IN THE COURT OF APPEALS

TWELFTH APPELLATE DISTRICT OF OHIO

BUTLER COUNTY

STATE OF OHIO EX REL. RICHARD A. SANTEFORT,	:	
Relator-Appellant,	:	CASE NO. CA2014-07-153
	:	O P I N I O N 5/26/2015
- vs -	:	
	:	
BOARD OF TOWNSHIP TRUSTEES OF WAYNE TOWNSHIP, et al.,	:	
Respondents-Appellees.	:	

CIVIL APPEAL FROM BUTLER COUNTY COURT OF COMMON PLEAS
Case No. CV2011-04-1141

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Michael T. Gmoser, Butler County Prosecuting Attorney, Roger S. Gates, P.O. Box 515, Ohio 45012, for respondents-appellees, Wayne Township Board of Trustees, R. Timothy Taylor, William T. Kennel, Robert V. Hoelle, and Marie Graham

RINGLAND, J.

{¶ 1} Relator-appellant, Richard A. Santefort, appeals from a decision of the Butler County Court of Common Pleas, ruling in favor of respondents-appellees, the Wayne Township Board of Trustees, concerning relator's requests for township records made pursuant to the Ohio Public Records Act, R.C. 149.43. For the reasons outlined below, we

affirm the decision of the trial court.

{¶ 2} This case concerns the application of the Ohio Public Records Act as relator made several public records requests to the township in 2011. The township provided all requested records to relator except for handwritten notes taken by the township's fiscal officer, Marie Graham, during township trustee meetings. Additionally, certain records, including minutes of an October 29, 2009, board of zoning appeals hearing (BZA hearing), were not provided to relator until 22 days after he filed a written public records request.

{¶ 3} Relator's first written public records request was made on March 21, 2011. At this time, relator requested a recording of the BZA hearing and "any other public documents pertaining to that hearing." Additionally, relator sought copies of several months' worth of minutes and recordings of township trustee meetings.[1] In the request, relator indicated that on March 2, 2011, he had called the township to request a recording of the BZA hearing and had not yet received it or other related documents. On April 12, 2011, relator received a copy of minutes of the BZA hearing and a copy of minutes from the relevant township trustee meetings.

{¶ 4} On April 18, 2011, relator filed two additional written public records requests seeking (1) additional specific documents relating to the BZA hearing and (2) "copies of all the paperwork, including handwritten notes, Marie Graham uses to produce the minutes of the township trustees meetings." Pertinent to this appeal, relator never received copies of Graham's handwritten notes. Rather, relator received a letter from Graham stating that she used her handwritten notes to compile the minutes of the township trustee meetings and that she no longer had these handwritten notes.

{¶ 5} Relator filed a writ of mandamus in the Butler County Common Pleas Court to

1. The audio recordings of the BZA hearing and township trustee meetings are not at issue in this appeal as it is undisputed that an audio recording of the BZA hearing does not exist due to a malfunction with the recording equipment and there are no audio recordings of the township trustee meetings as a matter of procedure.

compel production of Graham's handwritten notes and sought damages for the untimely production of public records. On February 13, 2012, a hearing was held in front of a magistrate. At the hearing, Theodore J. Ritter, the township zoning administrator, and Graham testified as to the nature of Graham's notes. Ritter testified that he was never in possession of the notes that Graham took at township trustee meetings. Graham testified that she only took notes at the township trustee meetings to serve as a reminder when she later typed draft minutes. Graham testified that after the township trustee meetings, she takes the notes home with her and does not provide them to anyone affiliated with the township. Furthermore, Graham stated she does not bring her handwritten notes to the township office and generally destroys her handwritten notes after the township trustees have approved official minutes.

{¶ 6} Regarding timeliness of the production of the requested public records, relator testified that when he made an oral request for the recording of the BZA hearing, township trustees told him that he would have "everything within 3 days." When he did not receive the records, relator made a written request on March 21, 2011. Ritter testified that in response to relator's written request, he mailed records to relator on March 23, 2011. However, it is undisputed that the mailed documents never reached relator and relator testified that the documents were later provided to him on April 12, 2011, at the township office.

