ORIGINAL

IN THE SUPREME COURT OF OHIO

STATE OF OHIO ex rel., JOHN MARK ANDREWS,	:	Supreme Court Case No. 2013-0816
Appellant,	:	On Appeal from the Geauga County Court of Appeals, Eleventh Appellate District
vs.	:	
CHARDON POLICE DEPT., et al.,	:	Court of Appeals Case No. 2012-G-3074
Appellees.	:	

APPELLEES' JOINT BRIEF

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RECEIVED
AUG 19 2013
CLERK OF COURT
SUPREME COURT OF OHIO

FILED
AUG 19 2013
CLERK OF COURT
SUPREME COURT OF OHIO

TABLE OF CONTENTS

I. STATEMENT OF FACTS 1
II. ARGUMENT 3

A. The Eleventh District Court of Appeals Did Not Err in Granting Appellees' Motions for Summary Judgment as No Genuine Issue of Material Fact Existed and Appellees Were Entitled to Judgment as a Matter of Law 3

B. The Eleventh District Court of Appeals Did Not Err in Denying Appellant's Motion for Reconsideration 5

C. Appellant's Question as to Whether the Intentional Destruction of Public Records Violates the Federal Legislative Intent Under the Freedom of Information Act is Immaterial, Irrelevant, and Has No Bearing to the Instant Appeal 6

III. CONCLUSION..... 8

Table of Authorities

Cases

Burnes v. Athens Cty. Clerk of Courts, 83 Ohio St.3d 523, 700 N.E.2d 1260, 1998-Ohio-3 5
Columbus v. Hodge (1987), 37 Ohio App.3d 68, syllabus 1, 523 N.E.2d 515 6
Garfield Hts. City School Dist.v. State Bd. of Edn. (1992), 85 Ohio App.3d 117, 619 N.E.2d 429 6
Matthews v. Matthews (1981), 5 Ohio App.3d 140, syllabus 2, 450 N.E.2d 278 6
Phillips v. Irwin, 96 Ohio St.3d 250, 774 N.E.2d 1218, 2002-Ohio-4758 5
State ex rel. Calvary v. City of Upper Arlington, et al., 89 Ohio St.3d 229, 729 N.E.2d 1182, 2000-Ohio-142 4
State ex rel. Gannett Satellite Information Network v. Shirey, et al., 78 Ohio St.3d 400, 678 N.E.2d 557, 1997-Ohio-206 4
State ex rel. Ohio Patrolmen's Benevolent Association v. City of Mentor, 89 Ohio St.3d 440, 732 N.E.2d 969, 2000-Ohio-214..... 4

Statutes

O.R.C. ¶149.43 6
5 U.S.C. ¶552 3

Rules

App.R. 26 5
Civ. R. 56 ..... 3, 4

I. STATEMENT OF FACTS

On or about April 16, 2012, Appellant submitted a written public records request to the Appellees, Chardon Police Department and the Geauga County Sheriff (hereinafter collectively referred to as "Appellees"). (See T. 19, p.3 and T. 25, p.1). According to his request, Appellant sought any and all police reports, notes, audio recordings and video recordings prepared or maintained by the Appellees in responding to the incident on April 4, 2012. (See, T. 19, p. 3 and T. 25, pp.1-2).

The Appellees' general policies regarding the disclosure of public records is to promptly prepare and make available for inspection at all reasonable times during regular business hours all public records responsive to a public records request and/or to make copies, upon request, of the public records available at a reasonable cost and within a reasonable period of time. On or about April 20, 2012, the Chardon Police Department denied most of Appellant's request because most of the records were exempt due to the ongoing criminal investigation. (See, T. 25, p.2). Likewise, on or about April 30, 2013 the Geauga County Sheriff verbally denied Appellant's request based on the fact that the investigation was still ongoing and Appellant had not been charged or dismissed of any crime. (See, T. 19, p.4).

Appellant was charged with felonious assault, waived his right to a preliminary hearing, and, consistent with the Chardon Police Department's practice and policy, was provided either with a copy of the documents and report filed with the complaint in the Chardon Municipal Court or permitted to read the police report at Appellant's preliminary hearing. (See, T. 25, p.2). In addition, in telephone conversations with Appellant, counsel for the Chardon Police Department informed Appellant that he would be provided with discovery by the Geauga County

Prosecuting Attorney under the Ohio Rules of Criminal Procedure after an indictment was returned by the Grand Jury. (See, T. 25, p.2).

On May 3, 2012, the Chardon Police Department received a summons with Appellant's Petition for Writ of Mandamus filed in the Eleventh District Court of Appeals, listing the items originally included in the April 16, 2012 request as well as additional items. (See, T. 25, p.2 and T. 6). On May 4, 2012, the Sheriff received the summons with Appellant's Petition for Writ of Mandamus filed in the Eleventh District Court of Appeals, seeking the same documents requested in the April 16, 2013 request. (See, T. 19, p.4).

