

ORIGINAL

IN THE SUPREME COURT OF OHIO

**STATE OF OHIO EX REL.
RALEIGH M. STRIKER**

Relator-Appellant

vs.

**CLERK OF COURT,
DANIEL F. SMITH**

Respondent-Appellee

CASE NO. 2010-0433

**[On Appeal from Richland
County Court of Appeals
Fifth Appellate District
Case No. 2008 CA 0336]**

BRIEF OF RESPONDENT-APPELLEE

**COUNSEL FOR
RESPONDENT-APPELLEE:**

**David L. Remy
(S. Ct. Reg. #0023702)
Law Director
City of Mansfield, Ohio
30 N. Diamond St.
Mansfield, OH 44902
Telephone: (419) 755-9659
Fax: (419) 755-9697
E-mail: dremy@ci.mansfield.oh.us**

**COUNSEL FOR
RELATOR-APPELLANT:**

**Lori A. McGinnis
(S. Ct. Reg. #0060029)
3183 Wally Rd.
Loudonville, OH 44842
Telephone: (419) 606-1278
E-mail: mcginnil@yahoo.com**

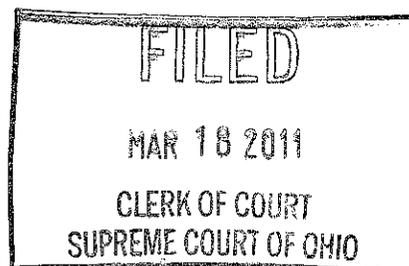


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STATEMENT OF FACTS

The root of this action lies in a civil case filed on November 1, 2006, in Mansfield Municipal Court under case number of 2006 CVH 3913 and entitled "*Calhoun, Kademenos & Childress Co. L.P.A. v. Randy D. Shepherd.*" It was assigned to the Honorable Jeff Payton, Judge of the Mansfield Municipal Court and involved a \$620.00 attorney fee dispute.

The basis of this current appeal is a writ of mandamus action filed by Relator, Raleigh M. Striker, "a friend of Mr. Shepherd," in the Fifth District Court of Appeals seeking an order compelling the Respondent, Daniel F. Smith, Clerk of the Mansfield Municipal Court, to comply with a public records request for certain documentation as set forth in the Mansfield Municipal Court's computerized docket for the *Shepherd* case. The Relator's public records request was originally made to Respondent in the form of an oral request on December 4, 2008. At that time, Relator was advised that the requested records were not available as the case file was in the custody of Judge Payton and that the case file would not be accessible to the public until the file was returned to the Clerk of Court's Office. The case file, at that time had been in the custody of Judge Payton since on or about February 7, 2008. During the morning hours of December 29, 2008, Relator made a subsequent request for the records. This time it was in writing and, in pertinent part, verbatim stated:

"I, Raleigh M. Striker, am requesting copies of Mansfield
Municipal Court Civil Docket case number 2006cv03913 entries
for the dates of:
12/20/2006 remand
01/02/07 remand SC

01/31/07 memorandum

04/30/07 je” [See Appended Exhibit #1]

The case file was still in the possession of Judge Payton on December 29, 2008 when Relator made his request, Respondent Smith did not have access to it and therefore he could not immediately fulfill Relator’s request. This fact was confirmed by Respondent by making a notation on the Relator’s request that reads as follows: “Waiting on Judge Payton, Dan Smith, 12-29-08.” At that point Relator took his written request with the notation and left the Clerk’s Office. Relator filed the herein action for a writ of mandamus the next day, December 30, 2008 which was served on Respondent on January 5, 2009. On January 20, 2009, via counsel for Respondent, documents corresponding to the requested “01/02/2007 remand SC”, “01/31/2007 memorandum” and “04/30/2007 je” were furnished by mail to the Relator.

Pursuant to an Order of the Court of Appeals, the parties submitted an agreed statement of facts with each party subsequently submitting briefs. The matter was thereafter considered by the Court of Appeals which, on February 8, 2010, issued a decision granting in part and denying in part a writ of mandamus. That portion of the writ granted was in relation to the lack of posting of a public records policy. The writ was denied in all other respects [i.e. timeliness of response to the request, withdrawal of an oral request, moot status of claim since documents were furnished, legal fees and statutory damages].

Relator appealed the Court of Appeals decision to this Honorable Court on March 8, 2010. Mediation was subsequently attempted, to no avail, by this court’s mediation services. Consequently, the case was placed back on the court’s docket for briefing and the rendering of a decision.

ARGUMENT

Proposition of Law No. 1:

THE COURT OF APPEALS DID NOT ERR IN FINDING THAT RESPONDENT, DANIEL F. SMITH, DID NOT VIOLATE THE PROVISIONS OF R.C. 149.43 WITH RESPECT TO THE PUBLIC RECORDS REQUEST OF RELATOR, RALEIGH M. STRIKER.

