

IN THE SUPREME COURT OF OHIO

10-0433

State of Ohio Citizen Raleigh M Striker,
Relator-Appellant,

Case No. 2010-0443
On Appeal from the Richland
County Court of Appeals
Fifth Appellate District

V.

Clerk of Court, Daniel F. Smith
Respondent-Appellee.

APPEAL OF RIGHT
Court of Appeals
Case No. 2008CA0336

REPLY BRIEF OF RELATOR-APPELLANT

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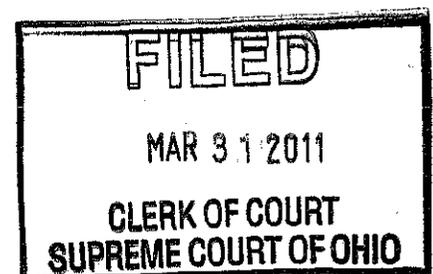


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THE COURT OF APPEALS ERRED IN DENYING RELATOR, AS A PERSON SEEKING PUBLIC RECORDS, AN AWARD OF STATUTORY DAMAGES AND ATTORNEY FEES SINCE HE DELIVERED HIS REQUEST BY HAND TO THE PERSON RESPONSIBLE FOR THE REQUESTED RECORDS, THE REQUEST FAIRLY DESCRIBED THE PUBLIC RECORD AND THE RESPONDENT FAILED TO COMPLY WITH THE DUTIES IMPOSED UPON HIM UNDER THE PUBLIC RECORDS ACT..... 10

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8

CONSTITUTIONAL PROVISIONS; COURT RULES; STATUTES:

ORC 149.43

passim

Now comes Appellant, Raleigh Striker, through counsel, and hereby submits his Reply Brief.

STATEMENT OF THE FACTS

Appellant incorporates the Statement of the Facts in his original Brief filed in this Court as if fully rewritten herein.

ARGUMENT

PROPOSITION OF LAW NO. 1

THE COURT OF APPEALS ERRED IN FINDING THAT RESPONDENT, DANIEL F. SMITH, CLERK OF COURTS, DID NOT VIOLATE THE PROVISIONS OF ORC 149.43 WHEN HE FAILED TO MAKE AVAILABLE THE RECORDS OF THE MANSFIELD MUNICIPAL COURT TO RELATOR, RALEIGH STRIKER, A CITIZEN.

ISSUES PRESENTED FOR REVIEW AND ARGUMENT

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, WHEN NO SUCH AGREEMENT APPEARS ON THE RECORD, RELATOR SPECIFICALLY CONTESTED THE RESPONDENT'S CLAIM THAT THE DOCUMENT DID NOT EXIST AND WHERE THERE IS NO EVIDENCE TO SUPPORT THAT FINDING.

The Appellee, in his Brief, argues, with respect to the request for the 12/20/06 remand entry, as follows:

"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. 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 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." (See Appellee's Brief at p. 2-6).

This argument is disingenuous. The Appellant now, in the face of irrefutable evidence that the 12/20/06 Remand Judgment Entry does exist, attempts to characterize the request of Appellant as simply a request for a “marginal notation” that has no corresponding entry. The Appellee tries to characterize this marginal notation as a wholly separate and independent act and now argues that this entry, although it exists, wasn’t really requested, because the entry wasn’t **journalized** by the clerk until January 1, 2007, and so it couldn’t have been requested by the Appellant in his initial request to the Court. This argument, advanced here for the very first time, is merely an attempt to convolute the real issue by using semantics to avoid the irrefutable fact that this 12/20/06 Remand Entry DID and DOES exist and that it was not “A marginal notation” unaccompanied by any document as previously represented. This position is not only obviously incorrect, but it is reprehensible.

It is Critical to review the AGREED STATEMENT OF FACTS filed in the Court of Appeals in considering this matter. This Statement was Agreed upon by both parties and is therefore the basis upon which any factual issue must be resolved.