All requested documents not subject to exemption that are public records were sent and given to Appellant shortly after he filed his Petition for Writ of Mandamus on May 24, 2012 by the Geauga County Sheriff and June 28, 2012 by the Chardon Police Department. (See, T. 19, pp.4-5 and T. 25, p.3). Thereafter, the Appellees filed separate motions for summary judgment on Appellant's Petition for Writ of Mandamus, arguing that no genuine issue of material fact existed as Appellant received all requested public record documents not subject to exemption and Appellees were entitled to judgment as a matter of law. (See, T. 19, pp.6-7, T. 25, p.4). On February 4, 2013, the Eleventh District Court of Appeals granted Appellees' respective motions for summary judgment, finding that Appellant's claims were moot once the non-exempt requested documents were released to Appellant. (See, T. 28, p.2). On February 11, 2013, Appellant filed a motion for reconsideration of the Eleventh District Court of Appeals' decision. (See, T. 30, p.1). On April 29, 2013, the Eleventh District Court of Appeals denied Appellant's motion for reconsideration and, on May 28, 2013, Appellant filed the instant appeal of the Eleventh District Court of Appeals' denial of his motion for reconsideration with this Honorable Court. (See, T. 32, p.1).

II. ARGUMENT

> "Did the 11th District Court of Appeals Abuse it's [sic] Discretion, Create Manifest Injustice, Err, and/or Violate Clearly Established Ohio Appellate Court Case Law on Public Records. By Erroneously Denying/Dismissing Relator's Meritorious Petition Writ of Mandamus, and Motion for Reconsideration. Since RelatorStated [sic] a Claim Upon Which Relief Should be Granted. That Respondents had a Clear Legal Duty to Disclose Existing Public Records(and not intentionally destroy them). Because this Relator was Entitled to Said Public Records by Right; and/or Whether the Whether [sic] the Intentional Destruction of Public Records Violates the Federal Legislative/Congressional Intent of the Federal FOIA (5 USC 552) Protected Under the Federal Supremacy Clause of the U.S. Constitution to Make this a [sic] Issue of Great Public Interest and a Federal/State Constitutional Issue?" (See, Appellant's Merit Brief, p.7).

Appellant asserts the above argument in his Merit Brief before this Honorable Court. It appears that Appellant is arguing that the Eleventh District Court of Appeals erred by granting Appellees' motions for summary judgment and by denying Appellant's motion for reconsideration because Appellees had a duty to disclose the public records to which he was entitled. Appellant also appears to be asking whether the intentional destruction of public records violates the federal legislative intent under the Freedom of Information Act.

A. The Eleventh District Court of Appeals Did Not Err in Granting Appellees' Motions for Summary Judgment as No Genuine Issue of Material Fact Existed and Appellees Were Entitled to Judgment as a Matter of Law.

Appellees contend that the Eleventh District Court of Appeals did not err in granting their motions for summary judgment as no genuine issue of material fact existed and Appellees were entitled to judgment as a matter of law.

Civ.R. 56(C) provides that "[s]ummary judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence, and written stipulations of fact, if any, timely filed in the action, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law."

In the instant appeal, the evidence showed that there was no genuine issue of material fact and the Appellees were entitled to judgment as a matter of law. Both Appellees submitted affidavits, and other documents, with their motions for summary judgment demonstrating that all existing, non-exempt requested public record documents were sent to Appellant on May 24, 2012 by the Geauga County Sheriff and June 28, 2012 by the Chardon Police Department. Once Appellees made those existing, non-exempt requested public record documents available to Appellant, Appellant's Petition for Writ of Mandamus seeking the release of those same documents became moot. This Honorable Court of Ohio has held time and time again that "provision of the requested records to the relator in a mandamus action brought under R.C. 149.43 renders the mandamus action moot." See e.g., *State ex re. Ohio Patrolmen's Benevolent Association v. City of Mentor*, 89 Ohio St.3d 440, 448, 732 N.E.2d 969, 2000-Ohio-214; *State ex rel. Calvary v. City of Upper Arlington, et al.*, 89 Ohio St.3d 229, 231, 729 N.E.2d 1182, 2000-Ohio-142; *State ex rel. Gannett Satellite Information Network v. Shirey, et al.*, 78 Ohio St.3d 400, 401, 678 N.E.2d 557, 1997-Ohio-206.

Appellant also claims that there are other records in the Appellees' possession that have been requested by him but have not been disclosed by the Appellees. However, as the evidence attached to the Appellees' motions for summary judgment demonstrates, only those existing, requested documents not subject to exemption were provided to the Appellant and that there exists no other non-exempt documents related to Appellant's request in the possession of the Appellees. Without any evidence to the contrary, Appellees provided the existing, non-exempt requested public record documents on May 24, 2012 and June 28, 2012 to Appellant, there exists no genuine issue of material fact, and the Appellees are entitled to judgment as a matter of law pursuant to Civ.R. 56(C).

