[Cite as *TP Mechanical Contrs., Inc. v. Franklin Cty. Bd. of Commrs.*, 2009-Ohio-3614.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

TP Mechanical Contractors, Inc.,	:	
Plaintiff-Appellant,	:	
		No. 09AP-235
v.	:	(C.P.C. No. 08CVH02-2059)
Franklin County Board of Commissioners et al.,	:	(ACCELERATED CALENDAR)
	:	
Defendants-Appellees.	:	

D E C I S I O N

Rendered on July 23, 2009

Thompson Hine LLP, Michael W. Currie, O. Judson Scheaf, III, and *Gabe J. Roehrenbeck*, for appellant.

Ron O'Brien, Prosecuting Attorney, *Nick A. Soulas, Jr.*, and *Anthony E. Palmer, Jr.*, for appellees.

APPEAL from the Franklin County Court of Common Pleas.

BROWN, J.

{¶1} TP Mechanical Contractors, Inc. ("TP"), plaintiff-appellant, appeals from a judgment of the Franklin County Court of Common Pleas, in which the court granted in part and denied in part a motion for summary judgment filed by defendants-appellees, Franklin County Board of Commissioners, Mary Jo Kilroy, commissioner; Paula Brooks, commissioner, and Marilyn Brown, commissioner (collectively "the board"), and granted in part and denied in part a motion for summary judgment filed by TP.

{¶2} In October 2007, the board sought bids for the construction of Huntington Park, a baseball stadium to be built in Columbus, Ohio. In November 2007, TP, a non-union contractor, submitted the lowest bid for the plumbing and heating, ventilating, and air conditioning ("HVAC") work. However, the board disqualified TP from consideration and hired another company, a union contractor, to complete the plumbing and HVAC work. Thereafter, on January 7, 2008, TP filed an action against the board, seeking declaratory and injunctive relief, claiming the board's rejection of its bid was based upon the fact that TP was a non-union contractor. The trial court issued a temporary restraining order enjoining the board from executing the contract with the other plumbing and HVAC company, and ordered a hearing for January 11, 2008.

{¶3} On January 9, 2008, TP sent an e-mail to the board requesting certain documents ("first request"). On January 10, 2008, the board provided TP with copies of some of the requested documents. On January 11, 2008, the trial court held a hearing on TP's complaint, after which the trial court found in favor of the board.

{¶4} On January 28, 2008, believing the board had withheld documents in the action, TP's counsel delivered a letter ("second request") to the board's counsel, seeking all documents the board had failed to produce in the first request. Also on January 28, 2008, TP's counsel sent to Debra Willaman, clerk for the board, an e-mail ("Willaman request"), in which TP made a public records request. On February 4, 2008, Willaman sent an e-mail to TP indicating that approximately 5,700 pages of documents were available for inspection February 6, 2008, or copies could be made in seven to 10 days.

{¶5} On February 8, 2008, TP filed a complaint against the board, seeking a writ of mandamus, statutory damages, attorney fees, and costs under R.C. 149.43. TP

asserted the board failed to respond to the first and second requests, which it claimed were both public records requests pursuant to R.C. 149.43. On October 31, 2008, TP filed a motion for summary judgment. On November 14, 2008, the board filed a cross-motion for summary judgment, arguing that the first and second requests were discovery requests, not public records requests.

{¶6} On February 9, 2009, the trial court issued a decision granting in part and denying in part TP's motion for summary judgment and granting in part and denying in part the board's motion for summary judgment. The trial court found that the first request was a discovery request and, therefore, not subject to R.C. 149.43. The court also found that, although the second request was a public records request under R.C. 149.43, because the board responded on February 4, 2008 to the second request by making available 5,700 pages of documents, TP was not entitled to a writ of mandamus or damages. The trial court issued a judgment journalizing the February 9, 2009 decision on March 3, 2009. TP appeals the judgment of the trial court, asserting the following assignment of error:

> The trial court erred in denying TP Mechanical Contractors, Inc.'s motion for summary judgment and in granting the Franklin County Board of Commissioners' cross motion for summary judgment.

