

ORIGINAL

IN THE SUPREME COURT OF OHIO

[State ex. rel.] Kirk D. Turns,

Relator,

Case No. 09-1335

v.

Original Action in Mandamus

The Honorable Daniel T. Hogan,
et al,

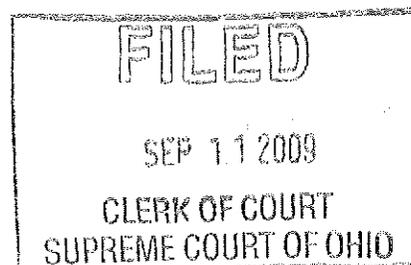
Respondents.

**RESPONDENTS JUDGE DANIEL T. HOGAN, ET AL.'S
MEMORANDUM CONTRA RELATOR'S MOTION FOR
PRELIMINARY INJUNCTION**

Kirk D. Turns
608 East Jenkins Ave.
Columbus, Ohio 43207
Relator
PRO SE

RON O'BRIEN (0017245)
Prosecuting Attorney
Franklin County, Ohio

Patrick J. Piccininni (0055324)
Asst. Prosecuting Attorney
373 South High Street, 13th Floor
Columbus, Ohio 43215
(614) 462-3520
FAX (614) 462-6012
pjp Piccininni@franklincountyohio.gov
COUNSEL FOR JUDGE DANIEL T. HOGAN, ET AL.



**RESPONDENT'S MEMORANDUM CONTRA RELATOR'S MOTION FOR
PRELIMINARY INJUNCTION**

Now comes Respondents Judge Daniel T. Hogan, *et al.* (hereinafter "Respondents"), by and through undersigned counsel, and requests this Court to deny Relator's Motion for Preliminary Injunction because Relator has failed to meet his burden in establishing that he is entitled to an injunction.

I. Introduction

This action is before the Court on Relator's Petition for a Writ of Mandamus filed July 29, 2009. Relator asks this Court to compel Respondents Judge Daniel T. Hogan and court reporter Thomas K. Cheney to provide a free transcript of proceedings of a July 20, 2009 in which Relator was a criminal defendant. On July 21, 2009, Relator made a public records request for the transcript pursuant to Ohio Rev. Code § 149.43. Respondents denied Relator's request for a free copy of the transcript. Respondents filed a Motion to Dismiss Relator's Petition on August 10, 2009.¹ Relator then filed a Motion for Preliminary Injunction on September 4, 2009.

II. Law and Argument

A. Standard of Review

To determine whether Relator qualifies for a preliminary injunction, the Court must determine "(1) whether there is a substantial likelihood that plaintiff will prevail on the merits, (2) whether plaintiff will suffer irreparable injury if the injunction is not granted, (3) whether third parties will be unjustifiably harmed if the injunction is granted, and (4)

¹ Relator was inadvertently listed as "Kirk Toms" in Respondent's Motion to Dismiss Certificate of Service. However, as Relator obviously received the document, he cannot show prejudice. Counsel for Respondent apologizes to the Court for the obvious typographical error.

whether the public interest will be served by the injunction.” *Vanguard Transp. Sys., Inc. v. Edwards Transfer & Storage Co., Gen. Commodities Div.* (1996), 109 Ohio App.3d 786, 790. As the party seeking an injunction, Relator must “establish a right to the preliminary injunction by showing clear and convincing evidence of each element of the claim.” *Id.*

B. Relator Has Not Established His Claim by Clear and Convincing Evidence.

Relator states that he is entitled to a preliminary injunction because Respondents are altering, molesting, or destroying copies of the transcript he seeks through his underlying petition for writ of mandamus. Relator offers nothing in support of this incredible accusation other than his own self-serving and uncorroborated statements. These statements do not amount to proof by clear and convincing evidence that Relator has a right to a preliminary injunction. Accordingly, Relator’s motion should be dismissed.

Relator’s argument must fail on three prongs of the criteria for issuance of a preliminary injunction. First, as argued in Respondent’s Motion to Dismiss, Plaintiff does not show a likelihood of success on the merits in this case. Relator’s petition for writ of mandamus is an attempt to receive a copy of a transcript without paying the proper rate for transcription. Relator has no right to the transcript without payment, therefore his underlying action lacks merit.

Second, Relator has not shown by clear and convincing evidence that he will suffer harm if this injunction is not granted. Relator’s statements that Respondents (who are officers of the court) are altering or deleting information from Relator’s transcripts are, frankly, outrageous. Certainly, his uncorroborated accusations do not rise to proof by clear and convincing evidence that Respondents are altering his transcripts, and therefore Relator is not harmed if this injunction is not granted.

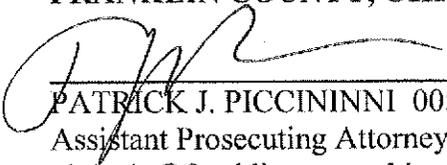
Lastly, the public interest is not served by the issuance of a preliminary injunction. Relator asks this Court to issue a search warrant to search for and seize records from Relator's criminal case. A search warrant cannot be issued in this case because "the Fourth Amendment guarantees that the State will not issue search warrants merely upon the conclusory application of a private party." *Fuentes v. Shevin* (1972), 407 U.S. 67, 93, n. 30. Relator's attempt to use state power to invade the offices of Respondents does not serve the public interest. Additionally, the Civil Rules do not allow for a search warrant to be issued in this case. Relator's request for a search warrant is in error.

III. Conclusion

For the foregoing reasons Relator's instant Motion for Preliminary Injunction should be denied and this matter be dismissed.

Respectfully submitted,

RON O'BRIEN
PROSECUTING ATTORNEY
FRANKLIN COUNTY, OHIO



PATRICK J. PICCININNI 0055324
Assistant Prosecuting Attorney
pjp Piccin@franklincountyohio.gov
373 South High Street, 13th Floor
Columbus, Ohio 43215
(614) 462-3520
Fax: (614) 462-6013
Counsel for Respondents

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing has been forwarded by regular U.S. mail, postage prepaid, to Kirk D. Turns, Relator *pro se*, at 608 East Jenkins Ave., Columbus, Ohio, 43207, this 11th day of September, 2009.



PATRICK J. PICCININNI 0055324
Assistant Prosecuting Attorney