Unquestionably, mandamus is the appropriate remedy to compel compliance with R.C. 149.43 [Ohio's Public Records Act]. *State ex rel. Steckman v. Jackson* (1994), 70 Ohio St. 3d 420; *State ex rel. Consumer News Services, Inc. v. Worthington City Bd. Of Edn.* (2002), 97 Ohio St. 3d 58 and clearly, the Clerk of Court is the proper person from whom to obtain court records under said Records Act. *State ex rel. Martinelli v. Corrigan* (1991), 71 Ohio App. 3d 243.

In the instant case, the parties have agreed that Relator was provided with three of the four requested "documents". To the extent that Relator's mandamus action seeks to compel Respondent to produce those three documents the matter is moot. *State ex rel. Cranford v. Cleveland* (2004), 103 Ohio St. 3d 196. However, such a summary resolution of the matter does not address the underlying issues presented by the Relator in his Brief of whether a requested document did in fact exist, whether the possession of the court file by the trial judge was sufficient cause to delay a response to his records' request, whether the retention of the request by the Relator was a withdrawal of the request and whether the requested records were furnished within a reasonable period of time.

This case, as proverbially in all public record cases, raises for consideration two issues: 1) what records are available for inspection and copying and 2) when are records to be made avail-

able for inspection and copying. As stated in *State ex rel. Wadd v. Cleveland* (1998), 81 Ohio St. 3d 50 “[w]hen records are available for public inspection and copying is often as important as *what* records are available.” Under Ohio’s Public Records Act a “record” is defined in pertinent part to be any document, device or item created or received by or coming under the control of a public office which serves to document the functions, policies, decisions, procedures or other activities of the office. R.C. 149.011. Absent falling into one of these categories, information sought pursuant to a public records request is not a public record and is not required to be released. *State ex rel. Fant v. Mengel* (1992), 62 Ohio St. 3d 455.

As for when a record is to be released, R.C. 149.43(B)(1) provides that “all public records shall be promptly prepared and made available for inspection to any person at all reasonable times during regular business hours” and that “upon request, a public office or person responsible for public records shall make copies available, within a *reasonable* period of time.” [emphasis added]. While the word “promptly” is not defined by applicable statute, its customary meaning is “without delay and with reasonable speed” and this meaning “ ‘depends largely on the facts in each case.’ ” *Wadd, supra p. 53*.

Issue No. 1:

Whether the Court of Appeals erred in finding that the parties were in agreement that the fourth requested document was not a public record subject to disclosure and even if so, whether such requested document was a public record.

At page 2 of the Court of Appeals’ decision it states that “[t]here was a fourth item requested, however, the parties agree the fourth item was not a public record subject to disclosure.” This fourth item relates to the Relator’s request for the municipal court docket entry described as

“12/20/2006 remand”. It is conceded that the parties did not agree as to the public record status of this particular request. However, for the reasons set forth below, it remains the position of the Respondent that this requested docket entry is in fact merely a docket notation and not a document.

In order to comply with the general rule, all public records *responsive to the request* shall be promptly prepared for inspection and/or copies made available and such records shall be organized and maintained in such a manner that they can be made available for inspection or copying. See **Dobrowski, Public Access to Public Records; The Law of Public Records in Ohio, Rev. July 1, 2010,**¹

In the instant case, the docket entry in question for December 20, 2006 reads as follows: “Case to Judge Payton for remand”. [See Appended Exhibit #2]. A literal reading of this statement means the case file was given to Judge Payton for consideration of a remand. It is simply a notation that the file has been delivered to the court. After the case file was given to Judge Payton on December 20, 2006, he completed an entry on the same date remanding the case to a magistrate. Although this entry contains the date December 20, 2006, it was not entered upon the journal by the clerk until January 1, 2007 when it was file stamped.² It is well settled that a court speaks only through its journals and judgment entries and that a judgment is effective only when entered by the clerk upon the journal. **62 OJur3d, Judgments §55; Civ. R. 58.** Again, the docket entry of “12/20/2006” is simply a docket notation, nothing more. And, as

1 A written and oral presentation made by Stanley Dobrowski, Esq. on July 30, 2010 at the Ohio Municipal Attorneys Association 2010 Municipal Law Seminar.

2 While the entry contains a rubber stamped date of January 1, 2007, the docket reflects January 2, 2007.

stated in *State ex rel. Medina County Gazette v. Brunswick* (1996), 109 Ohio App.3d 661, 666 “[a] party can’t produce what it doesn’t have.”

Since the docket entry of “01/02/2007” makes reference to a remand entry, and it might be argued that the entry was subsumed in the Relator’s second itemized request and/or, pursuant to **R.C. 149.43(B)(2)**, the Respondent could have or should have informed the Relator that he could not “reasonably identify what public records” were being requested. However, this argument must fail for following reasons. As stated at page 4 of the Court of Appeals’ decision, “Relator took his written request with him on December 29, 2008. Respondent was not in possession of a list of the records sought until Respondent was served with a copy of the Complaint [for a writ of mandamus] on January 5, 2009.” To ask for clarification after the filing of a mandamus action would be futile. The primary duty of the Respondent on and after January 5, 2009 was to mitigate the situation and comply with the request to best of his ability. Moreover, a review of Relator’s Mandamus Complaint, filed on December 30, 2008, will reveal that Relator has attached, as an exhibit, a copy of the exact document, he is now claiming Respondent did not furnish him. Why would or should the Respondent be required to produce a document that was already in the in hands of the Relator? The answer is that he should not.