Thus, the Eleventh District Court of Appeals did not err in granting Appellees' motions for summary judgment.

B. The Eleventh District Court of Appeals Did Not Err in Denying Appellant's Motion for Reconsideration.

Appellees contend that the Eleventh District Court of Appeals did not err in denying Appellant's motion for reconsideration because Appellant's motion was inapplicable to his original action for writ of mandamus. Even assuming for purposes of argument only that Appellant could properly move for reconsideration, the Eleventh District Court of Appeals did not err in denying Appellant's motion as it did not call to attention an obvious error in the Eleventh District Court of Appeals' decision or raise an issue that was properly before the Eleventh District Court of Appeals but was either not considered at all or not fully considered by the Eleventh District Court of Appeals when it should have been.

This Honorable Court has held that a request for reconsideration of an original action decision is a nullity. See, *Phillips v. Irwin*, 96 Ohio St.3d 350, 774 N.E.2d 1218, 2002-Ohio-4758, ¶5. A mandamus action, such as the one Appellant filed here, is an original action filed in the court of appeals and, as a result, a motion for reconsideration pursuant to App.R. 26(A) is inapplicable to any original action decision. See, *Burnes v. Athens Cty. Clerk of Courts*, 83 Ohio St.3d 523, 524, 700 N.E.2d 1260, 1998-Ohio-3. Appellant's motion for reconsideration was properly denied by the Eleventh District Court of Appeals.

Even assuming for purposes of argument only that a motion for reconsideration pursuant to App.R. 26(A) is applicable here, Appellant's motion failed to call to attention an obvious error in the decision or raise an issue that was properly before the Eleventh District Court of Appeals but was either not considered at all or not fully considered by the Eleventh District Court of Appeals. The test "generally applied to a motion for reconsideration in the court of appeals is

whether the motion calls to the attention of the court an obvious error in its decision or raises an issue that was not properly considered by the court in the first instance." See, *Garfield Hts. City School Dist. v. State Bd. of Edn.* (1992), 85 Ohio App.3d 117, 127, 619 N.E.2d 429; *Columbus v. Hodge* (1987), 37 Ohio App.3d 68, syllabus 1, 523 N.E.2d 515; *Matthews v. Matthews* (1981), 5 Ohio App.3d 140, syllabus 2, 450 N.E.2d 278. Here, Appellant failed to assert any alleged obvious error and failed to raise any issue that was before the Eleventh District Court of Appeals but not properly addressed by it. In addition, Appellant failed to rebut any of the evidence submitted on behalf of Appellees in their motions for summary judgment and, as a result, there was nothing for the Eleventh District Court of Appeals to reconsider in its decision granting Appellees' motions for summary judgment.

Thus, the Eleventh District Court of Appeals did not err in denying Appellant's motion for reconsideration.

C. Appellant's Question as to Whether the Intentional Destruction of Public Records Violates the Federal Legislative Intent Under the Freedom of Information Act is Immaterial, Irrelevant, and Has No Bearing to the Instant Appeal.

Appellees contend that Appellant's question as to whether the intentional destruction of public records violates the federal legislative intent under the Freedom of Information Act is immaterial, irrelevant, and has no bearing to the instant appeal.

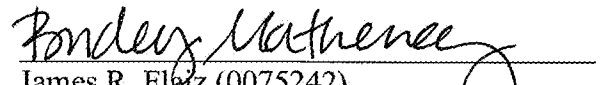
The gravamen of the underlying appeal is a mandamus action seeking to compel Appellees to provide certain requested documents pursuant to Ohio Public Records Law. See generally, Section 149.43 of the Ohio Revised Code. Even though Appellant cites the Freedom of Information Act ("FOIA") in his request to the Appellees, FOIA does not apply as both Appellees are state government entities and not federal government entities. FOIA simply does not apply to Appellees.

In addition, there is no evidence submitted by Appellant that demonstrates that the Appellees intentionally (or otherwise) destroyed public records. In fact, the only evidence before the Eleventh District Court of Appeals and this Honorable Court is in striking contrast to Appellant's baseless claim – all existing, non-exempt requested public record documents were sent to Appellant on May 24, 2012 and June 28, 2012. Appellant's mandamus action was rendered moot when Appellees made the existing, non-exempt public record documents available to Appellant.

III. CONCLUSION

Thus, the Eleventh District Court of Appeals' decisions granting summary judgment to Appellees and denying Appellant's motion for reconsideration should be affirmed by this Honorable Court.

Respectfully submitted,



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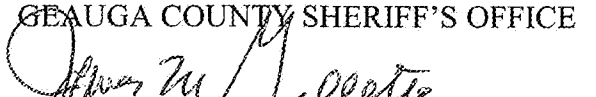

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Appellees' Joint Brief was sent by regular U.S. Mail this 15th day of August, 2013 to John Mark Andrews, Appellant Pro Se, at 120 Court Street, Chardon, Ohio 44024.

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