19 CV 1868, 2019 WL 6699463 (Dec. 9, 2019)	5, 7
<i>State ex. rel., Beacon Journal Publishing Co. v Bond</i> (2002) 98 Ohio St.3d 146, 160	2
<i>State ex rel., Consumer News Service, Inc. v. Worthington City Board of Education, (2002)</i> , 97 Ohio St.3d 58	9
<i>State ex rel., MADD v. Gosse</i> , 20 Ohio St.3d 30 (1983)	4
<i>State v. Richard Drabic</i> , 96-LW-0729, 95 AP 020005 (App.Ct., 5 th Dist. Tuscarawas Cty., Jan. 2, 1006)	6 fn 4
<i>State ex rel. Simonsen v. Ohio Dept. of Rehab. & Corr.</i> 2008 WL 5381924, 6 (Ohio App. 10 Dist.)	6
<i>State, ex rel., Striker v. Clerk of Court, Daniel Smith</i> , 2010-Ohio-457 (5 th Dist. Ct. of Appls., 2010).	6 fn3
<i>State ex rel. Striker v. Cline</i> , 2011-Ohio-983, 09CA107 (App. Ct., 5 th Dist. Richland Cty., Mar. 4, 2011)	6 fn 4
<i>State ex rel. Striker v. Cline</i> , 2010-Ohio-3592, 09CA107 (App. Ct., 5 th Dist., Richland Cty. Aug. 3, 2010)	6 fn 4
<i>State ex rel. Striker v. Cline</i> , 2010-Ohio-2861, 09CA107 (App. Ct., 5 th Dist., Richland Cty., June 21, 2010)	6 fn 4
<i>State ex rel. Striker v. Frary</i> , 2011-Ohio-1021, 10 CA 01 (App. Ct., 5 th Dist., Richland Cty. Mar.4, 2011)	6 fn 4

TABLE OF AUTHORITIES
(Continued)

<u>AUTHORITY</u>	<u>PAGE NOS.</u>
I. <u>CASES (Continued)</u>	
<i>State ex rel. Striker v. Smith</i> , 2010-Ohio-457, 2008-CA-0336 (App., Ct., 5 th Dist., Richland Cty., Feb. 8, 2010)	6 fn 4
II. <u>OHIO CONSTITUTION</u>	
Art. IV, Sec. 2(B)	2, fn 2, App.
III. <u>STATUTES</u>	
R.C. 149.43	1,2,3,4,9, App
R.C. Sec. 149 et seq. (Ohio Public Records Act)	1,3, App
R,C, 149.43(B)	2,9, App.
R.C. 149.43(B)(1)	9, App.
R.C. 149.43(C)(1)	4, App.
R.C.149.43 (E)(2)	6,fn.6,7, App.
R.C. 1302.12	8, App
R.C. Chapter 2303	App.
R.C. 2731.06	10, App.
R.C. 3105.12	8, App.
IV. <u>RULES OF COURT</u>	
App. R. 26(A)(1)(a)	5, App.
App. R. 30(A)	5, App.
V. <u>MISCELLANEOUS</u>	
Stark County Clerk of Court Public Records Policy	1, App.

INTRODUCTION

This matter arises from Pro Se Relator's and Appellant Ed. Davila ("Relator") Complaint for preemptory writ, or alternatively permanent writ of mandamus, which Relator maintains should have been granted under Ohio Public Records Act – R.C. 149.43.

After filing his Complaint, Relator sought an order from the Fifth District Court of Appeals granting Peremptory, Alternative and/or Permanent Writ of Mandamus directing Respondent Clerk of Courts Stark County, Ohio ("Respondent") to permit immediate inspection and copying of all records requested on Exhibit A attached to the Complaint.

Despite being public records to which access is guaranteed under R.C. 149.43 Respondent failed to promptly permit inspection and copying. The denial violated rights guaranteed to Relator under the Ohio Open Records Act and the rights guaranteed to Relator by the Respondent's own public records policy. Consequently, relief through a public records mandamus action before the Fifth District Court of Appeals was appropriate.

The Fifth District Court of Appeals, however, dismissed Relator's public records case on the grounds that the Clerk of Court was not *sua generis*. Relator appeals from this dismissal.

I. STATEMENT OF THE FACTS AND CASE

The original action in mandamus sought access under the authority of the Ohio Public Records Act, R.C. 149 et seq., and the Public Records Policy of the Clerk of Stark County, Ohio. Although the records requested by Relator are public records, the Clerk of Court failed to comply with Relator's request to promptly permit inspection and copying within a reasonable period of time in which to make such records available.

Relator filed a mandamus action before the Fifth District Court of Appeals and asked the Fifth District Court of Appeals to find that the public records must be promptly disclosed under R.C. 119.43 and the policy of the Clerk of Court, and to issue a peremptory or alternative and permanent writs of mandamus directing the Clerk of Court to permit immediate inspection and copying.