Consequently, while the Court of Appeals may have erroneously concluded that the parties agreed to the status of the “12/20/2006” requested document, such error, for the reasons set forth above, should be considered as harmless.

Issue No. 2:

Whether a Clerk of Court may refuse a request for court records made during normal business hours based upon a representation that the case file is with the judge, therefore, not available to the Clerk.

A majority of the requested documents did in fact exist and were subject to disclosure. While the inspection of records and the furnishing of copies should be done without delay and with reasonable speed, nothing in the Ohio Public Records Act states that records must be furnished immediately for inspection and/or copying. What is "without delay and with reasonable speed" is to be determined by the facts presented in each case. Furthermore, pursuant to **R.C. 149.43(B)(3)**, if a request is denied, in part or in whole, the public office must provide the requestor with an explanation of why the request is being denied and if the request is in writing the denial must be in writing.

In the instant case, the Respondent was unable to supply the requested documents when Relator made his initial verbal request on December 4th and again on December 29th when he made his written request, because on both dates the case file in which they were located was in the custody and control of the trial judge and it was not returned to the custody of the Clerk's office until later that day. [see Affidavits marked Exhibits E & F and attached to Respondent's Original Answer]. As a consequence and in accordance with **R.C. 149.43(B)(3)**, Respondent did provide such reason by notation on Relator's written request – "Waiting on Judge Payton /s/ Dan Smith 12/29/08". By statutory fiat, a clerk of court is obligated to "file and safely keep all journals, records, books and papers belonging to or appertaining to the court; record the proceedings of the court; perform all other duties that the judges of the court may prescribe;...". **R.C. 1901.31(E)**. In short, a clerk of court holds a servient relationship with the court. Or, another way of categorizing the relationship between the clerk and the judges of the court is that

he is the "sergeant major" in the operation of the judicial system. He serves the judges and makes it work. The requested records were in the hands of the head of the system - the judge.

Moreover, while the clerk is the keeper of court files, if a judge calls for the file and takes possession of the file, does the public policy surrounding the court system give the clerk the right to unilateral retrieve possession of that file any time he feels like doing so? The answer is obviously no! According to the rationale of the Relator, the clerk had an obligation to go to the judge's office and retrieve the file. The public policy of any court simple is that such is not to be done.

This Honorable Court has on at least two occasions held that there can be no legal duty imposed on one to furnish records which are not in his possession. *State ex rel. Bradley v. Shannon* (1970), 24 Ohio St. 2d 115 and *State ex rel. Vitoratos v. Gross* (1970), 24 Ohio St. 2d 22 ("The pleadings disclose that the [Clerk of Canton Municipal Court] has not refused to furnish the copy requested, but that he does not have the document in his possession."). Likewise, there is no indication, in the instant case, that Respondent refused to furnish copies of the requested documents to Relator. He simply could not furnish them because they were not in his possession at the time of either request. As stated in *Brunswick, supra*, p. 666 "[a] party can't produce what it doesn't have."

Consequently, with these known facts, there is nothing in this case to indicate that Respondent reasonably would believe that his conduct with regard to Realtor constituted a failure to comply with Ohio's Public Records Act.

Issue No. 3:

Whether a request for public records may be considered withdrawn after said request is made in writing, a notation as to an inability to comply is affixed to such request by the appropriate public official, and the request is thereafter taken back by the requestor who then leaves the public office without leaving any contact information.

With respect to the issue of the withdrawal of his oral request of December 4th, when Relator was advised that the file was still with Judge Payton and the Respondent had acknowledged the same, he simply left the office. He did not, prior to leaving, convert this oral request to writing and leave a copy with the Clerk's office so that, even when the court file was returned to his custody, the Respondent did not know what documents he was to furnish the Relator. Therefore, it is the position of the Respondent and the Court of Appeals agreed that the oral request had been withdrawn. See also *State ex rel. Raleigh M. Striker v. Clerk of Court, Alyce F. Cline* (June 21, 2010) Richland Ct. App. Case No. 09 CA 107, 2010 Ohio 2861.

As for the written request of December 29th, Relator upon presentation of the request, was advised that the case file was still in the possession of Judge Payton. This fact was by means of a notation handwritten on Relator's written request. Subsequently, the Relator took his written request with the notation and left the office. He did not leave a copy with the Clerk's office so that, even when the court file was returned to his custody, the Respondent did not know what documents he was to furnish the Relator. What exactly the Relator wanted with respect to documents did not surface again until his writ of mandamus action was filed and served on the Respondent on January 5, 2009. Thirteen business days after the mandamus action was filed (and eleven business days after notice of such action), the actual documents requested were furnished to Relator.

