

ORIGINAL

IN THE SUPREME COURT OF OHIO

State of Ohio *ex rel.* Woodrow Fox, *et al.* :
: Relators, :
: v. :
Gary Walters, *et al.*, :
Respondents. :

Case No. 13-0364

RESPONDENT'S RESPONSE TO RELATOR'S MOTION TO CONSOLIDATE AND
REQUEST FOR STAY OF THE PROCEEDINGS

Kenneth Oswalt, Reg # 0037208
Licking County Prosecutor
Amy Brown Thompson, Reg. # 0070511
Designated Counsel of Record
20 South Second Street, 4th Floor
Newark, Ohio 43055
Phone: (740) 670-5255
Fax: (740) 670-5241
athompson@lcounty.com

Counsel for Respondents

Kendra Carpenter, Reg # 0074219
Sprankle Carpenter, LLC
P.O. Box 14293
Columbus, OH 43214
Phone and Fax: (614) 310-4135
KCarpenter@SprankleCarpenter.com

Counsel for Relators

FILED
MAR 25 2013
CLERK OF COURT
SUPREME COURT OF OHIO

RESPONSE TO MOTION TO CONSOLIDATE

Now comes the Respondent, by and through counsel, and respectfully responds to the Relator's Motion to Consolidate, filed previously herein on March 15, 2013 to consolidate this case with *State ex rel. Sylvester v. Neal*, Supreme Court Case Number 2012-1742 which was filed herein on October 15, 2012. Anthony Sylvester, a bail bondsman, is seeking a writ of mandamus against Tim Neal, the Wayne County Clerk of Courts, to compel him to accept surety bonds when a 10% cash deposit bond has been ordered under Ohio Crim.R. 46(A)(2). Neal filed a Motion to Dismiss and the Court, in response to the pleadings, issued an alternative writ setting a briefing schedule.

While Respondent agrees that both cases contain common issues and parties that would support consolidation, it is the Respondent's position that judicial economy would be best served by this Court staying *State ex rel. Fox v. Walters, et al.*, for the reason that a ruling on *Sylvester* will be dispositive to *Fox* as both cases are litigating essentially identical facts and legal issues.

A. Rules and caselaw governing consolidation

Ohio Civil Rule 42(A) provides:

“When actions involving a common question of law or fact are pending before a Court, that court after a hearing may order a joint hearing or trial of any or all the matters in issue in the actions; it may order some or all of the actions consolidated; *and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.*” (emphasis added)

Prior to consolidating causes of action under this rule, a trial court must be able to answer two questions in the affirmative: Is there enough commonality of issues between the cases **and** are the parties substantially the same? *Waterman v. Kitrick*, 60 Ohio App.3d 7 at 14 citing *Miller v. Beard* (App. 1955), 73 O.O. 2d 10, 136 N.E.2d 366. Even if those questions are answered affirmatively, then the court must determine whether a consolidation of the causes of action will

truly serve the best interests of judicial economy. (“The obvious purpose of Rule 42(A) is for convenience of trial, for preventing multiplicity of actions, and for the saving of costs.” Civ.R. 42(A), Staff Notes (1970) referring to Civ.R. 42(A).)

Here, there is no question that the legal issues are essentially identical as the bondsmen in both suits are seeking a writ of mandamus to compel two different counties, through their clerks of courts and judiciary, to accept surety bonds in lieu of having to post 10% cash deposit bonds, issued under Ohio Crim. R. 46(A)(2), to secure the release of defendants. As the legal issues are the same in both cases, the issues at hand are common to all of parties.

The second question is whether the parties are “substantially the same”? In *Sylvester*, a bail bondsman sued the Wayne County Clerk of Court while in *Fox*, a different bail bondsman has sued the Licking County Clerk of Court along with both Licking County Common Pleas Court judges. While the parties are not “substantially the same” personally, they are “substantially the same” professionally as they are the individuals who would be responsible for posting and accepting surety bonds and cash deposits, respectively. In light of this, the parties should be considered “substantially the same” for consolidation purposes.

