

IN THE SUPREME COURT OF OHIO

State of Ohio *ex rel.*,
Estate of Miles, *et al.*

Relators,

-v-

Village of Piketon, Ohio *et al.*

Respondents.

Case No. **08-0782**

Original Action in Mandamus

MEMORANDUM IN SUPPORT
OF VERIFIED COMPLAINT FOR WRIT OF MANDAMUS

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c/o Village of Piketon, Ohio

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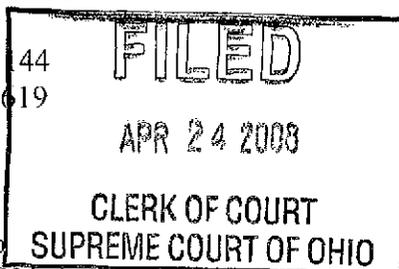
Bill Spencer, Mayor

Village of Piketon

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Linda Nelson, Clerk-Treasurer

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(740) 289-8137

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I. FACTUAL BACKGROUND

Relators Betty S. Miles, both individually and in her capacity as Administrator of the Estate of Jerry D. Miles, Bill S. Miles, and Joshua Miles (together hereinafter collectively referred to as “Relators”) are the Plaintiffs in Case No. 519-CIV-01 of the Pike County, Ohio Court of Common Pleas. (Relators’ Affs., Ex. D, E, and F of Complaint.) Relators were granted a judgment against the Village of Piqueton, Ohio (“VOP”) through its Chief of Police on January 2, 2003 in the principle amount of \$837,518.22, plus judgment interest (the “Judgment”). *See* Ex. A to Complaint. Relators were granted the judgment against the VOP through its Chief of Police after Jerry D. Miles and another individual were murdered. The VOP Police Department’s acts or omissions in the murder investigation, under the direction of the Chief of Police, were conducted in a reckless manner, and reflected a reckless indifference to Relators’ rights.

The Judgment was rendered against Nathaniel Todd Booth, individually and in his capacity as Chief of Police of the VOP. The Judgment Entry relative to liability, which is attached to the Complaint as Ex. C, states that “the Court finds that while [the Chief of Police of the VOP] was acting within the course and scope of his employment, [the Chief of Police’s] acts or omissions in the investigation of this matter were conducted in a reckless manner, and reflected a reckless indifference to the rights of the families involved.” The Judgment was rendered against the Chief of Police of the VOP based upon matters to which the Chief of Police was entitled to represent the VOP. The Judgment expressly provides for post-judgment interest.

On February 6, 2008, counsel for Relators mailed, by registered and regular U.S. mail, a demand upon Respondents VOP, the Mayor of the VOP, the Clerk-Treasurer of the VOP, and the Chief of Police of the VOP (together hereinafter collectively referred to as “Respondents”)

that they pay the Judgment in full, including judgment interest, or that arrangements for payment be made, by close of business on February 22, 2008. (Relators' Affs., Ex. D, E, and F of Complaint.) A copy of the demand is attached as Ex. B to the Complaint.

To date, Respondents have failed and/or refused to pay the Judgment in full, including judgment interest, and have failed to make arrangements for payment to Relators. (Relators' Affs., Ex. D, E, and F of Complaint.)

II. LAW AND ARGUMENT

Relators are entitled to the requested writ of mandamus because: (i) Relators have a clear legal right to satisfaction of the Judgment, including judgment interest; (ii) Respondents have a clear legal duty to pay the Judgment, including judgment interest; and (iii) Relators have no plain and adequate legal remedy in the ordinary course of the law to enforce the Judgment and judgment interest. *See State ex rel. Shimola v. City of Cleveland* (1994), 70 Ohio St. 3d 110, 112; *See also* Ohio Rev. Code § 2731.05.