A. JURISDICTION

Mandamus was the appropriate remedy to seek compliance with the Public Records Act under R.C. 149.43. See, *State ex.rel, Beacon Journal Publishing Co. v Bond* (2002). 98 Ohio St.3d 146, 160. The Court of Appeals had original jurisdiction to allow a writ of mandamus, peremptory and alternative writs. See Ohio Constitution Art. IV Sec. 2(B).¹

As the custodian of the requested records, Respondent was the proper party to whom a writ of mandamus to compel production should issue under Ohio Revised Code Sec. 149.43(B).

B. BACKGROUND

Relator is a citizen of the State of Ohio and made a formal public documents request on May 24, 2021 to the Public Records' Administrator of the Clerk of Courts' Office of the Common Pleas Court of Stark County, Ohio. See the copy of the May 24, 2021 request was attached to the Complaint and is attached hereto.

In the absence of a response by the Respondent, Relator submitted a second formal public documents request on June 7, 2021 to the Public Records' Administrator of the Clerk of Courts'

¹ Ohio Constitution Art. IV Sec. 2(B)(1), which provides:
"The courts of appeals shall have original jurisdiction in the following:
(a) Quo warranto;
(b) Mandamus;
(c) Habeas corpus;
(d) Prohibition;
(e) Procedendo". . . ."

Office of the Common Pleas Court of Stark County, Ohio. A copy of the June 7, 2021 request was attached to the Complaint and is attached hereto.

Respondent is a political entity created pursuant to Ohio Revised Code Chapter 2303 and performing such duties as are specified by the Ohio Revised Code..

Relator submitted his public records request pursuant to Ohio's Public Records Law (R.C. 149 *et seq.*)

In addition, Relator submitted his public records request pursuant to the Public Records Request Policy of the Stark County Clerk of Courts. A copy of the Public Records Request Policy of the Stark County Clerk of Courts was attached to the Complaint and is attached..

To date, Respondent failed to provide the requested documents, or otherwise responded to Relator to Relator's requests for public records.

A response to this request for public records was reasonable because the Respondent had been aware of the request for public records for over four weeks. Respondent's inaction was a clear refusal of Relator's request. This is inconsistent with Ohio's Public Records Law, and the Stark County Clerk of Courts' Public Records Request Policy which states that "Public records must be made available for inspection promptly." A copy of the Public Records Request Policy of the Stark County Clerk of Courts was attached to the Complaint and is attached hereto.

Respondent is a governmental agency and is therefore subject to the requirements of R.C. 149.43 and its own public records policy.

Respondent's refusal to respond to Relator's request was improper.

Respondent's denial of access to public records to Relator violates R.C. 149.43, and the policy of the Clerk of Courts. Respondent's refusal to respond to Relator's request for access to public records violated the public records policy of the Respondent and the Ohio Sunshine Laws

in that no valid exemption applies to the public records sought. *State ex rel, MADD v. Gosse*, 20 Ohio St.3d 30 (1983) (absent express statutory exemption, records are open to the public.)

Pursuant to Ohio Rev. Code. Sec. 143.49(C)(1), Relator was entitled to a conclusive presumption of injury arising from the loss of the use of the public records sought.

Pursuant to Ohio Rev. Code sec. 143.49(C)(1) Relator was entitled to a writ of mandamus from this Court commanding Respondent to comply with R.C.149.43 of the Ohio Revised Code, and to comply with the Public Records Request Policy of the Stark County Clerk of Courts, and to otherwise restore Relator's right to inspect and to obtain copies of the public records sought.

Although the Clerk of Courts filed a document claiming it had served public records upon the Relator, the evidence filed by the Clerk of Courts indicated that the alleged email with the claimed records was returned as undeliverable and the claimed records were not delivered to the Relator as set forth in the language of the exhibit of the Clerk of Courts attached to the filing by the Clerk of Courts.

Acting reasonably, Relator filed a document proposing that the Fifth District Court of Appeals order the parties meet and the Clerk of Court deliver the requested documents. However, the Fifth District Court of Appeals dismissed the case citing dicta from a federal case, and claiming that the Clerk of Courts was not *sua generis*.

II. ARGUMENT:

A. THE COURT OF APPEALS ERRED IN DISMISSING RELATOR'S REQUEST FOR A WRIT OF MANDAMUS.

Pro Se Realtor petitioned the Fifth District Court of Appeals ("the Court of Appeals") to reconsider its dismissal of this public records request case. Pro Se Relator's request for reconsideration was premised upon the claim that the decision of the Court to dismiss the request

for writ of mandamus for the production of requested documents from the Stark County Clerk of Court which have not been produced was contrary to Ohio Public Records law.²

1. This Court of Appeals' Reliance upon *Miller v. Ohio* was Inapposite to this Matter Involving a Public Records Request.

Unlike the present action, the federal court case cited by the Court, *Miller v. Ohio* 5:19 CV 1868, 2019 WL 6699463 (Dec. 9, 2019), involved an action under 42 U.S. Code Sec.1983. In the complaint of *Miller v. Ohio*, Plaintiff Miller alleged he was charged and convicted of improperly handling a firearm in a motor vehicle. Miller stated terrorists installed thought reading transmission technology on him against his will. *Id.* He also claimed that defendants violated his constitutional rights, and he sought monetary damages in the amount of \$25, 000, 000, 000. *Id.* at 6, 11.