{¶7} In its sole assignment of error, TP argues that the trial court erred when it granted the board's motion for summary judgment in part and denied TP's motion for summary judgment in part. When reviewing a motion for summary judgment, courts must proceed cautiously and award summary judgment only when appropriate. *Franks v. The Lima News* (1996), 109 Ohio App.3d 408. Civ.R. 56(C) provides that, before summary

judgment may be granted, it must be determined that (1) no genuine issue as to any material fact remains to be litigated; (2) the moving party is entitled to judgment as a matter of law; and (3) it appears from the evidence that reasonable minds can come to but one conclusion, and viewing the evidence most strongly in favor of the non-moving party, that conclusion is adverse to the non-moving party. *State ex rel. Howard v. Ferreri*, 70 Ohio St.3d 587, 589, 1994-Ohio-130. When reviewing the judgment of the trial court, an appellate court reviews the case de novo. *Franks*, supra.

{¶8} The Public Records Act reflects the state's policy that "open government serves the public interest and our democratic system." *State ex rel. Dann v. Taft*, 109 Ohio St.3d 364, 2006-Ohio-1825, ¶20. The purpose of the act is "to expose government activity to public scrutiny, which is absolutely essential to the proper working of a democracy." *State ex rel. WHIO-TV-7 v. Lowe*, 77 Ohio St.3d 350, 355, 1997-Ohio-271. In accordance with this salutary purpose, "[w]e construe R.C. 149.43 liberally in favor of broad access and resolve any doubt in favor of public records." *State ex rel. Toledo Blade Co. v. Seneca Cty. Bd. of Commrs.*, 120 Ohio St.3d 372, 2008-Ohio-6253, ¶17.

{¶9} R.C. 149.43(B)(1) requires a public office to make its public records available for inspection and, upon request, to make copies available at cost within a reasonable amount of time. If the office fails or refuses to make the public records available, R.C. 149.43(C) provides that the person allegedly aggrieved may commence a mandamus action to obtain a judgment that 1) orders the public office or the person responsible for the public record to produce the record, and 2) awards reasonable attorney fees to the person that instituted the mandamus action. R.C. 149.43 prescribes

no particular form that must be used to request a public record, and R.C. 149.43(B)(5) indicates that no writing for the request is necessary.

{¶10} In the present case, TP presents two arguments: (1) the trial court erred when it found the first request was a discovery request instead of a public records request; and (2) the trial court erred when it found that, even though the second request was a public records request, the board sufficiently responded to the second request by making available 5,700 pages of documents. With regard to the first argument, we agree with the trial court that the first request was a discovery request and not a public records request. The trial court pointed out several circumstances surrounding the first request that demonstrated it was meant as a discovery request within the context of the first lawsuit. The first request was made two days after TP filed the first lawsuit against the board and two days before the trial on the merits. Also, in TP's January 7, 2008 motion for expedited discovery, which was filed pursuant to the discovery provisions in Civ.R. 26 and 34, TP indicated "TP Mechanical will be serving the Board with written discovery." The only request made thereafter was the first request made in the January 9, 2008 e-mail. Thus, the timing of the first request strongly suggests it was related to the litigation, as it was made within the narrow window available for discovery in the expedited case. Furthermore, the subject header in the e-mail is entitled "Documents for Production." The e-mail also begins, "As you requested," and asks "the County produce the following documents." This wording is indicative of a request for production of documents made during the course of litigation rather than a public records request. The e-mail also specifically refers to the pending litigation, requesting "All documents the County intends to rely upon at the Hearing this Friday." Therefore, viewing the first request in the context

of the circumstances at the time the request was made, and examining the contents of the first request, we find the first request was a discovery request for production of documents made pursuant to litigation, and not a public records request.