In summary, one cannot furnish what another desires without knowing what is desired.

Issue 4:

Whether, under the circumstances as existed in the instant case, the Respondent replied to Relator's request "within a reasonable period of time" as provided by R.C 149.43

As the Court of Appeals, herein, correctly stated, citing *State ex rel. Simonsen v. Ohio Dept. of Rehab. & Corr.* ((February 3, 2009), Franklin Ct. App. Case No. 08AP-21, 2009 Ohio 442, "[p]ublic offices are required to promptly prepare records and transmit them within a reasonable period of time after receiving the request for the copy. The term 'promptly' is not defined in the statute. However, statutes in other states give their agencies from between three and 12 days from the date the public records were requested to make the documents available. The word "prompt" is defined as "performed readily or immediately. " Webster's Eleventh New Collegiate Dictionary (2005) 994."

Moreover, the Court of Appeals, at page 4 of its opinion, made the following observation as to reasonableness in replying to a public records request.

Other courts have examined the number of days which may be considered reasonable or unreasonable. Ten business days has been held to be reasonable while 32, 37, and 79 business days have been held to unreasonable. See *State ex rel. Bardwell v. Cuyahoga Cty. Bd. of Commrs.*, 2009 WL 3387654, 1 (Ohio App. 8 Dist.) (ten business days not violation); *State ex rel. Simonsen v. Ohio Dept. of Rehab. & Corr.*, 2009 WL 250867, 7 (Ohio App. 10 Dist.) (37 days not reasonable); *State ex rel. Bardwell v. Rocky River Police Dept.*, 2009 WL 406600, 7 (Ohio App. 8 Dist.) (32 business days unreasonable); *Bardwell v. Cleveland*, 2009 WL 3478444, 5 (Ohio App. 8 Dist.) (79 days unreasonable). In the instant case, the records were given to the Relator on the 13th business day after the request was made in writing. We cannot say 13 days is unreasonable under the circumstances."

The Court of Appeals followed the prevailing yard stick for reasonableness in replying to records request and was thus correct in holding that the Respondent's reply within 13 business days of the awareness of what documents the Relator desired was a reasonable response time.

Proposition of Law No. 2:

THE COURT OF APPEALS DID NOT ERR IN DENYING RELATOR, AS A PERSON SEEKING PUBLIC RECORDS, AN AWARD OF STATUTORY DAMAGES AND ATTORNEY FEES.

Issue:

When is a person seeking public records through a mandamus action entitled to statutory damages and attorney fees.

A. Statutory Damages

R.C. 149.43(C)(1) makes available to a requestor of public records an award of statutory damages if it is determined by a court that the public official responsible for the requested records has failed to promptly prepare and make available for inspection and/or copying, to any person, at all reasonable times during regular business hours the records requested and, if applicable, specify why a particular record(s) is/are exempt from disclosure. The court can deny an award of statutory damages or mitigate them, if it determines both of the following:

- (a) that based on the ordinary application of statutory and case law as it existed at the time of the conduct or the threatened conduct of the public office that allegedly constitutes a failure to comply with R.C. 149.43(B), and that was the basis of the mandamus action, a well-informed public office reasonably would believe that the conduct or threatened conduct did not constitute a failure to comply with R.C. 149.43(B), and
- (b) that a well-informed public office reasonably would believe that the conduct or threatened conduct would serve the public policy that underlies the authority that is asserted as permitting that conduct or threatened conduct. R. C. 149.43(C)(1)(a) and (b).

In the instant case, Respondent could not provide Relator with copies of the requested documents because the case file was not in his possession, but in the possession of the trial judge and not his. By statutory fiat, a clerk of court is obligated to "file and safely keep all journals, records, books and papers belonging to or appertaining to the court; record the proceedings of the

court; perform all other duties that the judges of the court may prescribe;...". **R.C. 1901.31(E)**. In short, a clerk of court holds a servient relationship with the court. Or, another way of categorizing the relationship between the clerk and the judges of the court is that he is the "sergeant major" in the operation of the judicial system. He serves the judges and makes it work. The requested records were in the hands of the head of the system - the judge. As stated in *Brunswick, supra*, "[a] party can't produce what it doesn't have." With these known facts, there is nothing in this case to indicate that Respondent reasonably would believe that his conduct with regard to Relator constituted a failure to comply with Ohio's Public Records Act.

As for the second prong of the test, while the clerk is the keeper of court files, if a judge calls for the file and takes possession of the file, does the public policy surrounding the court system give the clerk the right to unilateral retrieve possession of that file any time he feels like doing so? The answer is obviously no! According to the rationale of the Relator, the clerk had an obligation to go to the judge's office and retrieve the file. The public policy of any court simply is that such is not to be done. The Respondent in stating his reason for being able to fulfill Relator's request, was well within the public policy underlying the operation of the court.

Therefore, for the foregoing reasons statutory damages should not be awarded.