In *State ex rel. Shimola*, an Ohio Supreme Court case that is factually and procedurally parallel to the case at bar, an individual who had previously been awarded three judgments against the City of Cleveland made demands on the city for payment of the three judgments, to no avail. Thereafter, the individual filed a complaint requesting a writ of mandamus ordering the city and its finance director to pay all three judgments, plus accrued post-judgment interest. This Court, in granting the writ of mandamus ordering the city to pay the three judgments, plus post-judgment interest pursuant to Ohio Rev. Code §§ 1343.03(A) and 1343.03(B), held the following: (i) the individual relator had a clear legal right to the amount of the three judgments, plus post-judgment interest; (2) the city had a clear legal duty to pay relator such amounts; and

(3) pursuant to Ohio Rev. Code § 2744.06(A), the individual relator had no adequate legal remedy to enforce the judgments, plus post-judgment interest. (1994), 70 Ohio St. 3d 110.

As set forth in greater detail below, consistent with this Court's holding in *State ex rel. Shimola*, a writ of mandamus must be issued directing Respondents to pay all money necessary to satisfy in full the principal amount of the Judgment, including judgment interest from January 2, 2003 to the date the Judgment is paid.

A. Relators have a clear legal right to satisfaction of the Judgment in the principle amount of \$837,518.22, including judgment interest from January 2, 2003, which is the date the Judgment was rendered, to the date the Judgment is paid.

Despite Relators' formal demand upon Respondents that they pay the Judgment in full, including judgment interest, or that arrangements for payment be made by February 22, 2008, Respondents have failed and/or refused to pay the judgment in full, including judgment interest, and have failed to make arrangements for payment to Relators. (Relators' Affs., Ex. D, E, and F of Complaint.) The Judgment expressly provides for post-judgment interest. Pursuant to Ohio Rev. Code § 1343.03(B), "interest on a judgment . . . **shall** be computed from the date the judgment . . . is rendered to the date on which money is paid" (Emphasis added).

In *State ex rel. Shimola*, counsel for relator Shimola filed an affidavit in support of relator's motion for default judgment indicating that the city owed relator money based on three separate judgments, and that the city had failed to pay any money toward those judgments. (1994), 70 Ohio St. 3d 110, 112. In determining whether relator Shimola had a clear legal right to the judgments plus post-judgment interest, the Court noted that Ohio Rev. Code § 1343.03(A) "automatically bestows a right to post-judgment interest as a matter of law," and that pursuant to Ohio Rev. Code § 1343.03(B), the post-judgment interest is calculated from the dates of the

judgments. *Id.* Based on the evidence submitted by affidavit, this Court held that relator Shimola had a clear legal right to the amount of judgments plus post-judgment interest.

Relators have established, in the same manner as the relator in *State ex rel. Shimola*, that Relators have a clear legal right to satisfaction of the Judgment in the principle amount of \$837,518.22, plus judgment interest from January 2, 2003, which is the date the Judgment was rendered, to the date the Judgment is paid.

B. Respondents have a clear legal duty to pay the Judgment, including judgment interest.

It is “well settled in Ohio . . . that when a judgment is rendered . . . against an officer of a municipal corporation in his official capacity, in matters to which he is entitled to represent it, the judgment is binding against the [municipal] corporation, or another officer representing the [municipal] corporation. *State, ex rel. Gill v. Winters*, (1990), 68 Ohio App. 3d 497, 504; *Ohio Fuel Gas Co. v. City of Mt. Vernon* (1930), 37 Ohio App. 159, 169. The foregoing “is in accordance with the great weight of authority.” *State, ex rel. Gill*, 68 Ohio App. 3d at 504. “It will not do to allow parties in interest to fight their legal battles over the shoulders of a public officer and then claim that the judgments are not binding upon them because they were not parties nor privies.” *Ohio Fuel Gas Co.* (1930), 37 Ohio App. at 168.