{¶11} TP next argues that, even though the trial court was correct when it concluded that the second request was a public records request, the court erred when it then found that the board sufficiently responded to the second request when Willaman sent an e-mail to TP on February 4, 2008, indicating that 5,700 pages of documents were available for inspection by February 6, 2008, or could be copied in seven to 10 days. TP asserts that Willaman's reply was not in response to the second request but, rather, was in response to a different January 28, 2008 public records request that was served directly upon Willaman. TP maintains that Willaman's response to the Willaman request had nothing to do with the second request and could not be deemed a reply to the second request.

{¶12} However, because an appellate court must affirm a trial court's judgment if there are any valid grounds to support it, and because another valid ground exists to support the trial court's outcome, we need not decide the issue TP raises. See *Joyce v. Gen. Motors Corp.* (1990), 49 Ohio St.3d 93, 96 (noting an appellate court must affirm the judgment on review if that judgment is legally correct on other grounds, as any error is not prejudicial in view of the correct judgment the trial court reached). Although the trial court found that the second request was a public records request under R.C. 149.43, we find it was, instead, a discovery request related to the initial January 7, 2008 action. Several factors support the conclusion that the second request was an improper and untimely request for discovery made after the January 7, 2008 action had

concluded. Initially, we note the subject line for the second request is "Re: *TP Mechanical Contractors, Inc. v. Franklin County Board of Commissioners, et al.*" That this notation referred to the case name in the prior litigation is revealing. More importantly, the second request asked only for records the board failed to produce pursuant to the first request, which the trial court and this court have found was a discovery request, and made no new request. The second request provided in full:

> As you know, on January 9, 2008, TP Mechanical Contractors, Inc. sent you a written request for certain public records relating to the Franklin County Board of Commissioners' investigation, analysis, and award of the plumbing and HVAC contracts on the Huntington Park Project. (A copy of that request is attached hereto). The next day, the Board provided TP Mechanical with copies of some of the requested documents. Upon review of the documents provided, however, it appears that the Board did not produce all of the requested documents. For example, there were no e-mails to, from or between any of the Board members—the three people ultimately charged with making the decision on the award. As another example, there were no internal memoranda or correspondence between any representatives of the County setting forth any analysis or basis for the decision to reject TP Mechanical's bid. As another example, in addition to its request to the Board, TP Mechanical served a subpoena upon Nationwide Realty. In response to the subpoena, Nationwide produced a copy of an e-mail from Don Montgomery at Nationwide to Dick Meyer at the County, dated December 10, 2007. That e-mail was not included in the Board's production.
>
> Please produce all of the records previously requested on January 9th, but not produced, by this Friday, February 1, 2008. Should you wish to discuss this request please give me a call at the number listed below.

{¶13} It is apparent from the above that the second request was not actually a new request at all. It was only a follow-up to the first request. The second request requested documents that TP "previously requested" in the first request and did not seek

any new documents. Thus, TP wanted only those documents it was already entitled to under the first request. Merely because the first lawsuit had already concluded did not transform TP's second request into something different than the first request. As the first request was a discovery request, the second request must also be considered a discovery request, albeit untimely. Because it was a discovery request, mandamus could not be had for a violation of the public records statute found in R.C. 149.43. Therefore, although we find the trial court erred when it found the second request was a public records request, we find the trial court's ultimate outcome was correct when it denied TP's writ of mandamus because the second request was a discovery request not subject to the provisions of R.C. 149.43. Thus, because neither the first nor second request was a public records request under which TP could obtain recovery pursuant to R.C. 149.43, the trial court should have denied TP's motion for summary judgment in total and granted the board's summary judgment in full. For these reasons, TP's assignment of error is overruled.

{¶14} Accordingly, TP's assignment of error is overruled, and the judgment of the Franklin County Court of Common Pleas is affirmed, albeit on other grounds.

Judgment affirmed.

BRYANT and TYACK, JJ., concur.

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