B. Attorney Fees

Effective September 29, 2007, new standards for awarding attorney fees in public record mandamus cases were put in place. Prior to that date, the Supreme Court had consistently held that the awarding of attorney fees in public records cases was discretionary and to be determined by the presence of a public benefit conferred by the requestor seeking disclosure. *State ex rel. Beacon Journal Publishing Co. v. Maurer* (2001), 91 Ohio St. 3d 54.

In *State ex rel. Doe v. Smith* (2009), 123 Ohio St. 3d 44, the Supreme Court was given the chance to and did address the issue of attorney fees in a public record case in light of the September 2007 amendments to R.C. 149.43. In *Doe, supra*, the court held that an award of attorney fees is now mandatory only when a public official fails to respond affirmatively or negatively to a records request or when a public official fails to permit an inspection of records or fails to furnish copies of records within a specified period as promised by the public official. R.C. 149.43(C)(2)(b)(i) and (ii). The court went on to state that except for these two instances, the awarding of attorney fees is still discretionary.

Under R.C. 149.43(C)(2)(b), courts in public records cases 'may award reasonable attorney's fees subject to redaction as described in division (C)(2)(c).' ... The factors specified in R.C. 149.43(C)(2)(c)(i) and(ii) are considered after a court makes an initial, tentative decision to award fees. Therefore, consistent with existing precedent, courts can consider the presence of a public benefit conferred by the relator seeking disclosure. *Fox*, 39 Ohio St. 3d at 112,...; *Toledo Blade*, 120 Ohio St. 3d 372 ... quoting *State ex rel. Wadd v. Cleveland* (1998), 81 Ohio St. 3d 50, 54 ...(" 'In granting or denying attorney fees under R.C. 149.43(C), courts consider ... the degree to which the public will benefit from release of the records in question' ").

Hence, except for the caveat situations expressed in the *Doe, supra*, case, the ruling in *State ex rel WBNS TV, Inc v. Dues* (2004), 101 Ohio St. 3d 406 with respect to attorney fees in public records cases is still applicable and that ruling was that, in deciding whether or not to award attorney's fees, a court is to consider the reasonableness of Respondent's failure to comply with the public records request, and the degree that the public will receive a benefit from disclosure of the requested records.

In the instant case, Respondent did not ignore Relator's request nor did he fail to provide the requested records within a promised time frame. Therefore, the mandatory

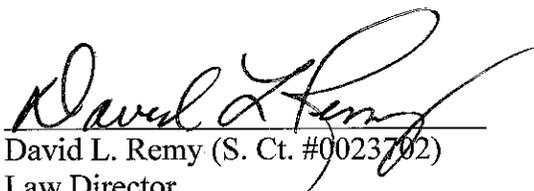
provisions as to attorney fees are not applicable thus leaving the court with the discretion of granting or denying such fees under the guidelines of *Dues, supra*.

Among the definitions of "failure" in *Merriam-Webster's Online Dictionary* is the following: "a state of inability to perform a normal function." In the case at hand, Respondent was unable to perform the function of producing the requested records because they were in the possession of the trial judge, clearly a reasonable inability to comply. As for the second prong of the test, Relator was seeking documents from a civil suit between two private parties - one of which was a friend of his. What is the public benefit associated with this records request? The answer is none. They are, like the following cases, for his individual interest and/or that of Randy Shepherd and thus attorney fees should not be awarded. *State ex rel. Fitz v. Cope* (March 2, 2004) Erie Ct. App. Case No. E-03-056, 2004-Ohio-1038 [request for breathalyzer log book used to gather evidence for DUI arrest of relator]; *State ex rel. Dayton Newspapers, Inc. v. Troy* (May 16, 2006) Montgomery Ct. App. Case No. 21180, 2006-Ohio-2631 [requested disclosure of identity of deceased individual used in undercover operation]; *State ex rel. Morgan v. New Lexington* (2006), 112 Ohio St. 3d 33 [requested record related to relator's discharge from employment.]

CONCLUSION

For all of the reasons set forth above, the decision and judgment entry of the Fifth District Court of Appeals rendered on February 8, 2010 should be affirmed in full.

Respectfully, submitted,

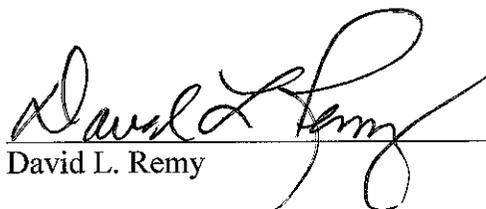


David L. Remy (S. Ct. #0023702)
Law Director
City of Mansfield
30 N. Diamond St.
Mansfield, OH 44902
Tel: (419) 755-9659
Fax: (419) 755-9697
E-mail: dremy@ci.mansfield.oh.us

Counsel for Respondent-Appellee

PROOF OF SERVICE

A true copy of the foregoing Brief of Respondent-Appellee was served on Lori A. McGinnis, Esq., Counsel for Relator-Appellant, 3183 Wally Rd., Loudonville, OH 44842 by means of regular U.S. Mail on March 18, 2011.