The *Miller* case had nothing to do with the public records case, which is based upon statutory authority set forth in Ohio Revised Code Chapter 149 and thus not superseded by common law. In addition, the *Miller* case doesn't address the specific provisions of Ohio's Public Records law, namely R.C. 149 *et seq.*, which specifically compels the disclosure of public records by officials who maintain the records. See, R.C. 149.43 (A) (A), states:

"Public record" means records kept by any public office, including, but not limited to, state, county, city, village, township, and school district units, and records pertaining to the delivery of educational services by an alternative school in this state kept by the nonprofit or for-profit entity operating the alternative school pursuant to section 3313.533 of the Revised Code.[Emphasis supplied]"

² This application for reconsideration was appropriate under Ohio App. R. 26(A(1)(a), which provides:

"Application for reconsideration of any cause or motion submitted on appeal shall be made in writing no later than ten days after the clerk has both mailed to the parties the judgment or order in question and made a note on the docket of the mailing as required by App.R. 30(A)"

In a number of cases, the Fifth District Court of Appeals reviewed the Public Records law in connection with the production of records by a clerk of courts.³ In the Public Records cases involving the clerk of courts within its jurisdiction, members of the Fifth District Court of Appeals in this case, applied the statutory provisions of the Ohio Public Records law in its review of the lower courts' decisions and at no time did the Fifth District Court of Appeals hold that the Ohio Public Records law did not apply because of any common law principles.⁴

As an aside, the Fifth District Court of Appeals noted that the clerk of court is mandated by Ohio Public Records law to post its public records policy for public viewing,⁵ which the Clerk of Court of Stark County, Ohio has not done.

³ In *State, ex rel., Striker v. Clerk of Court, Daniel Smith*, 2010-Ohio-457 (5th Dist. Ct. of Appls., 2010). Presiding Judge Gwin quoting the Tenth District Court of Appeals' examination of the duty of a public office pursuant to a public records request wrote:

"[P]ublic offices are required to promptly prepare records and transmit them within a reasonable period of time after receiving the request for the copy.

State ex rel. Simonsen v. Ohio Dept. of Rehab. & Corr. 2008 WL 5381924, 6 (Ohio App. 10 Dist.).

⁴ See, for example, *State ex rel. Striker v. Cline*, 2010-Ohio-3592, 09CA107 (App. Ct., 5th Dist., Richland Cty. Aug. 3, 2010) (Farmer, J. Gwin, P.J. and Delaney, J.); *State ex rel. Striker v. Cline*, 2010-Ohio-2861, 09CA107 (App. Ct., 5th Dist., Richland Cty., June 21, 2010) (Farmer, J. Gwin, P.J. and Delaney, J.); *State ex rel. Striker v. Smith*, 2010-Ohio-457, 2008-CA-0336 (App., Ct., 5th Dist., Richland Cty., Feb. 8, 2010) (Farmer, J. Gwin, P.J. and Delaney, J.); *State ex rel. Striker v. Frary*, 2011-Ohio-1021, 10 CA 01 (App. Ct., 5th Dist., Richland Cty. Mar.4, 2011); *State ex rel. Striker v. Cline*, 2011-Ohio-983, 09CA107 (App. Ct., 5th Dist. Richland Cty., Mar. 4, 2011); *State v. Richard Drabic*, 96-LW-0729, 95 AP 020005 (App.Ct., 5th Dist. Tuscarawas Cty., Jan. 2, 1006((Farmer, P. J., Reader, J., Wise, J.).

⁵ R.C. 149.43(E) (2) provides in part, "The public office shall create a poster that describes its public records policy and shall post the poster in a conspicuous place in the public office and in all locations where the public office has branches."

Clearly by Ohio case law, statute and its own policy, the Stark County Clerk of Court is the custodian of the records at issue in this matter, thus the Stark County Clerk of Courts is the proper party. Production of the requested records should have been made in accordance with the very policies adopted by the Stark County Clerk of Courts. See attached copy of the Stark County Clerk of Court Public Records Policy.

Reliance upon *Miller v. Ohio, supra*, to dismiss this action was an error, primarily because the case does not apply to the disclosure of public records and does not contradict the statutory duties imposed upon public officials and which duty is recognized by this Court and other Ohio courts with respect to public records and the production of the public records upon request, as occurred in this case..

Thus, this Court should reverse the Fifth District Court of Appeals' dismissal in light of this Court's own application of the Ohio Public Records law in cases involving the clerk of courts of several counties, which application is specified by law and which overrides common law principles.

2. Ohio Public Records Law Supersedes Any Common Law Arguments as The Statute Provides that Officials Who Maintain Public Records are Under Its Authority.

Because Ohio Public Records Law is a statutory enactment common law principles are inapplicable.

Examples of where common law is superseded by statutory law in Ohio law are plentiful. For example, common law marriage in Ohio was eliminated by statutory enactment.

Footnote 5(continued). In the instant case, no public records policy is posted at any of the offices of the Stark County Clerk of Courts as required by Ohio Law as mandated by R.C. 149.43 (E)(2).