{¶ 7} After hearing the evidence, the magistrate found that Graham's handwritten notes were not public records because they were made to serve as a personal reminder of what took place at the meetings. The magistrate also found that the handwritten notes had been destroyed and were incapable of being produced. Furthermore, the magistrate found, given the facts and circumstances of the case, that documents constituting public records were timely provided to relator. Specifically, the township attempted to provide the documents via mail within two days of the written request, and when the mail failed,

contacted relator to have him pick up the records. The trial court overruled objections made by relator to the magistrate's decision and adopted the magistrate's findings of fact and conclusions of law. Relator now appeals, and asserts three assignments of error for review.

{¶ 8} Assignment of Error No. 1:

{¶ 9} THE TRIAL COURT ERRED IN ITS AFFIRMATION OF THE MAGISTRATE'S DECISION THAT THE HANDWRITTEN NOTES, PRODUCED AND PREPARED BY THE WAYNE TOWNSHIP FISCAL OFFICER, ARE NOT PUBLIC RECORDS.

{¶ 10} Relator argues that the trial court erred by failing to require the township to produce handwritten notes taken by the township's fiscal officer, Graham, during the township trustee meetings. Relator specifically asserts that Graham's notes constituted "draft minutes" of the township trustee meetings, and thus are public records to which he is entitled. In contrast, the township asserts that any notes taken by Graham during its meetings were only for convenience and did not constitute any official record of its proceedings. As such, the township contends that Graham's notes of its meetings are not public records.

{¶ 11} The appropriate remedy to compel compliance with R.C. 149.43, Ohio's Public Records Act, is mandamus. *State ex rel. Toledo Blade Co. v. Seneca Cty. Bd. of Commrs.*, 120 Ohio St.3d 372, 376, 2008-Ohio-6253, ¶ 17 (2008). In order to be entitled to a writ of mandamus, the relator must establish a clear legal right to the requested acts, a corresponding clear legal duty on the part of the respondent to perform the requested acts, and the lack of a plain and adequate remedy in the ordinary course of law. *State ex rel. Woods v. Oak Hill Community Med. Ctr.*, 91 Ohio St.3d 459, 461 (2001). Relator must prove that he is entitled to the writ by clear and convincing evidence. *State ex rel. Cincinnati Enquirer v. Sage*, Slip Opinion No. 2015-Ohio-974, ¶ 10.

{¶ 12} The Public Records Act is based on the public policy concept 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. As such, the act is construed "liberally in favor of broad access and [a court is to] 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. Public records are defined by R.C. 149.43(A)(1) as "records kept by any public office." *See State ex rel. Cranford v. Cleveland*, 103 Ohio St.3d 196, 2004-Ohio-4884, ¶ 14. "Records" is defined earlier in the Chapter as

> any document, device, or item, regardless of physical form or characteristic, including an electronic record * * *, created or received by or coming under the jurisdiction of any public office of the state or its political subdivisions, *which serves to document the organization, functions, policies, decisions, procedures, operations, or other activities of the office.*

(Emphasis added.) R.C. 149.011(G). A document does not have to be in final form in order to constitute a record as long as it serves to document such functions of the public office. *Kish v. Akron*, 109 Ohio St.3d 162, 2006-Ohio-1244, ¶ 20. Although the definition of what constitutes a public record is expansive, it is not just "'any piece of paper on which a public officer writes something.'" *Cranford* at ¶ 14, quoting *State ex rel. Steffen v. Kraft*, 67 Ohio St.3d 439, 440 (1993). It has been uniformly held that notes taken by a public officer for convenience to recall events that were not provided to any other city officials and not kept as official records fall outside the definition of public records. *See Cranford*; *Kraft*. *But see State ex rel. Verhovec v. Marietta*, Fourth Dist. Washington No. 12CA32, 2013-Ohio-5415.

{¶ 13} Relator urges us to make a distinction regarding notes taken by Graham because, as fiscal officer, she had a statutory duty to record the township trustee meetings. Pursuant to R.C. 507.04, a township fiscal officer must "keep an accurate record of the proceedings of the board of township trustees at all of its meetings, and all of its accounts and transactions." Accordingly, R.C. 507.04 imposes a duty on township fiscal officers "to keep an accurate record of the resolutions a board of trustees adopts in carrying out its business at meetings." *State ex rel. Citizens for Open, Responsive & Accountable Govt. v.*

Register, 116 Ohio St.3d 88, 95, 2007-Ohio-5542, ¶ 30. Full and accurate minutes must contain sufficient facts and information to permit the public to understand and appreciate the rationale behind a decision. *White v. Clinton Cty. Bd. of Commrs.*, 76 Ohio St.3d 416, 424 (1996).

