The Supreme Court of Ohio

CASE ANNOUNCEMENTS

May 20, 2024

[Cite as *05/20/2024 Case Announcements*, 2024-Ohio-1910.]

MOTION AND PROCEDURAL RULINGS

2024-0219. State ex rel. Mobley v. Chambers-Smith.
In Mandamus. On respondent's motion to dismiss. Motion denied. Sua sponte, respondent ordered to file an answer to the complaint within 14 days. Sua sponte, alternative writ granted. The following schedule is set for the presentation of evidence and filing of briefs pursuant to S.Ct.Prac.R. 12.05: The parties shall file any evidence they intend to present within 20 days of the court's entry, relator shall file a brief within 30 days of the entry, respondent shall file a brief within 20 days after the filing of relator's brief, and relator may file a reply brief within 7 days after the filing of respondent's brief. Respondent's motion for sanctions denied. Relator's motion to strike as sham respondent's motion to dismiss denied.

DeWine, J., concurs, with an opinion joined by Brunner, J.

Fischer, J., dissents in part and would grant respondent's motions.

DEWINE, J., concurring.

{¶ 1} Alphonso Mobley Jr. seeks a writ of mandamus compelling respondent, the director of the Ohio Department of Rehabilitation and Correction, Annette Chambers-Smith, to provide him with public records, *see* R.C. 149.43(C)(1)(b). Chambers-Smith, who is represented by the office of the Ohio Attorney General, has responded with a motion to dismiss, *see* S.Ct.Prac.R. 12.04(A)(1). The problem is that the two arguments her counsel put forward in that motion have no basis in law. Observing this, Mobley filed a motion styled "Motion for Sanctions and to Strike as Sham Respondent's Motion to Dismiss pursuant to S.Ct.Prac.R. 4.03 and Civ.R. 11."

{¶ 2} Because Chambers-Smith's motion to dismiss contains groundless legal arguments, I concur in the majority's decision to deny the motion to dismiss and grant an alternative writ. I

also concur in the majority's decision to deny Mobley's motion for sanctions. But I write separately to emphasize that the quality of briefing by respondent's attorney in this case is unacceptable.

A request, a complaint, and a motion to dismiss

{¶ 3} Mobley is an inmate in the Southeastern Correctional Institution in Lancaster, Ohio. He avers that he mailed a public-records request to Chambers-Smith, requesting paper copies of four separate categories of records. He asserts that Chambers-Smith has failed to comply with the Public Records Act by "fail[ing] to respond" to his requests "within a reasonable time." He instituted this action in mandamus eight weeks after his alleged request was apparently delivered. He attached a United States Postal Service ("USPS") tracking slip to his complaint that purports to show the date his request was sent to USPS and the date it was delivered to Chambers-Smith.

{¶ 4} Chambers-Smith responded to Mobley's complaint with a motion to dismiss pursuant to S.Ct.Prac.R. 12.04(A)(1) and Civ.R. 12(B)(6). Counsel argued that this court should dismiss Mobley's complaint for two reasons. First, because Mobley "fails to allege that he made a public records request whatsoever." And second, because Chambers-Smith "does not have a duty to mail any public records or copies thereof" to Mobley. Neither of counsel's arguments has any basis in law.

{¶ 5} Mobley brought his motion for sanctions under S.Ct.Prac.R. 4.03(A) and Civ.R. 11. The former applies to situations where "an appeal or other action is frivolous." Because Chambers-Smith has not filed "an appeal or other action," this rule does not apply in this case. However, Civ.R. 11 does apply. It provides that by signing a "pleading, motion, or other document," an attorney certifies "that to the best of the attorney's * * * knowledge, information, and belief there is good ground to support it." Civ.R. 11. "For a willful violation of this rule, an attorney may be subjected to appropriate action." *Id.*

{¶ 6} In this case, it is appropriate to deny Mobley's motion for sanctions because there is no indication that counsel has engaged in a willful violation of Civ.R. 11. And while I join the court's decision not to impose sanctions here, that does not mean I will not vote to impose sanctions in the future if this court continues to receive motions with blatant misstatements of law.

Ohio's Civil Rules do not require the production of evidence at the pleading stage

{¶ 7} As the first basis for dismissal, Chambers-Smith's counsel argues that Mobley "failed to allege that he made a public records request." (Capitalization deleted.) Mobley's complaint is a little thin, but under Ohio's liberal pleading standards it easily alleges that he made a public-records request. *See Maternal Grandmother v. Hamilton Cty. Dept. of Job & Family Servs.*, 167 Ohio St.3d 390, 2021-Ohio-4096, 193 N.E.3d 536, ¶ 10. Mobley alleges that on December 18, 2023, Chambers-Smith "received a public records request" for four distinct categories of records. He also alleges that Chambers-Smith has "fail[ed] to respond to [Mobley's] public records request." And he separately alleges that Chambers-Smith has "fail[ed] to provide" each of the four categories of documents.

{¶ 8} While respondent's counsel labels his argument "[Mobley] Failed to Allege that He Made a Public Records Request," the argument that counsel actually makes is different. In essence, he argues that Mobley's complaint should be dismissed because he hasn't *proved* that he made a public-records request. Respondent's counsel asserts that "[t]he exhibit [Mobley] attaches to his Complaint, purporting to evidence delivery * * * fails to make any reference, allegation or even name the [Mobley] as the person who made the alleged public record request."