R.C. 3105.12. In addition, Ohio's Uniform Commercial Code supersedes common law practices of commerce. **See, for example**, the Uniform Commercial Code's Section 2-209 (R.C. 1302.12) which does a complete about face on the common law rule that negated the effect of certain contractual clauses.

With regard to public records cases involving clerks of courts, such cases can be found throughout Ohio Jurisprudence and the Ohio's Supreme Court website. Nowhere has the Ohio Supreme Court held that common law prevents a clerk of court from being named in a mandamus suit for public records of the clerk court employees as in this instance. Those cases which have denied the access to records of the clerk of courts have either held that production of the records was protected under certain provisions of the Ohio Public Records law, the requesting party did not comply with the requirements under the Ohio Public Records law, or production was moot because records had been eventually undisputable produced.. No such holdings would apply in this case.

In this case, the Public Records statutes compel the Clerk of the Stark County Court of Common Pleas to furnish the requested records, as provided in its own Public Records Policy. Moreover, Respondent's Counsel has suggested the Clerk has furnished certain requested records but Respondent Counsel's evidence suggested the records were never received by electronic mail transmission and the claimed records were not delivered. **See Memorandum in Opposition to the Respondent's Motion to Dismiss**, incorporated herein by reference.

B. THE TRIAL COURT ERRED BECAUSE RELATORS HAD A CLEAR LEGAL RIGHT TO INSPECT AND COPY THE REQUESTED DOCUMENTS UNDER THE OHIO PUBLIC RECORDS ACT AND THE POLICY OF THE CLERK OF COURTS

Relator has a clear legal right to inspect the requested documents by virtue of the Ohio Public Records Act, R.C. Sec. 149.43 and the policy of the Clerk of Court. The Public Records Act requires that "all public records shall be promptly prepared and made available for inspection to any person at all reasonable times during regular business hours." R.C. 149.43(B). The Ohio Supreme Court has consistently construed the Public Records Act as guaranteeing the broadest possible access to public records, which public records include in this matter all records requested in Relator's two written requests attached to the Complaint.

C. THE TRIAL COURT ERRED BECAUSE THE CLERK OF COURTS SHOULD HAVE PROVIDED ACCESS TO PUBLIC RECORDS WITHIN A REASONABLE TIME.

The Public Records Act permits public offices, a "reasonable time" to respond to a public records request. R.C. Sec. 149.43 (B),(1). Relator submits that more than a reasonable amount of time has already passed and that the records requested by Relator in Exhibit A and B attached to the Complaint should be made available immediately for inspection and copying. See, *State ex Rel., Consumer News Service, Inc. v. Worthington City Board of Education*, (2002), 97 Ohio St.3d 58, wherein the Court determined that the reasons for a six (6) day delay in complying were meritless stating at page 68:

It is not within the province of a public office or officer to determine for the requester when a requester's purpose in obtaining public records would best be served. Brooks' purpose in requesting to inspect and copy public records is irrelevant [Emphasis supplied].

In the instant action, the records requested should have been made available for inspection within a reasonable time but for the reluctance of the Respondent to allow prompt access and copying.

1. Relator was Entitled to a Peremptory Writ.

2.

Ohio Rev. Code Section 2731.06 states:

When the right to require the performance of an act is clear and it is apparent that no valid excuse can be given for not doing it, a court, in the first instance, may allow a peremptory mandamus. In other as an alternative writ must first be issued on the allowance of the court, or a judge thereof.

Relator submits that Respondent has no valid excuse for not permitting prompt inspection and copying by Relator. A peremptory writ requiring Respondent to comply with Relator's request was therefore appropriate.

D. THE COURT OF APPEALS ERRED BECAUSE THE CLERK OF COURT FAILED TO DEMONSTRATE DELIVERY OF THE REQUESTED DOCUMENTS.

The Clerk of Court filed a Motion to Dismiss Relator's Complaint for Writ of Mandamus ("Motion to Dismiss"), however, the significance of the Motion to Dismiss rested in the Respondent's failure to demonstrate delivery of the requested documents.

Nowhere in the Respondent's Motion to Dismiss did Respondent offer evidence that the documents requested were actually delivered or received by Relator. Nowhere did Respondent attach a copy of any confirmation of delivery of any email. Instead, Respondent's Exhibit 2 at the top contained the words, "All Unread", which indicates that there was a problem with the email communications because the emails were unread

As the Affidavit of Relator demonstrated, which was attached to the opposition to the Motion to Dismiss filed by the Clerk of Court, he did not receive any of the requested documents. Also, what is significant is that nowhere did Respondent offer to produce the requested documents as an offer to settle or to conclude these proceedings.

For these reasons, Relator argued the Respondent's Motion to Dismiss should have been overruled and Relator's Motion for a Writ of Mandamus should have been granted. Alternatively, Relator proposed that to resolve this matter the Court of Appeals should have ordered the parties to meet and for the Respondent to produce the documents to Relator which would end this matter.

A meeting and exchange of the requested documents would have put an end to this matter.