{¶ 14} At the hearing in front of a magistrate, Graham testified that her handwritten notes were not "draft minutes." Graham stated that her notes were used to help her remember things, such as names of people who attended the meeting and which trustee proposed amendments. Graham indicated that the official minutes of the township trustee meetings were a combination from her memory and her handwritten notes. Graham testified that she takes her handwritten notes home with her, she does not keep a copy of the notes in her office, and the township does not keep her notes as official records. To the extent Graham relied on her handwritten notes, Graham testified that they were incorporated into the official minutes of the township's meetings.

{¶ 15} We find Graham's notes were personal in nature, and we decline relator's invitation to distinguish her notes based on the duties imposed on her as the township fiscal officer. From Graham's testimony, it is clear that the notes were taken for her own convenience to serve as a reminder when compiling the official record and were not created to document organization, functions, policies, decisions, procedures, operations, and other council activities. *Contra Verhovec* at ¶ 30. Graham's handwritten notes were not used by the township as records. No one at the township had access to Graham's handwritten notes and the township did not keep a copy. Furthermore, because Graham relies on her recollection of the township trustee meetings in addition to her handwritten notes, such notes do not contain sufficient facts and information to reflect an accurate record. While not identical to the official record, to the extent Graham relied on her handwritten notes, relator was provided with the information as it was incorporated into the official minutes of the

township's meetings. *See State ex rel. Doe v. Register*, 12th Dist. Clermont No. CA2008-08-081, 2009-Ohio-2448, ¶ 28.

{¶ 16} Because we find that Graham's notes were personal in nature, the township had no duty to provide Graham's handwritten notes in response to relator's public records request. *See State ex rel. Doe v. Tetrault*, 12th Dist. Clermont No. CA2011-10-070, 2012-Ohio-3879. Based on the foregoing, we find that the trial court did not err in finding relator failed to establish by clear and convincing evidence that Graham's handwritten notes were public records subject to production under R.C. 149.43.

{¶ 17} Relator's first assignment of error is overruled.

{¶ 18} Assignment of Error No. 2:

{¶ 19} THE TRIAL COURT ERRED IN AFFIRMING THE MAGISTRATE'S FAILURE TO FIND THAT APPELLANT/RELATOR WAS DEPRIVED TIMELY DELIVERY OF RECORDS CONSISTING OF THE FISCAL OFFICER'S HANDWRITTEN NOTES USED TO COMPILE THE MINUTES OF THE TOWNSHIP TRUSTEE MEETINGS.

{¶ 20} Relator argues that Graham failed to deliver her handwritten notes of the township trustee meetings to him within a reasonable time as required by the Public Records Act. Specifically, relator asserts that delivery of Graham's handwritten notes was not timely because he never received copies even though Graham still had her handwritten notes in her possession at the time of his request.

{¶ 21} In light of our resolution of relator's first assignment of error, Graham's handwritten notes of the township trustee meetings were personal in nature and not subject to disclosure under R.C. 149.43. As such, the township had no duty to timely produce Graham's handwritten notes. Furthermore, a writ of mandamus cannot be issued to compel the production of a record that does not exist because it is an impossible act. *State ex rel. Cincinnati Enquirer, Div. of Gannett Satellite Information Network, Inc. v. Cincinnati Bd. of*

Edn., 99 Ohio St.3d 6, 2003-Ohio-2260, ¶ 15. As relator concedes, at this time, Graham's handwritten notes no longer exist.

{¶ 22} Consequently, relator's second assignment of error is overruled.

{¶ 23} Assignment of Error No. 3:

{¶ 24} THE TRIAL COURT ERRED IN ITS AFFIRMATION OF THE MAGISTRATE'S DECISION THAT APPELLEES/RESPONDENTS PROVIDING OF RECORDS ON APRIL 12, 2011 WAS TIMELY UNDER R.C. 149.43(B).

