ORIGINAL

The Supreme Court of Ohio

Gerald O. Strothers Jr.
14019 Northfield Ave
East Cleveland, OH 44112
(216) 324-4783

Appellant, Relator – Pro Se,

vs.

Mayor of East Cleveland Ohio,
Gary Norton Jr.,
c/o Law Department
Ronald K. Riley
Deborah Gooden Blade
14340 Euclid Ave.
East Cleveland, OH 44112
(216) 681-2393
(216) 681-2199 (FAX)

Appellee, Respondent

Notice of Appeal 11-1483

Appeal from

Original Action (Mandamus)

8th District Court of Appeals

Cuyahoga County, Ohio

Case Number: **CA 10 096147**

Notice of Appeal of Appellant Gerald O. Strothers Jr.

Appellant Gerald O. Strothers Jr. Hereby gives notice of appeal to the Supreme Court of Ohio from the judgment of the Cuyahoga County Court of Appeals, Eighth Appellate District, entered in Court of Appeals case No **CA 10 096147** on July 26, 2011.

This case raises a substantial constitutional question and is one of great general interest to media and or public. It also severely impacts the provisions of Ohio Revised Code 149.43. The briefs will go into full detail how this case is in conflict with previous decisions and standing law.

RECEIVED
AUG 30 2011
CLERK OF COURT
SUPREME COURT OF OHIO

FILED
AUG 30 2011
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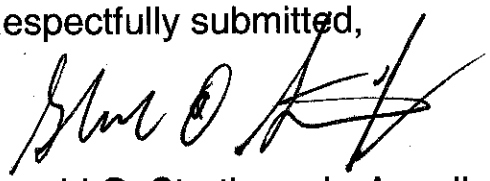
SUPREME COURT OF OHIO

Respectfully submitted,

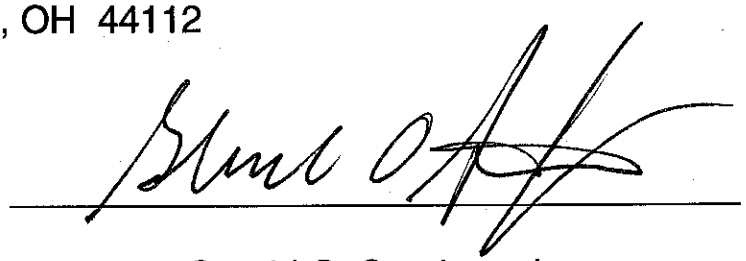


Gerald O. Strothers Jr. Appellant, Pro Se

Certificate of Service

I certify that a copy of this Notice of Appeal was sent by Certified United States Mail to The Honorable Mayor of East Cleveland Ohio, Appellee, Respondent. Certified Mail: 7008 3230 0002 3976 5993

Gary Norton Jr.,
c/o Law Department
Ronald K. Riley
Deborah Gooden Blade
14340 Euclid Ave.
East Cleveland, OH 44112



Gerald O. Strothers Jr.

Appellant / Relator – Pro Se

August 26, 2011

JUL 26 2011

Court of Appeals of Ohio, Eighth District

County of Cuyahoga
Gerald E. Fuerst, Clerk of Courts

GERALD O. STROTHERS, JR.

Relator

COA NO.
96147

ORIGINAL ACTION

-vs-

MAYOR OF E. CLEVE. OH.GARY NORTON,JR

Respondent

MOTION NO. 446174

Date 07/26/11

Journal Entry

WRIT DENIED; STATUTORY DAMAGES AWARDED.

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ALL RIGHTS - COSTS TAXED

FILED AND JOURNALIZED
PER APP.R. 22(C)

JUL 26 2011

GERALD E. FUERST
CLERK OF THE COURT OF APPEALS
BY [signature] DEP.

Adm. Judge, MARY EILEEN KILBANE, Concurs

Judge MELODY J. STEWART,
CONCURS AND DISSENTS IN PART

Judge FRANK D. CELEBREZZE,JR.

JUL 26 2011

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 96147

GERALD O. STROTHERS, JR.

RELATOR

vs.

MAYOR OF EAST CLEVELAND, OHIO
GARY NORTON, JR.

RESPONDENT

JUDGMENT:
WRIT DENIED;
STATUTORY DAMAGES AWARDED

Writ of Mandamus
Motion No. 440450
Order No. 446174

RELEASE DATE: July 26, 2011

FOR RELATOR

Gerald O. Strothers, Jr., pro se
14019 Northfield Avenue
East Cleveland, Ohio 44112

ATTORNEY FOR RESPONDENT

Ronald K. Riley
Director of Law
City of East Cleveland
14340 Euclid Avenue
East Cleveland, Ohio 44112

COPIES MAILED TO COUNSEL FOR
ALL PARTIES.-COSTS TAXED

FRANK D. CELEBREZZE, JR., J.:

Relator, Gerald O. Strothers, Jr., requests that this court compel respondent, Gary Norton, Jr., Mayor of East Cleveland ("the mayor"), "to provide access to review, inspect and copy 'at cost'" various records. Complaint, at 4. Strothers also requests that this court award statutory damages for the delay in making the records available to him. For the reasons stated below, we deny his request for relief in mandamus and enter judgment for statutory damages in the amount of $1,000.

Strothers sent a letter to the mayor requesting records relating to the operation of the East Cleveland jail including: food service; laundry service; financial records; purchases of jail bedding; plumbing repairs; medical care and dispensing medications; extermination contracts; jail policy regarding various prisoner rights and treatment of prisoners; and state and county inspection reports. The letter was dated December 1, 2010. The certified mail return receipt indicates that it was received on December 2, 2010.