The Agreed Statement of Facts filed in the Court of Appeals on on August 31, 2009 provides in relevant part:

On December 4, 2008, Relator went to the Office of Clerk of Courts of the Mansfield Municipal Court to acquire documents filed with the Clerk of Courts in Case 2006 CVH 03913 captioned “Calhoun, Kademenos and Childress, Co., LPA vs. Randy Shepherd” (herein called the Shepherd file). . . . Thereafter, on Monday December 29, 2008, he presented a written request for documents from the Shepherd file, specifically:

copies of entries for the dates of:

“12/20/2006, remand; 1/02/07 remand SC; 1/31/07 memorandum; 4/30/07

JE.”

On December 30, 2008, the Relator filed the action in Mandamus in the Court of Appeals, requesting that the Court issue an order that the Respondent comply with the request for public records filed by Relator and that Respondent comply in all respects with the Ohio Public Records Act, and for his costs and expenses, including attorney fees, incurred in his attempt to obtain the records requested and force compliance with the Ohio Public Records Act by the Clerk of Courts of the Mansfield Municipal Court, Respondent, Daniel Smith. **Three of the four documents requested were provided to Relator on January 20, 2009.**(emphasis added)(See Agreed Statement of Facts). It is clear from the plain language of the Agreed Statement of Facts that the Appellant Requested “copies of **entries for the dates of 12/20/06 remand and 1/02/07 remand.**” Nowhere does this agreed statement either expressly or impliedly state that the request was only for the **docketing entry** noted on 12/20/06 for the remand. Specifically the corresponding **entry** for that date was requested. It is illogical to argue that he was requesting only the marginal notation in the docket for the items requested, since corresponding documents were provided for the other three marginal notations referencing entries, but no document was provided for the 12/20/06 date. And in Fact, **admittedly, an entry does exist.** A remand Entry, dated 12/20/06, was drafted and signed by Judge Payton on that date. It was never provided to the Appellant. In fact, it was and has always been represented by the Appellee that no such document exists. However, it is clear from the Agreed Statement of Facts that the Entry was specifically requested. To now argue that the existence of the entry can be ignored by some legal fiction that the Entry was not journalized until January 1, 2007 is absolutely preposterous.

Even ignoring this argument, however, the Agreed Statement of Facts also provides a request for the Entry of 1/02/07 Remand. It could not be more clear that, even assuming the Court chose to treat the 12/20/06 Remand by some legal fiction, as merely a marginal notation with no corresponding entry, that the Entry had to be clearly requested by the request for the Entry of 1/02/07 remand. The Appellee attempts to discount this fact by arguing:

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".

(See Appellee's Brief at 6). Again, this argument is an attempt to avoid the clear error in the Court of Appeals finding that the parties "the parties agree that the fourth item is not a public record subject to disclosure." **There was never such an agreement, and hence, that fact alone constitutes error on the part of the Court of Appeals.**

The Respondent does not deny that the records requested by Relator were public records within the meaning of the statute, nor that he failed to produce the records upon requests made during normal business hours. However, Respondent denied the existence of the fourth record, 12/20/06 Remand, throughout the course of these proceedings. Relator never doubted the existence of the record, and never conceded that it did not exist. However, despite that fact, the Court of Appeals, in its Judgment Entry at page 2, specifically found the parties "agree that the fourth item is not a public record subject to disclosure". This is a fact wholly unsupported by the record. Despite the attempt of

Respondent to get an agreed statement on this fact, Relator did not do so, and therefore it was not included in the agreed statement

