

[Cite as *State ex rel. Chatfield v. Distelzweig*, 2011-Ohio-4596.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio ex rel. James L. Chatfield, :
Relator, :
v. : No. 11AP-119
Walter L. Distelzweig, in his Official : (REGULAR CALENDAR)
Capacity as Chief of Police of the :
City of Columbus, Ohio, :
Respondent. :

D E C I S I O N

Rendered on September 13, 2011

James L. Chatfield, pro se.

Richard C. Pfeiffer, Jr., City Attorney, and Glenn B. Redick,
for respondent.

IN MANDAMUS
ON OBJECTIONS TO THE MAGISTRATE'S DECISION

FRENCH, J.

{¶1} Relator, James L. Chatfield ("relator"), filed an original action in mandamus asking this court to issue a writ of mandamus ordering respondent, Walter L. Distelzweig, as Chief of Police for the City of Columbus, Ohio ("respondent"), to provide public records.

{¶2} This court referred this matter to a magistrate pursuant to Civ.R. 53(C) and Loc.R. 12(M) of the Tenth District Court of Appeals. The magistrate issued a decision, which includes findings of fact and conclusions of law and is appended to this decision, recommending that this court grant summary judgment in favor of respondent. Specifically, the magistrate found that a representative of the Columbus Police Department ("CPD") responded to relator's request and stated that CPD had no records responsive to the request.

{¶3} Relator filed objections to the magistrate's decision. First, relator contends that the magistrate erred by concluding that records to which relator refers do not show that CPD has records pertaining to the theft and impoundment of a Ford Explorer allegedly driven by Christopher Carter in a high-speed chase that began outside Franklin County and ended in Columbus. We agree with the magistrate's conclusion that there is no evidence indicating that CPD has or even should have responsive records. CPD searched for, but could not locate, records relating to Christopher Carter's arrest, the Explorer or the chase. Therefore, we overrule relator's first objection.

{¶4} Second, relator contends that the magistrate erred by suggesting that Licking County law enforcement officials might have responsive records because CPD's involvement in the chase was ancillary to that of other law enforcement jurisdictions. We agree with the magistrate's observation and overrule relator's second objection.

{¶5} Third, relator contends that the magistrate erred by stating that relator did not allege that CPD failed to respond to his request in a timely manner. Relator simply

clarifies that CPD failed to provide the records he believes exist. We agree with the magistrate's characterization of relator's complaint and CPD's response, and we overrule relator's third objection.

{¶6} Finally, relator contends that the magistrate erred by stating that CPD has no records responsive to his request. Relator suggests that he has proven the existence of such records, and that Perry County Court of Common Pleas Judge Linton Lewis ordered CPD to release them. We agree with the magistrate's conclusion that CPD responded to relator's request by conducting a search and informing him that CPD has no responsive records. Therefore, we overrule relator's fourth objection.

{¶7} In summary, we overrule each of relator's objections. Having conducted an independent review of the record in this matter, we adopt the magistrate's decision, including the findings of fact and conclusions of law contained in it, as our own. Accordingly, we deny relator's motion for summary judgment, and we grant summary judgment in favor of respondent. Relator's request for a writ of mandamus is denied.

*Objections overruled;
writ of mandamus denied.*

BROWN and DORRIAN, JJ., concur.

A P P E N D I X

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James L. Chatfield,	:	
	:	
Relator,	:	
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v.	:	No. 11AP-119
	:	
Walter L. Distelzweig, in his Official	:	(REGULAR CALENDAR)
Capacity as Chief of Police of the	:	
City of Columbus, Ohio,	:	
	:	
Respondent.	:	

M A G I S T R A T E ' S D E C I S I O N

Rendered on March 28, 2011

James L. Chatfield, pro se.

Richard C. Pfeiffer, Jr., City Attorney, and Glenn B. Redick,
for respondent.

IN MANDAMUS
ON RESPONDENT'S MOTION FOR SUMMARY JUDGMENT

{¶8} Relator, James L. Chatfield, has filed this original action requesting that this court issue a writ of mandamus ordering respondent, Walter L. Distelzweig, as the

Chief of Police for the City of Columbus, Ohio, to provide him with certain records he requested pursuant to the Public Records Act.

Findings of Fact:

{¶9} 1. Relator is an inmate currently incarcerated at London Correctional Institution.

{¶10} 2. According to his complaint and affidavit, relator sent a public records request to respondent on June 3, 2009 requesting the following records:

* * * White Ford Explorer involved in a high speed pursuit from Newark, Ohio Pataskala Ohio to Columbus Ohio on November 30, 2007, the vehicle was stolen by Christopher Carter and it used in breaking and enterings in Pataskala Ohio Perry County – Ohio on the dates of November 30, 2007, November 19, 20, 21, 25, 27, 2007. Christopher Carter was the driver who was charged with the vehicle, In Newark Ohio.

{¶11} 3. On June 3, 2009, relator received a response to his request by Officer D. Welch #1179 of the Public Record Unit of the Columbus Police Department ("CPD"), quoting from R.C. 149.43(B)(8) and informing relator that he needed to obtain permission from the court to obtain a release of the public records. Specifically, relator was informed of the following:

*A Public office or person responsible for public records is not required to permit a person who is incarcerated pursuant to a criminal conviction * * * to inspect or obtain a copy of any public records concerning a criminal investigation or prosecution * * * 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 justifiable claim of the person.