III. CONCLUSION

Accordingly, for the reasons set forth above the Complaint for Mandamus should have been granted directing the Respondent to produce the requested records, or alternatively, the Court of Appeals should have granted Appellant's request to have the parties meet and confer to resolve this matter.

RESPECTFULLY SUBMITTED,



Ed. Davila
333 Erie Street, South #325
Massillon, Ohio 44648
(330) 412-2605
Email: davilaed70@aol.com

Pro Se Relator

CERTIFICATE OF SERVICE

I certify that a true and accurate copy of the foregoing was served by ordinary U.S. mail telefax, or hand delivery on this 22th day of October, 2021 upon the following office.

Stark County Prosecutor Kyle L. Stone
Assistant Stark County Prosecutor Melissa Bright
Stark County Prosecuting Attorney's Office
110 Central Plaza, South, Suite 510
Canton, Ohio 44702-1413
(330) 451-7897
(330) 451-7965 (Telefax)

Counsel for Respondent

A handwritten signature in dark ink, appearing to read "Ed. Davila", is written over a horizontal line.

Ed. Davila
Pro Se Relator

APPENDIX

APPENDIX
(Table of Contents)

<u>ITEM</u>	<u>PAGE NOS.</u>
July 28, 2021 Judgment Dismissal Entry	A-1
August 18, 2021 Judgment Entry Denying Reconsideration	A-2
May 24, 2021 Public Records Request Letter	A-3
June 7, 2021 Public Records Request Letter (2 nd Request)	A-4
Stark County Clerk of Court Public Records Policy	A-5
R.C.149.43	A-6
R.C. 1302.12	A-9
R.C. 3105.12	A-10
Ohio App. R. 26(A)(1)(a)	A-11

3304517249 Fifth District 2

IN THE COURT OF APPEALS FOR STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO, EX REL., ED
DAVILA

Relator

-vs-

CLERK OF COURT COMMON
PLEAS COURT STARK COUNTY,
OHIO

Respondent

Case No. 2021CA00077

JUDGMENT ENTRY

2021 JUL 28 PM 2:38

CLERK OF COURT OF APPEALS
STARK COUNTY, OHIO

On July 26, 2021, this Court dismissed Relator's Complaint for Writ of Mandamus. Prior to dismissing the writ, on July 19, 2021, Relator filed a "Pro Se Relator's Motion for Preemptory, Alternative and Permanent Writ of Mandamus Under Ohio Public Records Act – R.C. 149.43." We deny Relator's motion as moot based on our dismissal of the Complaint for Writ of Mandamus.

MOTION DENIED.

IT IS SO ORDERED.

Earle E. Wise Jr.

JUDGE EARLE E. WISE, JR.

John W. Wise

JUDGE JOHN W. WISE

Patricia A. Delaney

JUDGE PATRICIA A. DELANEY

3
P

A-1

3304517249 Fifth District 3

CLERK OF COURT OF APPEALS
STARK COUNTY, OHIO
2021 AUG 18 PM 9:57

IN THE COURT OF APPEALS FOR STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO, EX REL., ED
DAVILA

Relator

-vs-

CLERK OF COURT COMMON
PLEAS COURT STARK COUNTY,
OHIO

Respondent

Case No. 2021CA00077

JUDGMENT ENTRY

This matter is before the Court upon Relator, Ed Davila's Application for Reconsideration of Dismissal. We find Mr. Davila's application not well-taken and deny the same.

APPLICATION DENIED.

IT IS SO ORDERED.

Earle E. Wise Jr.

JUDGE EARLE E. WISE, JR.

John W. Wise

JUDGE JOHN W. WISE

Patricia A. Delaney

JUDGE PATRICIA A. DELANEY

3
ENTERED BY 13

A-2

Ed. Davila
333 Erie Street, South #325
Massillon, Ohio 44648
Email address: davilaed70@aol.com
Telephone: 330.412.2605

May 24. 2021

Public Records Administrator
Clerk of Courts' Office
Common Pleas Court, Stark County, Ohio
110 Central Plaza North, Suite 101
Canton, OH 44702

Fax 330.451.7066

RE: Public Records Request

To Whom It May Concern:

Pursuant to state law and the Public Records Request Policy of the Stark County Clerk of Courts, I am hereby requesting production of the public records set forth below.

In accordance with the Ohio's Public Records Law (ORC 149 et seq.), and your local public records policy set forth on the website of The Stark Clerk of Courts, I am requesting the following:

- A. Reports and Documents –
Any and all writings relating to the termination of James Babcock;
- B. Employee Manuals or Handbooks;
- C. Personnel Files – A copy of the complete personnel file relating to the employment of James Babcock;
- D. Any documents relating to the Policies, Procedures, Rules, Regulations, Orders and/or Memoranda – Regarding employee disciplinary procedures

Please produced any of the above referenced documents within the statutory appropriate time frame or explain why such production is not possible. Alternatively, if there are no such documents in existence, please respond in as such to this letter. Ignoring my requests will leave me with no choice but to avail myself of any and all possible judicial remedies.