However, even ignoring that fact, the argument that this Remand Entry, dated 12/20/06, file-stamped January 1, 2006 (suspiciously a date when the court was closed) and Journalized on January 2, 2007 can somehow be excused from production by arguing that the Appellant should be excused for not asking for clarification of which record was requested since a mandamus action had to be filed to even get a response is even more disingenuous. If, as Appellee argues, it was the duty, upon filing of the mandamus, to “mitigate the situation and comply to the best of its ability” certainly it would be incumbent upon the clerk to request any clarification at that time to make certain that all of the requested documents were produced. But this was not the approach taken—rather, the clerk denied the existence of the Judgment Entry Remanding the case dated 12/20/06. It is further noteworthy that a document was produced relating to the 1/2/007 request, but it was an entry setting the matter before Magistrate Teffner pursuant to the Remand Entry of 12/20/06. So, again, the attempt to “disappear” the Remand dated 12/20/06 by convoluting it with some imaginary “dating process” of journalization, is contemptible. It exists, It should have been produced, and it was not! It is interesting to note, also, that the docket of this case, in itself, is not trustworthy. It is clear that modifications have been made to the docket in an attempt to either muddy the issues or somehow clear up errors or perceived errors. Attached hereto are two dockets from the underlying case—one printed in December 29 of 2008, and one submitted by the Appellee as Respondent exhibit A in Case 2008ca0334 to the Answer filed January 23, 2009. It is noteworthy that the notation “per JE” was added sometime between 12/29/2008 and 01/14/2009. It

is unclear why such a notation would be added but it certainly raises suspicion regarding the docketing of records and the docket itself in this case, only reinforcing the problematic nature of the next argument advanced by the Appellee.

The final argument advanced by the Appellee is 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 hands of the Relator? The answer is that he should not.”(See Appellee’s Brief at p. 6).

First, it is no excuse to the fulfillment of a request for public records that the requestor may already be in possession of a copy. But perhaps more important, the request for a copy of the document on file with the Court would have allowed the Appellant to compare it with a copy which was discovered by accident to have been filed in another case in this Court. Given the many discrepancies in the records and dockets in this case there was and is a clear record of alteration of the records. Absent the production of the Clerk’s copy of this document it would be impossible to compare it with the document discovered elsewhere by Appellant to determine whether any tampering existed. From the rubber stamped date on the document of January 1, a date when the court was closed, to the claim that the document didn’t “exist” until it was journalized on January 2, to the clear evidence of changes to the docket related to this entry, to the the copy of Relator’s Exhibit A, to his Motion to Supplement, showing a rubber stamp in lieu of a partially obliterated clerk’s time-stamp (see Appendix at 3), all as set forth herein, the Clerk can not excuse its duty to produce a record requested by a citizen simply because he happened upon a copy of it somewhere else, and thus deny that citizen to inspect the actual documents on file in the Clerk of Court’s office in that case for purposes of determining their accuracy. Indeed, there is no insurance that the copy that the Appellant had in his possession at the time the Mandamus was filed was even an accurate copy of what was filed with the Clerk. Appellant had located a copy of this Entry, But he could not even **prove its existence** until it was discovered to

be filed in this Court, and thus had some evidence that it was in the possession of the Clerk and had been **filed as part of a court record**, all as set forth in the Appellant's Brief. Appellee's argument that since some copy of this entry had been found through other means by Appellant his duty to produce it was excused is not only a weak and baseless argument, but it would defeat the entire purpose of the public records act --to ensure a policy of open government.

The Court of Appeals erred in finding that the parties agreed that the fourth document was not a public record subject to disclosure was error, and that error can not be deemed harmless for all of the reasons set forth in the Appellant's Brief and in the Reply Brief herein. This Court should reverse the decision of the Court of Appeals.

WHETHER A CLERK OF COURT MAY REFUSE A REQUEST FOR COURT RECORDS MADE DURING NORMAL BUSINESS HOURS FOR A PROLONGED PERIOD OF TIME BASED UPON A REPRESENTATION THAT THE CASE FILE IS WITH THE JUDGE AND THEREFORE NOT AVAILABLE TO THE CLERK.

In response to this issue, the Appellee argues as follows:

"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 unilaterally 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. . .