(Emphasis sic; quoting R.C. 149.43(B)(8).)

{¶12} 4. Thereafter, relator filed a "Motion for Request for Justiciable Finding for Public Records" in the Perry County Court of Common Pleas.

{¶13} 5. Apparently, this motion was denied and relator filed a notice of appeal.

{¶14} 6. On September 8, 2010, the Perry County Court of Appeals issued an opinion remanding the matter to the trial court for determination of relator's public records request.

{¶15} 7. Ultimately, in a judgment entry dated November 30, 2010, the trial court granted relator's original motion as follows:

The Columbus Police Department Division of Records shall provide to the Defendant James L. Chatfield any and all records pertaining to the theft and impoundment of a white Ford Explorer allegedly being driven by Christopher Carter. Said records for the dates of November 19, 20, 25, 26, 27 and 30 2008 [sic] shall be made available. Said records were previously requested by the Defendant by a letter received by the Division of Police on June 3, 2010.

{¶16} 8. Relator resubmitted his public records request.

{¶17} 9. Relator received a response from Officer Welch informing him that after searching for the records, the CPD discovered that it did not have any records regarding the incident.

{¶18} 10. Thereafter, on February 7, 2011, relator filed the instant mandamus action.

{¶19} 11. On February 23, 2011, respondent filed a motion to dismiss which the magistrate converted to one for summary judgment.¹ Respondent submitted the affidavit of Donna Welch, the officer who responded to relator's public records requests. In that affidavit, Officer Welch stated in pertinent part:

[Three] The Public Records Unit received a request from James Chatfield for any records relating to an incident that involved a white Ford Explorer that was stolen in Newark, Ohio, and driven by Christopher Carter. Said vehicle was involved in a high speed chase.

[Four] I responded to the request and I advised Mr. Chatfield that O.R.C. 149.43(b)(8) requires that a person who is incarcerated has to obtain permission from a judge to obtain release of public records.

[Five] At a later date, Mr. Chatfield sent a copy of an order, signed by Judge Lewis, directing the Columbus Police Division to provide all records relating to the theft and impoundment of a white Ford Explorer alleged[ly] driven by Christopher Carter.

[Six] In response to the Judge's Order, I advised Mr. Chatfield, after a search of the records, that the Columbus Police Department did not have any records regarding the incident.

[Seven] I have searched the records for anything relating to James L. Chatfield and Christopher Carter, but nothing appeared. This may be because the Columbus Division of Police did not arrest either of these individuals.

{¶20} 12. Relator filed a response to respondent's motion for summary judgment and further argued that summary judgment should be granted in his favor.

{¶21} 13. The matter is currently before the magistrate for review.

¹ On March 9, 2011, respondent refiled its motion as one for summary judgment.

Conclusions of Law:

{¶22} For the reasons that follow, it is this magistrate's decision that this court should grant respondent's motion for summary judgment.

{¶23} A motion for summary judgment requires the moving party to set forth the legal and factual basis supporting the motion. To do so, the moving party must identify portions of the record which demonstrate the absence of a genuine issue of material fact. *Dresher v. Burt* (1996), 75 Ohio St.3d 280. Accordingly, any party moving for summary judgment must satisfy a three-prong inquiry showing: (1) that there is no genuine issue as to any material facts; (2) that the parties are entitled to judgment as a matter of law; and (3) that reasonable minds can come to but one conclusion, which conclusion is adverse to the party against whom the motion for summary judgment is made. *Harless v. Willis Day Warehousing Co.* (1978), 54 Ohio St.2d 64.

{¶24} Although relator asserts that it is clear that respondent has documents which meet his public records request, Officer Welch's affidavit provides evidence that respondent does not have any records regarding the high speed chase that occurred on November 30, 2007. Relator argues that the reports by "Sgt. Lee Hawks of the Perry County Sheriffs office" and "Deputy James Cambell of the Licking County Sheriffs office * * * clearly shows and states the facts allued [sic] to in the above complaint are true and that such records do exist." The magistrate disagrees. While those documents do indicate that the CPD became involved in the pursuit of the white Ford Explorer and actually stopped the vehicle, those records do not establish that the CPD created any documents. In fact, the documents to which relator refers specifically indicate that both

relator and Carter "were placed under arrest and were transported to the Licking County Justice Center for incarceration" and were interviewed by the deputies. Everything in the record points to the Licking County deputies having the relevant evidence concerning relator's arrest and further indicating that the CPD's involvement was ancillary at best.

{¶25} In his complaint, relator makes no allegation that respondent failed to timely respond to his public records request. In fact, the evidence relator submitted establishes that respondent did promptly reply. However, the evidence also establishes that, according to the affidavit of Officer Welch, respondent has no documents concerning the high speed chase which was the subject matter of relator's public records request. Finding that respondent cannot provide relator with the documents it does not have, the magistrate finds that respondent's motion for summary judgment should be granted.

/s/ Stephanie Bisca Brooks
STEPHANIE BISCA BROOKS
MAGISTRATE

NOTICE TO THE PARTIES

Civ.R. 53(D)(3)(a)(iii) provides that a party shall not assign as error on appeal the court's adoption of any factual finding or legal conclusion, whether or not specifically designated as a finding of fact or conclusion of law under Civ.R. 53(D)(3)(a)(ii), unless the party timely and specifically objects to that factual finding or legal conclusion as required by Civ.R. 53(D)(3)(b).