{¶ 9} This argument represents a fundamental misunderstanding of a motion to dismiss. A motion to dismiss tests "the sufficiency of a complaint." *State ex rel. Hanson v. Guernsey Cty. Bd. of Commrs.*, 65 Ohio St.3d 545, 548, 605 N.E.2d 378 (1992). A party has no obligation to produce proof at the motion-to-dismiss stage. *State ex rel. Harris v. Toledo*, 74 Ohio St.3d 36, 37, 656 N.E.2d 334 (1995). On the contrary, a court must accept the truth of all factual allegations in the complaint at the motion-to-dismiss stage. *Mitchell v. Lawson Milk Co.*, 40 Ohio St.3d 190, 192, 532 N.E.2d 753 (1988). Because Mobley was not required to attach to his complaint any evidence proving delivery of his public-records request, perceived inadequacies in what he did attach can hardly serve as the basis for a motion to dismiss.

{¶ 10} To put it bluntly, counsel's argument bespeaks an inexcusable failure to grasp one of the most basic precepts of civil procedure—the pleading standard for a Civ.R. 12(B)(6) motion to dismiss. This is troubling. What is even more troubling is that this court has received

numerous other motions to dismiss filed by the state containing groundless arguments in prisoner public-records cases in recent months.[1]

Ohio's Public Records Act imposes a duty to provide public records by mail

{¶ 11} Counsel's second argument for dismissal is that Chambers-Smith did not have a duty to provide public records by mail. In support, he cites two of this court's decisions from the early 1990s: *State ex rel. Nelson v. Fuerst*, 66 Ohio St.3d 47, 607 N.E.2d 836 (1993), and *State ex rel. Cheren v. Chief of Police*, 67 Ohio St.3d 461, 619 N.E.2d 1024 (1993).

{¶ 12} The problem is that these cases dealt with a prior version of the Public Records Act, and have not represented the current law in Ohio for two and a half decades. The version of the Public Records Act applicable at the time of those decisions provided: "All public records shall be promptly prepared and made available for inspection to any person at all reasonable times during regular business hours. Upon request, a person responsible for public records shall make copies available at cost, within a reasonable period of time." Former R.C. 149.43(B), Am.Sub.S.B. No. 275, 142 Ohio Laws, Part I, 1151, 1152.

{¶ 13} What Chambers-Smith's counsel overlooks is that in 1999, the General Assembly passed an act that required, among other things, "a public office to transmit copies of a public record through the United States mail if so requested." Am.Sub.S.B. No. 78, 148 Ohio Laws, Part IV, 8623. These provisions remain, in modified form, in the Public Records Act today:

> Upon a request made in accordance with division (B) of this section and subject to division (B)(6) 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 or by any other means of delivery or transmission 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

1. *See, e.g.*, 2023-1192, *State ex rel. Satta v. Dept. of Rehab. & Corr.* (the state's motion erroneously cites relator's failure to comply with the "requirements" of R.C. 2969.25 as a ground to dismiss, even though that statute does not apply to original actions filed in the Supreme Court); 2023-1291, *State ex rel. Fenstermaker v. Madden* (the state's motion erroneously states as a ground to dismiss that a public office has no duty to mail copies of requested records); 2023-1395, *State ex rel. Gordon v. Henry* (the state's motion erroneously cites as a ground to dismiss the fact that the exhibits attached to relator's complaint failed "to prove delivery of a formal and valid public records request"); 2023-1573, *State ex rel. Slager v. Trelka* (the state's motion erroneously relies on the federal pleading standard adopted in *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007), and *Ashcroft v. Iqbal*, 556 U.S. 662, 129 S.Ct. 1937, 173 L.Ed.2d 868 (2009), which do not apply in Ohio state courts).

> request to pay in advance the cost of postage if the copy is transmitted by United States mail or the cost of delivery if the copy is transmitted other than by United States mail, and to pay in advance the costs incurred for other supplies used in the mailing, delivery, or transmission.

R.C. 149.43(B)(7)(a).

{¶ 14} The passage of Am.Sub.S.B. No. 78—in 1999—abrogated our decisions in *Nelson* and *Cheren* to the extent they held that a public-records custodian was not required to mail public records. *See State ex rel. Sevayega v. Reis*, 88 Ohio St.3d 458, 459, 727 N.E.2d 910 (2000); *State ex rel. Call v. Fragale*, 104 Ohio St.3d 276, 2004-Ohio-6589, 819 N.E.2d 294, ¶ 7. Counsel's assertion that Chambers-Smith "does not have a duty to mail any public records or copies thereof" has simply no basis in law.

Conclusion

{¶ 15} Even the best attorneys sometimes make mistakes. And I would ordinarily be reluctant to write an opinion such as this one. But neither the public nor this court is served by advocacy that regularly misstates the law. And the multitude of motions containing misstatements of law that this court has received from the state in recent prisoner public-records cases compels me to write here. My hope is that we will not see similar groundless arguments in the future. But to the extent we do, this court may need to take appropriate action.

BRUNNER, J., concurs in the foregoing opinion.