Again, your cooperation and timely response is appreciated and you may email your response to this letter to davilaed70@aol.com

Respectfully,

Ed. Davila
cc: File

A-3

Ed. Davila
333 Erie Street, South #325
Massillon, Ohio 44648
Email address: davilaed70@aol.com
Telephone: 330.412.2605

June 7, 2021

Public Records Administrator
Clerk of Courts' Office
Common Pleas Court, Stark County, Ohio
110 Central Plaza North, Suite 101
Canton, OH 44702

Fax 330.451.7066

RE: SECOND REQUEST: Public Records Request

To Whom It May Concern:

Pursuant to state law and the Public Records Request Policy of the Stark County Clerk of Courts, I am hereby requesting production of the public records set forth below.

In accordance with the Ohio's Public Records Law (ORC 149 et seq.), and your local public records policy set forth on the website of The Stark Clerk of Courts, I am requesting the following:

- A. Reports and Documents –
Any and all writings relating to the termination of James Babcock;
- B. Employee Manuals or Handbooks;
- C. Personnel Files – A copy of the complete personnel file relating to the employment of James Babcock;
- D. Any documents relating to the Policies, Procedures, Rules, Regulations, Orders and/or Memoranda – Regarding employee disciplinary procedures

Please produced any of the above referenced documents within the statutory appropriate time frame or explain why such production is not possible. Alternatively, if there are no such documents in existence, please respond in as such to this letter. Ignoring my requests will leave me with no choice but to avail myself of any and all possible judicial remedies.

Again, your cooperation and timely response is appreciated and you may email your response to this letter to davilaed70@aol.com

Respectfully,

Ed. Davila
cc: File

A-4

STARK COUNTY CLERK OF COURTS

PUBLIC RECORDS REQUEST POLICY

Openness leads to a better informed citizenry, which leads to better government and better public policy. It is the mission and intent of the Stark County Clerk of Courts to at all times fully comply with and abide by both the spirit and the letter of Ohio's Public Records Act.

DEFINING PUBLIC RECORDS

A "record" is defined to include the following: A document in any format – paper, electronic (including, but not limited to, business e-mail) – that is created, received by, or comes under the jurisdiction of the Stark County Clerk of Courts that documents the organization, functions, policies, decisions, procedures, operations, or other activities of the office.

A "public record" is a "record" that is being kept by this office at the time a public records request is made, subject to applicable exemptions from disclosure under Ohio or federal law. All public records must be organized and maintained in such a way that they can be made available for inspection and copying.

RESPONSE TIMEFRAME

Public records are to be available for inspection during regular business hours. Public records must be made available for inspection promptly. Copies of public records must be made available within a reasonable period of time. "Prompt" and "reasonable" take into account the volume of records requested, the proximity of the location where the records are stored, the necessity for any legal review and redaction, and other facts and circumstances of the records requested.

It is the goal of the Stark County Clerk of Courts that all requests for public records should be acknowledged in writing or, if feasible, satisfied within a reasonable period of time following the office's receipt of the request.

HANDLING REQUESTS

No specific language is required to make a request for public records. However, the requester must at least identify the records requested with sufficient clarity to allow the office to identify, retrieve, and review the records.

The requester does not have to put a records request in writing, and does not have to provide his or her identity or the intended use of the requested public record(s). It is this office's general policy that this information is not to be requested. However, the law does permit the office to ask for a written request, the requester's identity, and/or the intended use of the information requested, but only if (1) a written request or disclosure of identity or intended use would benefit the requester by enhancing the office's ability to identify, locate, or deliver the public records that have been requested; and (2) the requester is first told that a written request is not required and that the requester may decline to reveal the requester's identity or intended use.

In processing the request, the office does not have an obligation to create new records or perform a search or research for information in the office's records. An electronic record is deemed to exist so long as a computer is already programmed to produce the record through the office's standard use of sorting, filtering, or querying features. Although not required by law, the office should consider generating new records when it makes sense and is practical under the circumstances.

In processing a request for inspection of a public record, an office employee may accompany the requester during inspection to make certain original records are not taken or altered.

A copy of the most recent edition of the Ohio Sunshine Laws Manual is available via the Ohio Attorney General's website (www.OhioAttorneyGeneral.gov/YellowBook) for the purpose of keeping employees of the office and the public educated as to the office's obligations under Ohio's Public Records Act, Ohio's Open Meetings Act, records retention laws, and the Personal Information Systems Act.

RECORDS REQUESTED BY INMATES

Record requests by inmates are subject to Ohio Revised Code § 149.43(B)(8) which requires the inmate to first obtain a judicial finding from the sentencing judge, or the judge's successor in office, "...that the information sought in the public record is necessary to support what appears to be a justiciable claim of the person." No records will be provided to inmates, or their agents, for their own case or any other criminal case, without a copy of the above judicial finding being attached to the request.

ELECTRONIC RECORDS

Records in the form of e-mail, text messaging, and instant messaging, including those sent and received via a hand-held communications device, are to be treated in the same fashion as records in other formats, such as paper or audiotape.

Public record content transmitted to or from private accounts or personal devices is subject to disclosure. All employees or representatives of this office are required to retain their e-mail records and other electronic records in accordance with applicable records retention schedules.