B. Will consolidation promote judicial economy?

However, even if the legal issues/facts and the parties are similar enough to warrant consolidation, the larger question is whether consolidation would promote the interest of judicial economy by saving the court duplicative filings, expense, and time? Even if the cases are consolidated pursuant to Civ.R. 42(A), they are not merged into a single cause of action but still maintain their individual identities and procedure. *Transcon Builders, Inc. v. City of Lorain*, (1976) 49 Ohio App. 2d 145, 359 N.E. 2d 715.

As the cases are at different points procedurally, consolidation is not going to prevent the filing of duplicative pleadings as the parties in *Fox* are going to be filing essentially the same responsive pleadings that have already been filed in *Sylvester*. The Court, after reviewing the pleadings filed in *Sylvester*, has already issued an alternative writ setting a briefing schedule that will conclude this week. Therefore, it is highly unlikely, with *Sylvester* already pending in the Supreme Court and both cases encompassing the same issues, the Court would rule differently in *Fox* and not issue an alternative writ as well.

In order to avoid the duplicity of filings, expense, and time, the Respondent moves this Court to stay the *Fox* case until the *Sylvester* case is complete. Courts have the power to stay proceedings pending resolution of potentially dispositive developments. *Guerriero v. Department of Rehabilitation and Correction*, 2002 WL 311606576 (Ohio App. 11 Dist.) citing *State v. Hochhausler* (1996), 76 Ohio St.3d 455, 464, 668 N.E.2d 457. Courts derive this power from their authority to control their own dockets. *Id.* Among the factors that are to be considered when determining whether a stay would be appropriate is the “efficiency and judicial economy that results from staying matters pending resolution of potentially dispositive developments”. *Id.* citing *Zellner v. Bd. of Ed. Of Cincinnati* (1973), 34 Ohio St.2d 199, 202, 297 N.E.2d 528. This is in line with the last clause under Civ.R. 42(A) which permits a trial court to issue orders that prevent “unnecessary costs or delay”.

The ultimate issue in both *Sylvester* and *Fox* is whether a court, through its clerk, must accept a surety bond in lieu of a cash deposit under Ohio Crim.R. 46(A)(2). Due to *Sylvester* being further along procedurally, the Court will rule on that case prior to *Fox*. Regardless of how the Court rules on *Sylvester*, it will be dispositive to *Fox* as the parties in both are arguing the same line of cases in support of their respective positions. To prevent the filing of multiple

pleadings and the imposition of unnecessary costs and time, the Court should stay the proceedings in *Fox* until *Sylvester* is decided.

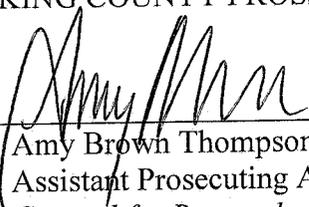
Conclusion

In conclusion, while Respondent does not oppose a consolidation of the cases based on the commonality of issues and parties, the Respondent respectfully requests that the Court stay the proceedings in this case until *State ex rel. Sylvester v. Neal* is decided.

Respectfully submitted,

KENNETH W. OSWALT
LICKING COUNTY PROSECUTOR

By



Amy Brown Thompson, Reg. # 0070511
Assistant Prosecuting Attorney
Counsel for Respondents

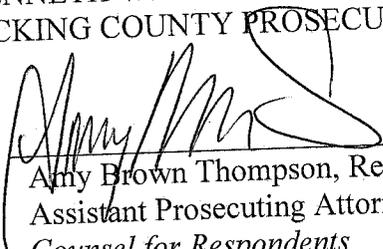
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing Response to Relator's Motion to Consolidate and Request for Stay has been served on the following party by regular U.S. Mail, postage pre-paid, this 25th day of March, 2013:

Kendra Carpenter
Sprankle Carpenter, LLC
Counsel for Relator
P.O. Box 14293
Columbus, OH 43214

KENNETH W. OSWALT
LICKING COUNTY PROSECUTOR

By



Amy Brown Thompson, Reg. # 0070511
Assistant Prosecuting Attorney
Counsel for Respondents