David L. Remy

APPENDIX

December 29, 2008

Request for Records

To the Clerk of the Mansfield Municipal Court; Daniel F. Smith

I, Raleigh M Striker, am requesting copies of Mansfield Municipal Court Civil Docket case number 2006cvh03913 entries for the dates of:

12/20/2006 remand
01/02/2007 remand SC
01/31/2007 memorandum
04/30/2007 je

Raleigh M Striker

Raleigh M Striker

3560 Alvin Rd

Shelby, OH 44875-9458

*Waiting on Judge Peyton
Dan Smith
12/29/08*

Mansfield Municipal Court
Clerk's Computerized Public records

Exhibit #2

Calhoun Kademenos & Childress Co LPA VS. Randy D. Shepherd

Docket for Case Number : 2006CVH03913

Date	Description
	Case filed on : 11/01/2006 Case# : 2006CVH03913
	Caption : Calhoun Kademenos & Childress Co LPA VS. Randy D. Shepherd, Claim : 620.00
	Plaintiff(s) :
	Calhoun Kademenos & Childress Co LPA
	Six West Third St Suite 200, PO Box 268, Mansfield, OH 44901-0268
	Plaintiff Main Attorney :
	James L Childress
	Defendant(s) :
	Randy D Shepherd
	3558 Alvin Road, Shelby, OH 44875
	Judgments:
	None
	Dockets/Activities:
11/06/2006	Payment Receipt No: 02116460 Total Amount \$86.00
	Payer: James L Childress
	Civil Court Costs: \$28.00
	Civil Court Facilities: \$19.00
	Court Computerization: \$10.00
	Legal Fee-Victims Assistance: \$26.00
	Legal Research: \$3.00
	New CVH Case receipt printed
	Civil Summons issued to the defendant Randy D Shepherd
	Initial Court Date:
	Certified mail#: 1 sent to defendant: Randy D. Shepherd 3558 Alvin Road Shelby, OH 44875
11/08/2006	Date Of Service: 11/07/2006 Certified mail
11/30/2006	Answer and CounterClaim Date Filed: 11/30/2006
12/01/2006	Answer and Counterclaim with Proof of Service filed 11/30/06 by Def and fwd to Mag Ofc
	'Answer Request' processed
12/05/2006	Letter from Randy Shepherd accepted as appearance/answer case to clerks
	Judge Jeff Payton Assigned (11/30/06)
12/20/2006	Case to Judge Payton for remand
01/02/2007	Case remand to Mag. Teffner per JE SC 1-29-07 1:20 pm
01/08/2007	Pits reply to counterclaim filed-to mag

01/12/2007	Defs Motion to Dismiss Pltfs Reply to Counterclaim and Defs Motion for Summary Judgment to mag
01/18/2007	Memorandum in Opposition to Motion to Dismiss Reply to Counterclaim and JE Filed 1/17/07 To Mag
01/23/2007	Motion for Amendment to Counter Claim Filed by Def Shepherd 1/23/07 To Mag
01/31/2007	PI Combined Memorandum in Opposition to Def Motion to Amend Counterclaim and Motion for Summary Judgment Filed 1/31/07 To Mag
02/05/2007	Defendants reply to Pltfs Combined Memorandum in opposition to Defs Motion to Amend CC and Motion for Summary Judgment
02/06/2007	Judgment Entry on Motion to Dismiss Reply to Counterclaim and Judgment Entry Denying Defs Motion to Amend his Counterclaim and Defs Motion for Summary Judgment submitted by Atty Childress
02/08/2007	Magistrate order set forth trial 5-14-07 1pm file with Mag. Teffner for further orders on motion to dismiss and summary
02/12/2007	Motion for Default Judgment Filed by Defendant. To Mag.
02/22/2007	JE to Deny Def Motion for Default Judgment Filed 2/22/07 To Mag
03/06/2007	Letter from Defendant Shepherd to Judge Payton Letter from Defendant Shepherd to Judge Ault
03/30/2007	Motion to transfer to Common Pleas Court and Jury Demand filed by Defendant-\$25 due to mag
04/03/2007	Case to Judge Payton for approval of Mag. Report
04/05/2007	Magistrate report set forth: trial order set forth trial 5-14-7 1pm case to clerks for docketing/scanning to be returned -sb
04/09/2007	Motion for transfer to common to Judge Payton
	Trans.before Judgment: \$25.00
	Civil Receipt No: 02127329 Total Amount: \$25.00
	Payer: Defdt: Randy D Shepherd
	Trans before Judgmen receipt printed
04/16/2007	Case to Judge Payton
04/18/2007	Defs Objection to Magistrates Finding of Fact and Conclusion of Law-to Judge
04/30/2007	Unsigned entry/file ret'd to LW, Judge needs changes to the entry, LW w/b made aware of wording needed.
	PL Combined Motion nd Memorandum in Support to Strike Defs Motion to Transfer, Juryd Demand ant to deny defs Objections to the Magistrates Report per Rule 53(E)
05/03/2007	Case to Judge Payton for transfer approval
	signed entry ret'd to LW.
	JE to Transfer to Richland County approved per Judge Payton-case to clerks-sb
05/17/2007	Pltfs Motion to reconsider Order to Transfer and JE to mag
06/06/2007	JE set forth by Judge Payton motion to transfer to Richland County is STAYED. It is further ordered that this matter be set down for hearing before a Magistrate on all open motions before the court. Including motion to transfer to common pleas and the plaintiff's responsive pleadings and motions. Entry to clerks to be returned case file with Magistrate Teffner: Copies mailed by reg. mail to Attorney Medwig and Defendant Randy