{¶ 25} Relator argues that he is entitled to damages under the Public Records Act because copies of public records requested on March 21, 2011, were not provided to him in a prompt manner and within a reasonable period of time pursuant to R.C. 149.43(B)(1). Relator asserts that the township's production of the minutes of the BZA hearing was untimely especially in light of an oral request he made on March 2, 2011. Relator asserts he needed the minutes of the BZA hearing for use in a separate matter before the common pleas court that occurred on March 16, 2011. Because relator did not receive a copy of the minutes of the BZA hearing until April 12, 2011, he did not have the minutes for the common pleas court hearing. Consequently, relator believes he is entitled to damages.

{¶ 26} We review the trial court's decision to deny damages for the township's alleged failure to comply with R.C. 149.43(B)(1) under an abuse of discretion standard. *State ex rel. Patton v. Rhodes*, 129 Ohio St.3d 182, 2011-Ohio-3093, ¶ 12-13. Whether the trial court abused its discretion depends on whether its attitude was unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219 (1983).

{¶ 27} Pursuant to R.C. 149.43(C)(1), a person 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" may, in addition to commencing a mandamus action, be entitled to court costs, reasonable attorney fees, and statutory

damages. A person requesting the documents is entitled to statutory damages for the failure of a public office to comply with R.C. 149.43(B)(1) when the person transmits a *written* request. R.C. 149.43(C)(1).

{¶ 28} According to R.C. 149.43(B)(1), in response to a request to inspect public records, such records "shall be promptly prepared and made available for inspection" and, if requested, copies shall be available "at cost and within a reasonable period of time." Thus, if a request calls for the inspection of records, respondents have a duty under R.C. 149.43(B)(1) to "promptly" prepare the records and make them available for inspection. *State ex rel. Consumer News Serv., Inc. v. Worthington City Bd. of Edn.*, 97 Ohio St.3d 58, 2002-Ohio-5311, ¶ 37. The ordinary and customary meaning of "promptly" has been defined and used by courts as "without delay and with reasonable speed," with its application depending "largely on the facts in each case." *Id.*; *State ex rel. Young v. Bd. of Edn. Lebanon School Dist.*, 12th Dist. Warren No. CA2012-02-013, 2013-Ohio-1111, ¶ 15. If copies of the public records are requested, then the public office has a duty to provide the copies within a reasonable period of time. *Consumer News* at ¶ 37. Pursuant to R.C. 149.43(B)(7), a public office "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." Whether a respondent complies with the statutory duty to timely provide requested copies of public records "depends upon all of the pertinent facts and circumstances." *State ex rel. Morgan v. Strickland*, 121 Ohio St.3d 600, 2009-Ohio-1901, ¶ 10.

{¶ 29} Regarding the minutes of the BZA hearing requested by relator, relator states in his brief:

> It is evident from the trial record that Appellees/Respondents could have produced the written record of the BZA hearing shortly after the March 2, 2011, oral request, or within a day after the March 21, 2011[,] written request. * * * In his trial testimony,

> Mr. Ritter admitted that he knew the exact location of such record since he took it to the Trustees, over 17 months prior to Appellant/Relator's request. [Citation omitted.] Instead, said Township officials mailed it, by certified mail, to the wrong address, and left it at the post office for a week after its returned [sic.], before deciding to recopy the requested documents and deliver them to Appellant/Relator at the Township building on April 12, 2011, some 22 days after said request.

{¶ 30} In this instance, the township promptly prepared the documents and mailed them on March 23, 2011, to relator at an address found on the auditor's website as relator failed to provide his address in his request. Despite the good faith effort of the township to provide copies of the documents to relator, relator never received the mailing. Relator did not receive copies of the requested documents until April 12, 2011, when he went to the township office where he picked up the documents, including the minutes of the BZA hearing. Whether relator received copies of the documents within a reasonable period of time depends on the unique facts and circumstances of this case. Even though relator did not actually receive the requested documents until 22 days after his written request, the township timely responded by mailing documents to an address associated with relator within two days. Furthermore, the trial court found that relator was contacted by the township once the mailing was returned. Under the facts and circumstances of this case, we find that 22 days between the date relator filed a written request and the date when he received the documents, including the minutes of the BZA hearing, was reasonable. Consequently, we find that the trial court did not abuse its discretion in finding that the township timely responded to relator's request and that relator was not entitled to statutory damages.

{¶ 31} Relator's third assignment of error is overruled.

{¶ 32} Judgment affirmed.

S. POWELL, P.J., and HENDRICKSON, J., concur.