Strothers filed the complaint in this action on December 9, 2010. On December 27, 2010, the mayor filed a "response" in which he argues that he had not been provided a reasonable opportunity to respond to the request for records when Strothers filed this action. Also on December 27, Strothers filed a motion for summary judgment.

On April 13, 2011, this court ordered the parties to each file an inventory listing the category of records requested and whether and to what extent respondent had made the records available. Each party responded.

In his inventory, Strothers attempts to expand the scope of this action to include records regarding East Cleveland's use of traffic cameras. He requested these records in a December 21, 2010 letter to the mayor and members of the city council. Although this letter is attached to his motion for summary judgment, Strothers has not moved to amend his complaint to include this additional request for records, which occurred after the filing of this action on December 9, 2010. See Civ.R. 15. As a consequence, we hold that the scope of this action is limited to the request for records in the December 1, 2010 letter.

Strothers acknowledges that he has received records. He contends, however, that he has not received all or the correct records. We note, however, that none of these representations is made in an affidavit or other material of evidentiary quality.

By contrast, the mayor filed a "supplemental response," which is supported by the affidavit of Brenda L. Blanks, Executive Assistant/Paralegal to the city's law director. Blanks avers that she was responsible for responding to the request for records.

In her affidavit, Blanks states that she mailed records to Strothers. The accompanying copy of a certified mail receipt reflects that, although the records were sent to the same address that Strothers used in filing this action, the item was returned "unclaimed." She also avers that, although she and the law director have invited Strothers by telephone and by letter to schedule an appointment to examine records, he has not done so.

Blanks also refers to respondent's inventory of records made available to Strothers. The inventory accompanies the "supplemental response" and reflects that records were transmitted to Strothers primarily on December 21, 2010 but also on January 13, 18 and 25, 2011.

R.C. 149.43 establishes the standards for making public records available. "That statute specifies two primary means of providing access to public records: (1) making the records 'available for inspection to any person at all reasonable times during regular business hours' and (2) making 'copies of the requested record[s] available at cost and within a reasonable time.' R.C. 149.43(B)(1)." *State ex rel. Patton v. Rhodes*, __ Ohio St.3d __, 2011-Ohio-3093, __ N.E.2d __, at ¶15.

As noted above, Blanks represents that the mayor has provided to Strothers either copies of the records he requested or the opportunity to inspect the records during regular business hours. She also avers that Strothers has not

acted on the opportunities to inspect records and that copies of records that were mailed to him were returned "unclaimed." Strothers has not submitted any material of evidentiary quality to rebut the averments by Blanks.

The evidence in the record in this action indicates that the mayor has made the records available to Strothers by providing him copies as well as the opportunity to inspect the records. We must conclude, therefore, that respondent has discharged his duty to make the records available to Strothers. As a consequence, we deny the request for relief in mandamus as moot.

Strothers has also requested that this court award statutory damages.

"If a requestor transmits a written request by hand delivery or certified mail to inspect or receive copies of any public record in a manner that fairly describes the public record or class of public records to the public office or person responsible for the requested public records, except as otherwise provided in this section, the requestor shall be entitled to recover the amount of statutory damages set forth in this division if a court determines that the public office or the person responsible for public records failed to comply with an obligation in accordance with division (B) of this section." R.C. 149.43(C)(1).

Strothers contends that the mayor did not timely make the records available. R.C. 149.43(B)(1) provides, in part: "a public office or person

responsible for public records shall make copies of the requested public record available at cost and within a reasonable period of time."

The mayor received the request for records on December 2, 2010. Strothers filed this action on December 9. The first delivery of records was on December 21. Additional transmittals of records occurred on January 13, 18 and 25, 2011. In a letter from the law director dated February 11, 2011, Strothers was advised to contact Blanks "to arrange a day for any future visits to review, inspect and/or copy records." Blanks Affidavit, at 10.

The record in this case, therefore, reflects that the mayor did not fully respond to the public records request by Strothers for at least seven weeks after receipt of the request and more than a month after Strothers commenced this action. Strothers contends that the mayor did not make the records available "within a reasonable period of time" as required by R.C. 149.43(B)(1).

In *State ex rel. Bardwell v. Rocky River Police Dept.*, Cuyahoga App. No. 91022, 2009-Ohio-727, the relator hand-delivered a public records request on January 18, 2008. The respondents transmitted records between February 7 and March 28, 2008. We observed that 45 days (32 business days) elapsed between the filing of the action in mandamus and the transmittal of the last record. As a consequence, we entered judgment for the maximum amount of statutory damages — $1,000.

county offices tasked with monitoring jail conditions; and jail policies relating to prisoner treatment, medical care, and discipline encompassing prisoner control by non-lethal means or confinement with handcuffs or chains.

Any rational application of the reasonable time standard set forth in R.C. 149.43(B)(1) would show that the records request in this case was far more onerous than that made in *Bardwell*. Unlike the two-month time period for which records were sought in *Bardwell*, Strothers sought, without time limitation, virtually every record documenting the operation of the East Cleveland jail. Indeed, Strothers himself acknowledged in the records request that "I realize that this is a large request of documents * * *." We might also acknowledge that Strothers made his records request toward the end of the year and approaching the Christmas and New Year holidays when it could reasonably be presumed that offices were understaffed. But despite acknowledging that he requested a large number of documents, Strothers filed this complaint in mandamus just eight days after the city received his request. These facts make Strothers less a good-faith victim of delay in producing public records and more an opportunist seeking to manipulate the statutory damages provisions of the public records law. Given the circumstances described, I would find that the city's production of all requested documents within 47 days was certainly accomplished within a reasonable period of time.