	Shepherd.
06/18/2007	Def Motion to Reconsider Order to Stay Judgment Entry Filed by Def 6/18/07 To mag
	Magistrate order set forth: Hearing on all motion 8-20-2007 at 2pm with Magistrate Teffner
08/23/2007	Brief filed by Defendant Randy Shepherd to magistrate
09/12/2007	Affidavit of Disqualification Filed by Def To Mag
	Copy of Affidavit of Disqualification was given to Prob. Dept. front desk person by defendant to route to Judge. Per AD, he indicated that there was a *contact ph.# enclosed, (*did not see a ph# on the paperwork). Copy w/b routed to Judge, per def's request. - mmt
09/17/2007	Magistrate report set forth: hold 14 days for objections pull 10-5-07 : Note: THIS WILL NOT COMPLETE CASE case will be set for trial thereafter
09/27/2007	Objection to Magistrates finding of Fact and Conclusion of Law filed by Def Shepherd-to mag
09/28/2007	Defs Amended Objection to Magistrates Finding of Fact to mag
10/01/2007	Friend of Court Brief filed by Def Shepherd-to mag
	Objection to Magistrates Finding of Fact and Conclusion of Law filed by Def shepherd
10/09/2007	Case to Judge Payton for review of Mag. Decision with objections
10/18/2007	Ptlfs combined Memorandum in support of the Magistrates Rept and Opposition to Defs Objection to Magistrates findings of Fact and Motion to strike Defs Friend of the Court Brief and JE-to mag
10/24/2007	Motion - Default Judgement: \$10.00
	Civil Receipt No: 02142025 Total Amount: \$10.00
	Payer: Defdt: Randy D Shepherd
	Default Judgment receipt printed
10/26/2007	Ruling by Judge Deweese of the Common Pleas Court on Defs Affidavit of Disqualification-AFFIDAVIT DENIED 10/25/07-TO MAG
10/29/2007	Defs Motion to Reconsider Defs Affidavit of Disqualification to Judge Deweese
11/16/2007	Pls Combined Motion to Strike Defs Motion to Reconsider Aff of Disqualification and for Sanctions per Ohio Civil Rule 11 Against Def with JE recd 11/15/07 and fwd to Mag Ofc
12/14/2007	Defendants Motion to Reconsider Disqualification of Judge Payton and Magistrate Teffner Denied per Judge Deweese-copies to Mag Teffner and Judge Payton
12/19/2007	Defs Memorandum in opposition to Judges order on Disqualification filed
01/15/2008	Pls Response to Defs Memorandum in opposition to Judges order on Disqualification filed 1/15/08 to Mag Teffner
01/22/2008	Defs Motion for contempt to Mag office
02/07/2008	CASE PULLED AND ORGANIZED AND BACK TO J. PAYTON W/NOTE REGARDING STATUS OF CASE.
02/21/2008	Letter from Defendant Randy Shepherd to Judge Ault
03/03/2008	Notice of Assignment for Review Hearing on 3/17/08 @ 1:30 pm
	Review Hearing scheduled before: Judge: Jeff Payton Manually Assigned - No Control Number Assigned. On 03/17/2008 @ 01:30 PM
	Notice: AssignmentNoticeDefendant-Civil printed for Calhoun Kademenos &

