

**In the
Supreme Court of Ohio**

STATE, *ex rel.* THE CINCINNATI
ENQUIRER, a Division of Gannett
GP Media, Inc.

Relator,

vs.

HONORABLE KARI L. BLOOM,
Hamilton County Juvenile Court

Respondent.

Case No. 2022-1457

**Original Action in Mandamus and
Prohibition**

**MEMORANDUM IN OPPOSITION TO MOTION TO DISMISS AMENDED
COMPLAINT FOR WRIT OF MANDAMUS AND PROHIBITION**

John C. Greiner (0005551)
Counsel for The Cincinnati Enquirer
GRAYDON HEAD & RITCHEY LLP
1800 Scripps Center
312 Walnut Street
Cincinnati, OH 45202
Phone: (513) 629-2734
Fax: (513) 651-3836
E-mail: jgreiner@graydon.law

In her Motion to Dismiss the Amended Complaint, Respondent correctly quotes the legal standard for granting a Rule 12(B)(6) motion, but then promptly ignores the standard. That standard requires this Court to presume the factual allegations in the complaint are true, and decide, based on that presumption, whether the complaint states a claim for relief.

Here, the facts set forth in the complaint, when presumed true, establish that Respondent presided over the felonious assault trial of a juvenile identified as J.L. Upon the conclusion of the trial, Respondent ruled the juvenile not delinquent. Upon that finding, Respondent immediately sealed the records of the Assault Case, including the transcript of the proceedings, pursuant to R.C. 2151.356 (“Sealing Order”).

Respondent entered the sealing order without making any finding that public access could harm the child or endanger the fairness of the adjudication, and that the potential harm outweighs the benefits of public access, as required by the Ohio Constitution.

The Enquirer requested a copy of the trial transcript and Respondent denied the request via an entry which relied on the fact that the case had been sealed pursuant to R.C. 2151.356.

These allegations establish a valid claim to relief, and there is no basis as a matter of law to dismiss the complaint.

Respondent’s argument for dismissal is that the Enquirer failed to produce “admissible” evidence to support its claim. But a Rule 12(B)(6) proceeding merely tests the sufficiency of the allegations of the complaint, not the “evidence.” Because the

allegations are presumed true, there is no evidentiary aspect to the Rule 12(B)(6) decision.

But Respondent is wrong about the evidentiary issue. Exhibit A to Kevin Grasha's Affidavit is a statement from then Hamilton County Prosecutor Joseph Deters which states in pertinent part:

"Last year, Jerome Lipscomb was charged with Felonious Assault for his involvement in the shooting of another juvenile. Cincinnati Police officers were nearby and heard shots fired. As they ran towards the scene, officers witnessed Lipscomb standing over the victim, shooting him. Lipscomb stood trial in front of Judge Kari Bloom. Although the victim was not cooperative, the officer testified that he witnessed Lipscomb shoot the victim. Despite this testimony, Judge Bloom found Lipscomb not guilty and he was released from custody."

The statement of Prosecutor Deters is a "statement . . . of [a] public office . . . setting forth (a) the activities of the office or agency" Ohio R. Evid. 803(8). As such, it is an exception to the Hearsay Rule and fully admissible here. Respondent is simply wrong to argue otherwise.

The Deters statement constitutes evidence that the trial the Enquirer describes in its complaint occurred in the manner described, and was presided over by Respondent. Respondent's contradictory affidavit may create a question of fact, but that question cannot be resolved by a 12(B)(6) motion.

This Court should thus deny Respondent's motion, grant an alternative writ and allow the parties to conduct discovery to ascertain the truth of what occurred.

Respectfully submitted,

Of Counsel:

GRAYDON HEAD & RITCHEY LLP
1800 Scripps Center
312 Walnut Street
Cincinnati, OH 45202
Phone: (513) 621-6464
Fax: (513) 651-3836

/s/ John C. Greiner
John C. Greiner (0005551)
Counsel for The Cincinnati Enquirer
GRAYDON HEAD & RITCHEY LLP
1800 Scripps Center
312 Walnut Street
Cincinnati, OH 45202
Phone: (513) 629-2734
Fax: (513) 651-3836
E-mail: jgreiner@graydon.law

CERTIFICATE OF SERVICE

I hereby certify that on the 17th day of February, 2023, a copy of the foregoing
Memorandum in Opposition to the Motion to Dismiss the Amended Complaint for
Writ of Mandamus and Prohibition was served via email pursuant to Sup.Ct.Prac.R.

3.11(C) on the following:

Joseph S. Honerlaw, Esq.
Candace N. Ayers, Esq.
The Honerlaw Firm, LLC
joe@honerlawfirm.com
candace@honerlawfirm.com

Counsel for Respondent

/s/ John C. Greiner
John C. Greiner (0005551)