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."(See Appellee's Brief at p. 8)

Pleadings filed with a court are public records and any exceptions to disclosure under the Public Records Act, RC § 149.43 must to be strictly construed against a public-records custodian, who bears the burden of establishing the applicability of an exception. *State ex rel. Physicians Comm. for Responsible Med. v. Bd. of Trs. of Ohio State Univ., 108 Ohio St. 3d 288, 843 N.E. 2d 174, 2006 Ohio LEXIS 633, 2006 Ohio 903,(2006).*

Public records are the people's records and the officials in whose custody they happen to be are merely trustees for the people and, therefore, where an entity fails to produce records that are requested, claiming exemption, the burden of proof is on that entity to prove that the exemption applies and all doubts are to be resolved in favor of disclosure. *Gilbert v. County of Summit*, 2003 Ohio App. LEXIS 5337, 2003 Ohio 6012, (2003), affirmed by 104 Ohio St. 3d 660, 2004 Ohio 7108, 821 N.E.2d 564, 2004 Ohio LEXIS 3068 (2004).

The argument that the Clerk had no obligation to go into the Judge's office and request the file of the Judge so that he could make copies to comply with a public records request is insupportable. There is no evidence that the Clerk was ordered not to ask the Judge to make copies of the file, nor that the Judge ordered that no copies be made. Rather, the Clerk simply refused to go to the Judge and request to make copies of the Court's record, of which the Clerk is the custodian. The claim of a "subservient" relationship to the Judge is no exemption to compliance with the public records act. It is inconceivable that a Clerk is prohibited from viewing its own records simply because the judge is reviewing the case file. How else would a Clerk have access to file documents, docket entries, set hearings, schedule deadlines and answer questions regarding the case or conduct any myriad of activities required to manage and maintain the case if this were the rule?

The Relator discovered, wholly by accident, that this document was attached to a pleading filed by Attorney for Respondent, in an unrelated case on August 1, 2008 and the Relator's public records request was made in December of 2008, so clearly this document was in existence at the time the request was made and was available to

Respondent and his counsel for the purposes of making a copy to file in the Ohio Supreme Court case. This begs the question, why was the file available to the Clerk for some purposes, but not for the purpose of responding to Appellant's public records request?

This argument is meritless and does not meet the threshold requirement that the custodian bears the burden to establish an exemption under the public records act.

The Appellant has not met the burden of proving that an exemption existed or applied in this case.

WHETHER A CLERK OF COURT MAY ARBITRARILY CONSIDER A REQUEST FOR PUBLIC RECORDS TO BE WITHDRAWN, AFTER SAID REQUEST IS MADE IN WRITING, WHERE THE REQUEST WAS DENIED AND THE WRITTEN REQUEST WAS RETURNED TO THE REQUESTING PARTY, WITHOUT ADVISING THE REQUESTING PARTY THAT BY TAKING THE WRITTEN REQUEST RETURNED TO HIM HIS REQUEST WOULD BE CONSIDERED WITHDRAWN.

WHETHER PROVISION OF PUBLIC RECORDS BY THE CLERK OF COURT MORE THAN SIX WEEKS AFTER AN ORAL REQUEST FOR THOSE DOCUMENTS WAS MADE, AND MORE THAN THREE WEEKS AFTER A WRITTEN REQUEST FOR THOSE DOCUMENTS WAS MADE AND ONLY AFTER AN ACTION IN MANDAMUS WAS FILED, IS "WITHIN A REASONABLE PERIOD OF TIME" AS PROVIDED BY ORC 149.43.

Appellant reiterates and relies upon the arguments set forth in his Brief filed with this Court and for those reasons submits that the The Court of Appeals erred in its findings in both respects and this Court should reverse the Court of Appeals decision.

PROPOSITION OF LAW NO. II

THE COURT OF APPEALS ERRED IN DENYING RELATOR, AS A PERSON SEEKING PUBLIC RECORDS, AN AWARD OF STATUTORY DAMAGES AND ATTORNEY FEES SINCE HE DELIVERED HIS REQUEST BY HAND TO THE PERSON RESPONSIBLE FOR THE REQUESTED RECORDS, THE REQUEST FAIRLY DESCRIBED THE PUBLIC RECORD AND THE RESPONDENT FAILED TO COMPLY WITH THE DUTIES IMPOSED UPON HIM UNDER THE PUBLIC RECORDS ACT.