DENIAL AND REDACTION OF RECORDS

If the requester makes an ambiguous or overly broad request or has difficulty in making a request such that the office cannot reasonably identify what public records are being requested, the request may be denied, but the office must then provide the requester an opportunity to revise the request by informing the requester of the manner in which records are maintained and accessed by the office.

If the office withholds, redacts, or otherwise denies requested records, it must provide an explanation, including legal authority, for the denial(s). If the initial request was made in writing, the explanation must also be in writing. If portions of a record are public and portions are exempt, the exempt portions may be redacted and the rest must be released. When making public records available for public inspection or copying, the office shall notify the requester of any redaction or make the redaction plainly visible.

COPYING AND MAILING COSTS

Those seeking public records may be charged only the actual cost of making copies, not labor. The charge for paper copies is 10 cents per page.

A requester may be required to pay in advance for the actual costs involved in providing the copy. The requester may choose whether to have the record duplicated upon paper, upon the same medium on which the public record is kept, or upon any other medium on which the office determines that the record can reasonably be duplicated as an integral part of the office's normal operations.

If a requester asks that documents be delivered to them, he or she may be charged the actual cost of the postage and mailing supplies, or other actual costs of delivery. There is no charge for e-mailed documents.

MANAGING RECORDS

Stark County Clerk of Court's records are subject to records retention schedules. The office's current schedules are available at: 115 Central Plaza North, Suite 101, Canton, OH 44702, a location readily available to the public as required by Ohio Revised Code § 149.43(B)(2).

§ 149.43. Availability of public records.

(A) As used in this section:

(1) "Public record" means records kept by any public office, including, but not limited to, state, county, city, village, township, and school district units, and records pertaining to the delivery of educational services by an alternative school in Ohio kept by a nonprofit or for profit entity operating such alternative school pursuant to section 3313.533 [3313.53.3] of the Revised Code.

* * *

(B) (1) Subject to division (B)(4) of this section, all public records shall be promptly prepared and made available for inspection to any person at all reasonable times during regular business hours. Subject to division (B)(4) of this section, upon request, a public office or person responsible for public records shall make copies available at cost, within a reasonable period of time. In order to facilitate broader access to public records, public offices shall maintain public records in a manner that they can be made available for inspection in accordance with this division.

(2) If any person chooses to obtain a copy of a public record in accordance with division (B)(1) of this section, the public office or person responsible for the public record shall permit that person to choose to have the public record duplicated upon paper, upon the same medium upon which the public office or person responsible for the public record keeps it, or upon any other medium upon which the public office or person responsible for the public record determines that it reasonably can be duplicated as an integral part of the normal operations of the public office or person responsible for the public record. When the person seeking the copy makes a choice under this division, the public office or person responsible for the public record shall provide a copy of it in accordance with the choice made by the person seeking the copy.

(3) Upon a request made in accordance with division (B)(1) of this section, a public office or person responsible for public records shall transmit a copy of a public record to any person by United States mail within a reasonable period of time after receiving the request for the copy. The public office or person responsible for the public record may require the person making the request to pay in advance the cost of postage and other supplies used in the mailing.

Any public office may adopt a policy and procedures that it will follow in transmitting, within a reasonable period of time after receiving a request, copies of public records by United States mail pursuant to this division. A public office that adopts a policy and procedures under this division shall comply with them in performing its duties under this division.

In any policy and procedures adopted under this division, a public office may limit the number of records requested by a person that the office will transmit by United States mail to ten per month, unless the person certifies to the office in writing that the person does not intend to use or forward the requested records, or the information contained in them, for commercial purposes. For purposes of this division, "commercial" shall be narrowly construed and does not include reporting or gathering news, reporting or gathering information to assist citizen oversight or understanding of the operation or activities of government, or nonprofit educational research.

(4) A public office or person responsible for public records is not required to permit a person who is incarcerated pursuant to a criminal conviction or a juvenile adjudication to inspect or to obtain a copy of any public record concerning a criminal investigation or prosecution or concerning what would be a criminal investigation or prosecution if the subject of the investigation or prosecution were an adult, unless the request to inspect or to obtain a copy of the record is for the purpose of acquiring information that is subject to release as a public record under this section and the judge who imposed the sentence or made the adjudication with respect to the person, or the judge's successor in office, finds that the information sought in the public record is necessary to support what appears to be a justiciable claim of the person.

(5) Upon written request made and signed by a journalist on or after December 16, 1999, a public office, or person responsible for public records, having custody of the records of the agency employing a specified peace officer, firefighter, or EMT shall disclose to the journalist the address of the actual personal residence of the peace officer, firefighter or EMT and, if the peace officer's, firefighter's or EMT's spouse, former spouse, or child is employed by a public office, the name and address of the employer of the peace officer's, firefighter's, or EMT's spouse, former spouse, or child. The request shall include the journalist's name and title and the name and address of the journalist's employer and shall state that disclosure of the information sought would be in the public interest.