	Childress Co LPA - P
03/07/2008	Letter from Atty Medwid to Judge Payton
03/10/2008	Defs Motion to Dismiss Status Hearing to Court
04/09/2008	Letter from Defendant Randy Shepherd to clerk Dan Smith
07/10/2008	FILE LOCATION: Case w/b in Judge Payton's Aug. trial drawer w/large sticker ident. it as CIVIL trial. Case w/b returned to Clerk after matter has been heard. - mmt
	New Trial scheduled before: Judge: Jeff Payton Manually Assigned - No Control Number Assigned. On 08/06/2008 @ 09:30 AM
	Notice: AssignmentNoticePlaintiff-Civil printed for James L. Childress - A
08/11/2008	MATTER RESCHEDULED FOR TRIAL AUGUST 20, 2008 @ 1:00 P.M. BEFORE JUDGE PAYTON, COURTROOM NUMBER THREE; NOTICE TO ALL PARTIES
08/20/2008	Pltfs Motion in Limine and Memorandum in support filed 8/19/08 to Judge Payton
10/03/2008	Certify Copy: \$1.00
	Civil Receipt No: 02168181 Total Amount: \$1.00
	Payer: Attny: James L Childress
	Certify Copy receipt printed
11/12/2008	Call rec'd 11-11-08 from Atty. Medwid, checking status of this case. Judge Payton has been made aware of the call.
11/24/2008	Statement of Account submitted by Randy Shepherd
11/26/2008	FINAL JUDGMENT ENTRY FROM TRIAL ON AUGUST 20,2008 BY JUDGE PAYTON
12/05/2008	MOTION TO RECONSIDER OF RANDY SHEPHERD-TO JUDGE PAYTON 12/8/08
12/22/2008	Statement of Account rec'd in mail from R. Shepherd, document has been routed to the Judge for review.
12/24/2008	Plts Motion and Memorandum in Support To Strike Defs Motion to Reconsider recd 12/23/08 and fwd to Mag Ofc
12/26/2008	Request for Records filed by Randy Shepherd-Case is in Judge Payton's possession.
	'Cost Statment' processed
12/29/2008	NOTICE OF APPEAL, DOCKETING STATEMENT AND JUDGMENT ENTRY FILED BY DEF SHEPHERD Civil Receipt No: 02174709 Total Amount: \$91.00
	Notice of Appeal 202: \$91.00
	JE-This matter came on for hearing 12/26/08 to consider issues presented in Defendant's Motion to Reconsider, said Motion is not well taken and the Court hereby denies same.
	Time-Stamped Appeal taken to county on 12/29/08 (08CA334)
	Payer: Defdt: Randy D Shepherd
	Notice of Appeal receipt printed
01/09/2009	Transcript and all original paperwork filed w/Richland County Clerk of Court for Fifth District Court of Appeals
05/04/2009	Furnish Copy: \$3.75
	Civil Receipt No: 02183461 Total Amount: \$3.75
	Payer: Defdt: Randy D Shepherd

07/22/2009	Copy of Court of Appeals Decision recvd from Richland County-case to Mag
07/31/2009	Motion and Memorandum for Leave to File Reply to Counterclaim Instanter Filed by PI Atty 7/31/09 - To Mag
	'Civil Letter' processed
08/04/2009	Pltfs Motion and Memorandum for Leave to file reply to Counterclaim granted and accepts previously submitted reply filed on January 8, 2007 per JE-copies to parties
08/10/2009	Certify Copy: \$2.00
	Forms Money: \$1.50
	Leave to Plead: \$5.00
	Spec Proj2-Gen: \$5.00
	Civil Receipt No: 02190255 Total Amount: \$3.50
	Payer: Defdt: Randy D Shepherd
	Certify Copy receipt printed
	Civil Receipt No: 02190256 Total Amount: \$10.00
	Payer: Attny: James L Childress
	Leave to plead receipt printed
08/17/2009	PER JE: REVIEW OF PLTFS MOTION FOR LEAVE TO FILE REPLY TO COUNTERCLAIM INSTANTER FILED ON JULY 31, 2009 AND JE GRANTING MOTION SIGNED AUGUST 4, 2009 IS VACATED-MATTER SET FOR FURTHER PROCEEDINGS PER JUDGE PAYTON-COPIES TO PARTIES
08/18/2009	Check # 37069 issued to Randy D Shepherd for \$11.00. 2006CVH3913 over-pay refund
08/25/2009	DOCUMENT REC'D VIA US POSTAL SERVICE (OH FIFTH DISTRICT COURT OF APPEALS, RICHLAND CO. OHIO) SUPPLEMENT TO ORIGINAL ACTION. DOCUMENT HAS BEEN ROUTED TO THE JUDGE FOR REVIEW.
08/31/2009	Review Hearing scheduled before: Judge: Jeff Payton Manually Assigned - No Control Number Assigned. On 09/08/2009 @ 09:30 AM
09/04/2009	MEMORANDUM IN OPPOSITON, MEMORANDUM IN OPPOSITON TO REVIEW HEARING REC'D TODAY, VIA REGULAR MAIL. DOCUMENT HAS BEEN ROUTED TO JUDGE FOR REVIEW.
	DEFENDANTS MOTION TO WITHDRAW AMENDED COUNTERCLAIM FILED-TO PAYTON
	Review Hearing scheduled before: Judge: Jeff Payton Manually Assigned - No Control Number Assigned. On 09/08/2009 @ 01:00 PM
09/08/2009	Pltfs Memorandum in Opposition to Defs Motion to Amend counterclaim and Motion and Memorandum for Leave to file repy to counterclaim instanter-to Judge Payton
09/30/2009	Copy of JE Time Stamped 9-30-09 sent Certificate of Mail to Mr. Shepherd
	Copy of JE Time Stamped 9-30-09 Placed in Calhoun, Kademenos, & Childress mail folder
	JUDGMENT ENTRY: MATTER TO BE CERTIFIED TO THE RICHLAND COUNTY COURT OF COMMON PLEAS-TRANSFER BE MADE FORTHWITH PER JUDGE PAYTON
10/02/2009	Case transferred to Richland County Common Pleas Court

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