ISSUES PRESENTED FOR REVIEW AND ARGUMENT

WHETHER A PERSON SEEKING PUBLIC RECORDS IS ENTITLED TO AN AWARD OF STATUTORY DAMAGES AND ATTORNEY FEES WHEN ONLY A PORTION OF THE PUBLIC RECORDS ARE PROVIDED AND ONLY AFTER AN ACTION IN MANDAMUS IS FILED.

Appellant reiterates and relies upon the arguments set forth in his Brief filed with this Court and for those reasons submits that the The Court of Appeals erred in its findings in both respects and this Court should reverse the Court of Appeals decision.

CONCLUSION

The Relator submits that the Court of Appeals erred in finding that the Respondent did not violate the Ohio Public Records act, and therefore Relator requests that this Court reverse the decision of the Court of Appeals and find that Respondent has failed to comply with RC 149.43 and that Relator is entitled to an award statutory damages, attorney fees and costs pursuant to R.C. 149.43 and direct Relator's counsel to submit a bill and documentation in support of the award of attorney fees and cost.

Respectfully Submitted,



Lori Ann McGinnis-0060029
1209 East Main Street
Ashland, OH 44805
(419) 606-1278
Counsel for Relator-Appellant

CERTIFICATE OF SERVICE

Counsel for Relator hereby certifies that a true copy of the foregoing was sent by ordinary U.S. mail this 31 day of March, 2011 to David L. Remy, Law Director, City of Mansfield, 30 North Diamond Street, Mansfield, OH 44902, counsel for Respondent



Lori Ann McGinnis-0060029

IN THE SUPREME COURT OF OHIO

State of Ohio Citizen Raleigh M Striker,
Relator-Appellant,

V.

Clerk of Court, Daniel F. Smith
Respondent-Appellee.

Case No. 2010-0443
On Appeal from the Richland
County Court of Appeals
Fifth Appellate District

APPEAL OF RIGHT
Court of Appeals
Case No. 2008CA0336

APPENDIX

MANSFIELD MUNICIPAL COURT

Civil Docket

2006CVH03913

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

2006 DEC 20 PM 3:32
FILED
CLEVELAND OH
08 CA334

Caption : Calhoun Kademenos & Childress Co LPA VS. Randy D. Shepherd, Claim : 620.00

Case Filed On : 11/1/2006 Case# : 2006CVH03913

Plaintiff(s) :

Calhoun Kademenos & Childress Co LPA

Six West Third St Suite 200, PO Box 268 Mansfield, OH 44901-0268

Attorney(s) :

Childress, James L

Defendant(s) :

Randy D Shepherd

3558 Alvin Road Shelby, OH 44875

Attorney Info :

Childress, James L. 6 West Third St Suite 200 Mansfield, OH 44901 0268 419-524-6011 P O Box 268

Date

Description

11/06/2006 Initial Court Date:

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

Certified mail#: 1 sent to defendant:

Randy D. Shepherd

3558 Alvin Road

Shelby, OH 44875

Civil Summons issued to the defendant Randy D Shepherd

11/08/2006 Date Of Service: 11/07/2006 Certified mail

11/30/2006 Answer Date Filed: 11/07/2006

Answer Date Filed: 11/30/2006



- Judge Jeff Payton assigned
- 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
- ① 12/20/2006 Case to Judge Payton for remand
- ② 01/02/2007 Case remand to Mag. Teffner SC 1-29-07 1:20 pm
- 01/08/2007 Plts 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 Pl Combined Memorandum in Opposition to Def Motion to Amend Counterclaim and Motion for Summary Judgment Filed 1/31/07 To Mag
- 02/06/2007 JE Denying Def Motion to Amend his Counterclaim and Motion for Summary Judgment filed by Plaintiff's Attorney
- 02/09/2007 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
- 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 to transfer to Common Pleas Court and Jury Demand filed by Defendant-to mag
Civil Receipt No: 02127329 Total Amount: \$25.00
Payer: Defdt: Randy D Shepherd
Trans.before Judgment: \$25.00
Trans before Judgmen receipt printed
Motion for transfer to common to Judge Payton
- 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
Def Motion to Transfer, Jury Demand and to Deny Def Objections to Mag Reprot Per Rule 53 E and JE Filed 4/30/07 To Mag
- 05/03/2007 Case to Judge Payton for transfer approval
signed entry ret'd to LW.
Transfer to Richland County per Judge Payton case to clerks-sb
- 05/17/2007 Pltfs Motion to reconsider Order to Transfer 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. Defs Motion to Transfer action to Richland County Common Pleas Court is Stayed.-sb
- 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 Objection to Magistrates finding of Fact and Conclusion of Law and Brief filed by Def Shepherd-to mag office
- 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-to mag
- 10/24/2007 Civil Receipt No: 02142025 Total Amount: \$10.00
Payer: Defdt: Randy D Shepherd
Motion - Default Judgement: \$10.00
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 Order on Defendant Affidavit of disqualification by Judge Deweese of Common Pleas Cort to Judge Payton copy of Magistrate Teffner
Def's 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.

03/03/2008 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

03/10/2008 Defs Motion to Dismiss Status Hearing to Court

07/10/2008 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

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

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 Civil Receipt No: 02168181 Total Amount: \$1.00

Payer: Attny: James L Childress

Certify Copy: \$1.00

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.

11/26/2008 FINAL JUDGMENT ENTRY FROM TRIAL ON AUGUST 20,2008 BY JUDGE PAYTON

12/08/2008 MOTION TO RECONSIDER OF RANDY SHEPHERD-TO JUDGE PAYTON

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.

12/29/2008 Civil Receipt No: 02174709 Total Amount: \$91.00

Payer: Defdt: Randy D Shepherd

Notice of Appeal 202: \$91.00

Notice of Appeal receipt printed

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.

Mansfield Municipal Court
Clerk's Computerized Public records **RESPONDENT EXHIBIT A**
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)
① 12/20/2006	Case to Judge Payton for remand
② 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

http://docket.webxsol.com/mansfield/Last.jsp?Case_id=2006CVH03913&type=C&selection=D

1/14/2009





FILED

DEC 29 2008

MUNICIPAL COURT
MANSFIELD, OHIO
DANIEL F. SMITH, CLERK

← handwritten change from "9" to "8"

December 15, 2008

Mansfield Municipal Court
Small Claims Division
30 North Diamond Street
Mansfield, Ohio 44902

Case Number 2008CV103838

Mr. Daniel F. Smith, Clerk, Mansfield Municipal Court,

This will serve as our answer to the complaint filed by Mr. Raleigh Striker against ELM Transport, LLC in the amount of \$1,344.25 for costs associated with him defending his position regarding unemployment compensation with the State of Ohio.

Mr. Striker was terminated for cause on or about April 30, 2008 with regard to his discourteous and unprofessional actions toward company customers. Mr. Striker had been counseled with regard to his actions and unprofessional conduct while interacting with company customers on two other occasions and was warned that if future occurrences took place it would result in his termination. His disruptive behavior with our customers and his supervisors could no longer be tolerated as it impaired our ability to effectively serve the needs of our customers, our business and the values in which we strive to achieve everyday.

Based on the fact Mr. Striker was terminated for cause under the State of Ohio and its unemployment compensation code state,

"An individual is not eligible for benefits if the individual was discharged for just cause in connection with work. The individual will remain ineligible until the individual obtains covered employment, works six weeks, and earns the required requalifying amount. 4141.29 (D) (2) (a), 4141.29 (G) ORC."

This is the standard position of this company with regard to unemployment benefits for employees in the State of Ohio whom are terminated for cause.

Upon this company position Mr. Striker was notified his unemployment benefits were denied by the State of Ohio and that he had the option to appeal their decision. Mr. Striker in fact did appeal the decision and sought legal representation on his own accord as it is not a requirement for the appeal process.

↑ Original file-stamp obliterated only traces left