* * *

(C) If a person allegedly is aggrieved by the failure of a public office to promptly prepare a public record and to make it available to the person for inspection in accordance with division (B) of this section, or if a person who has requested a copy of a public record allegedly is aggrieved by the failure of a public office or the person responsible for the public record to make a copy available to the person allegedly aggrieved in accordance with division (B) of this section, the person allegedly aggrieved may commence a mandamus action to obtain a judgment that orders the public office or the person responsible for the public record to comply with division (B) of this section and that awards reasonable attorney's fees to the person that instituted the mandamus action. The mandamus action may be commenced in the court of common pleas of the county in which division (B) of this section allegedly was not complied with, in the

supreme court pursuant to its original jurisdiction under Section 2 of Article IV, Ohio Constitution, or in the court of appeals for the appellate district in which division (B) of this section allegedly was not complied with pursuant to its original jurisdiction under Section 3 of Article IV, Ohio Constitution.

(D) Chapter 1347. of the Revised Code does not limit the provisions of this section.

* * *

HISTORY: 130 v 155 (Eff 9-27-63); 138 v S 62 (Eff 1-18-80); 140 v H 84 (Eff 3-19-85); 141 v H 238 (Eff 7-1-85); 141 v H 319 (Eff 3-24-86); 142 v S 275 (Eff 10-15-87); 145 v H 152 (Eff 7-1-93); 146 v H 5 (Eff 8-30-95); 146 v S 269 (Eff 7-1-96); 146 v H 353 (Eff 9-17-96); 146 v H 419 (Eff 9-18-96); 146 v S 277, § 1 (Eff 3-31-97); 146 v H 438, § 3 (Eff 7-1-97); 146 v S 277, § 6 (Eff 7-1-97); 147 v H 352 (Eff 1-1-98); 147 v H 421 (Eff 5-6-98); 148 v S 55 (Eff 10-26-99); 148 v S 78 (Eff 12-16-99); 148 v H 471 (Eff 7-1-2000); 148 v H 539 (Eff 6-21-2000); 148 v H 640 (Eff 9-14-2000); 148 v H 448 (Eff 10-5-2000); 148 v S 180 (Eff 3-22-2001); 149 v H 196 (Eff 11-20-2001); 149 v S 180 (Eff 4-9-2003); 149 v S 258. Eff 4-9-2003; 149 v H 490, § 1, eff. 1-1-04; 150 v H 6, § 1, eff. 2-12-04; 150 v H 431, § 1, eff. 7-1-05; 150 v H 303, § 1, eff. 10-29-05.

Revised Code Section 1302.12 | Modification, rescission, and waiver - UCC 2-209.

- (A) An agreement modifying a contract within sections 1302.01 to 1302.98, inclusive, of the Revised Code, needs no consideration to be binding.
- (B) A signed agreement which excludes modification or rescission except by a signed writing cannot be otherwise modified or rescinded, but except as between merchants such a requirement on a form supplied by the merchant must be separately signed by the other party.
- (C) The requirements of section 1302.04 of the Revised Code, must be satisfied if the contract as modified is within its provisions.
- (D) Although an attempt at modification or rescission does not satisfy the requirements of division (B) or (C) of this section, it can operate as a waiver.
- (E) A party who has made a waiver affecting an executory portion of the contract may retract the waiver by reasonable notification received by the other party that strict performance will be required of any term waived, unless the retraction would be unjust in view of a material change of position in reliance on the waiver.

Revised Code Section 3105.12 | Proof of Marriage.

(A) Except as provided in division (B) of this section, proof of cohabitation and reputation of the marriage of a man and woman is competent evidence to prove their marriage, and, in the discretion of the court, that proof may be sufficient to establish their marriage for a particular purpose.

(B)(1) On and after October 10, 1991, except as provided in divisions (B)(2) and (3) of this section, common law marriages are prohibited in this state, and the marriage of a man and woman may occur in this state only if the marriage is solemnized by a person described in section 3101.08 of the Revised Code and only if the marriage otherwise is in compliance with Chapter 3101. of the Revised Code.

(2) Common law marriages that occurred in this state prior to October 10, 1991, and that have not been terminated by death, divorce, dissolution of marriage, or annulment remain valid on and after October 10, 1991.

(3) Common law marriages that satisfy all of the following remain valid on and after October 10, 1991:

(a) They came into existence prior to October 10, 1991, or come into existence on or after that date, in another state or nation that recognizes the validity of common law marriages in accordance with all relevant aspects of the law of that state or nation.

(b) They have not been terminated by death, divorce, dissolution of marriage, annulment, or other judicial determination in this or another state or in another nation.

(c) They are not otherwise deemed invalid under section 3101.01 of the Revised Code.

(4) On and after October 10, 1991, all references in the Revised Code to common law marriages or common law marital relationships, including the references in sections 2919.25, 3113.31, and 3113.33 of the Revised Code, shall be construed to mean only common law marriages as described in divisions (B)(2) and (3) of this section.

**Rule 26. Application for reconsideration; Application for en banc consideration;
Application for reopening.**

(A) Application for reconsideration and en banc consideration.

(1) Reconsideration

(a) Application for reconsideration of any cause or motion submitted on appeal shall be made in writing no later than ten days after the clerk has both mailed to the parties the judgment or order in question and made a note on the docket of the mailing as required by App. R. 30(A).