In *State, ex rel. Gill*, an individual was granted a peremptory writ of mandamus against the Mayor of the City of Wellston ordering the Mayor to appoint the individual relator to the position of Second Assistant Fire Chief, and that the Mayor pay the individual the amount of damages sustained and costs. 68 Ohio App. 3d at 500. On appeal, the Mayor argued that because the Mayor was the only one sued, neither the City of Wellston nor the City’s other officers were bound by the order granting the peremptory writ of mandamus. *Id.* at 504. The

court disagreed and held that, contrary to the Mayor's argument, "it appears well settled in Ohio . . . that when a judgment is rendered . . . against an officer of a municipal corporation in his official capacity, in matters to which he is entitled to represent it, the judgment is binding against the [municipal] corporation, or another officer representing the [municipal] corporation." *Id.*

Pursuant to Ohio Rev. Code §§ 733.23, "[t]he executive power of villages **shall** be vested in a mayor, clerk, treasurer, **marshal**, [and] street commissioner" (Emphasis added). "Each village shall have a **marshal**, designated **chief of police**" Ohio Rev. Code § 737.15 (emphasis added). The Judgment was rendered against Nathaniel Todd Booth individually, **and in his capacity as Chief of Police of the VOP**. The Judgment Entry relative to liability, which is attached to the Complaint as Ex. C, states that "the Court finds that while [the Chief of Police of the VOP] was acting within the course and scope of his employment, [the Chief of Police's] acts or omissions in the investigation of this matter were conducted in a reckless manner, and reflected a reckless indifference to the rights of the families involved."

The Judgment was rendered against the Chief of Police of the VOP based upon matters to which the Chief of Police was entitled to represent the VOP. Thus, consistent with this Court's holding in *State ex rel. Shimola*, the Judgment is binding against the VOP, and Respondents have a clear legal duty to pay the Judgment, including judgment interest.

C. Pursuant to Ohio Rev. Code § 2744.06(A), Relators have no plain and adequate legal remedy in the ordinary course of the law to enforce the Judgment and judgment interest.

Like the relator in *State ex rel. Shimola*, Relators have no plain and adequate remedy in the ordinary course of the law to enforce the Judgment and judgment interest because the VOP is immune from execution pursuant to Ohio Rev. Code § 2744.06(A), which provides the following:

“[r]eal or personal property, and moneys, accounts, deposits, or investments of a political subdivision are not subject to execution, judicial sale, garnishment, or attachment to satisfy a judgment rendered against a political subdivision in a civil action to recover damages for injury, death, or loss to person or property caused by an act or omission of the political subdivision or any of its employees in connection with a governmental or proprietary function. **Those judgments shall be paid from funds of the political subdivisions** that have been appropriated for that purpose, but, if sufficient funds are not currently appropriated for the payment of judgments, the fiscal officer of a political subdivision shall certify the amount of any unpaid judgments to the taxing authority of the political subdivision for inclusion in the next succeeding budget and annual appropriation measure and payment in the next succeeding fiscal year

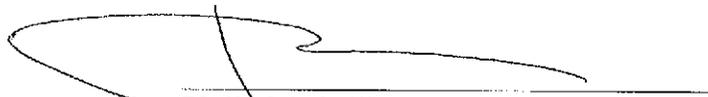
See State ex rel. Shimola (1994) 70 Ohio St. 3d at 112-13. “‘Political subdivision’ . . . means a municipal corporation” Ohio Rev. Code § 2744.01(F).

Pursuant to Ohio Rev. Code § 2744.06(A), and consistent with this Court’s holding in *State ex rel. Shimola*, Relators have no plain and adequate legal remedy in the ordinary course of the law to enforce the Judgment and judgment interest. Therefore, Relators request that this Court issue an alternative and/or peremptory writ of mandamus directing Respondents to pay all money necessary to satisfy in full the principal amount of the Judgment totaling \$837,518.22, plus judgment interest from January 2, 2003 to the date the Judgment is paid, and grant the costs of this action to Relators, and any other relief as may be just and proper, including, but not limited to, reasonable attorneys’ fees.

III. CONCLUSION

Relators have established that (i) Relators have a clear legal right to satisfaction of the Judgment, including judgment interest; (ii) Respondents have a clear legal duty to pay the Judgment, including judgment interest; and (iii) Relators have no plain and adequate legal remedy in the ordinary course of the law to enforce the Judgment and judgment interest. Thus,

consistent with this Court's holding in *State ex rel. Shimola*, Relators have a right to an alternative and/or peremptory writ of mandamus directing Respondents to pay all money necessary to satisfy in full the principal amount of the Judgment totaling \$837,518.22, plus judgment interest from January 2, 2003 to the date the Judgment is paid.



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