

ORIGINAL

IN THE SUPREME COURT OF OHIO

STATE OF OHIO EX REL.
JAMES E. PIETRANGELO, II

Relator-Appellant,

v.

CITY OF AVON LAKE, OHIO, *et al.*

Respondents-Appellees.

No. 2015-0495

On Appeal From the
Lorain County
Court of Appeals,
Ninth Appellate District
Case No. 14CA010571

AMENDED NOTICE OF APPEAL OF RIGHT
OF RELATOR JAMES E. PIETRANGELO, II

James E. Pietrangelo, II
33317 Fairport Drive
Avon Lake, OH 44012
(802) 338-0501
PRO SE RELATOR

Abraham Lieberman
City of Avon Lake Law Director
150 Avon Belden Road
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COUNSEL FOR RESPONDENTS,
CITY OF AVON LAKE, OHIO,
ABRAHAM LIEBERMAN

RECEIVED

APR 09 2015

CLERK OF COURT
SUPREME COURT OF OHIO

FILED

APR 09 2015

CLERK OF COURT
SUPREME COURT OF OHIO

NOTICE OF APPEAL

Pursuant to S.Ct.Prac.R. 5.01.(A)(3), Relator James E. Pietrangelo, II, and/or the State of Ohio *ex rel.* James E. Pietrangelo, II, hereby invokes the appellate jurisdiction of the Supreme Court of Ohio and appeals of right to the Supreme Court of Ohio from

the March 11, 2015 judgment (Journal Entry) (attached hereto) in part, to the extent that it denied Pietrangelo statutory damages and records/information of the dates, hours, and (fee) rates other than in the "Professional Fee Summary" on the billing statements (see also below);

the October 20, 2014 Journal Entry (attached hereto) denying Pietrangelo's motion to set aside the Magistrate's August 8, 2014 Order;

the August 18, 2014 Journal Entry (attached hereto) denying Pietrangelo's motion for summary judgment; and

the August 8, 2014 Magistrate's Order (attached hereto) denying Pietrangelo's motion to strike and for sanctions,

of the Lorain County Court of Appeals, Ninth Appellate District, in Case No. 14CA010571, *Pietrangelo v. City of Avon Lake, Ohio, et al.*, originating in said Court of Appeals. Pietrangelo does not appeal the Ninth District's March 11, 2015 judgment (Journal Entry) to the extent that said judgment (Journal Entry) granted Pietrangelo a writ of mandamus and taxed costs to the Respondents.

April 9, 2015

Respectfully submitted,

James E. Pietrangelo, II
JAMES E. PIETRANGELO, II
33317 Fairport Drive
Avon Lake, Ohio 44012
(802) 338-0501

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Amended Notice of Appeal was served upon Respondents-Appellees by first-class U.S. Mail this 9th day of April 2015, to Avon Lake Law Director Abraham Lieberman, 150 Avon Belden Road, Avon Lake, OH 44012, Counsel for Respondents-Appellees.

James E. Pietrangelo, II
JAMES E. PIETRANGELO, II

ENTERED

STATE OF OHIO

COURT OF APPEALS

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

COUNTY OF LORAIN)

ss: FILED
LORAIN COUNTY

2015 MAR 11 A 11:53

STATE OF OHIO ex rel. JAMES E.
PIETRANGELO, II

C.A. No. 14CA010571

CLERK OF COMMON PLEAS
JOHN MADAKOWSKI

Relator

v.

9th APPELLATE DISTRICT

CITY OF AVON LAKE, OHIO, et al.

Respondents

JOURNAL ENTRY

Relator, James Pietrangelo, II, filed this action in mandamus to compel the City of Avon Lake to provide unredacted detailed invoices for attorney's fees paid to retained counsel in a litigation matter. This Court denied the parties' cross-motions for summary judgment, ordered the City to file unredacted copies of the billing statements under seal, and directed the parties to file merit briefs. The matter is now ripe for decision.

Pietrangelo made a public records request for invoices from the law firm of Porter, Wright, Morris and Arthur, LLP for services rendered to the City in connection with litigation involving Pietrangelo. In response, the City provided invoices that set forth the identity of the law firm, the matter for which services were provided, the total amount billed, and expenses and disbursements made. Citing attorney-client privilege, the City redacted the following information:

Citing attorney-client privilege,
Journal 152 Page 110

narrative descriptions of particular legal services rendered, the exact dates on which such services were rendered, the particular attorney rendering each service, the time spent by each particular attorney on a particular day, the billing rate of each particular attorney, the total number of hours billed by each particular attorney during the period covered by the

invoice, and the total fees attributable to each particular attorney for the period covered by the invoice.

Pietrangelo sought a writ of mandamus compelling the City to provided unredacted invoices, arguing that “the dates, hours, and (fee) rates for legal services provided * * * are clearly public records/information, and non-exempt from production by the officials.”

Relator’s Claims

The appropriate remedy to compel compliance with the Public Records Act, R.C. Chapter 149, is mandamus. *State ex rel. Physicians Committee for Responsible Medicine v. Ohio State Univ. Bd. of Trustees*, 108 Ohio St.3d 288, 2006-Ohio-903, ¶ 6. “Although ‘[w]e construe the Public Records Act liberally in favor of broad access and resolve any doubt in favor of disclosure of public records,’ * * * the relator must still establish entitlement to the requested extraordinary relief by clear and convincing evidence.” *State ex rel. Motor Carrier Serv., Inc. v. Rankin*, 135 Ohio St.3d 395, 2013-Ohio-1505, ¶ 18, quoting *State ex rel. Rocker v. Guernsey Cty. Sheriff’s Office*, 126 Ohio St.3d 224, 2010-Ohio-3288, ¶ 6. In a public records case, the relator does not need to establish that there is no adequate remedy at law. *State ex rel. Am. Civ. Liberties Union of Ohio, Inc. v. Cuyahoga Cty. Bd. of Commrs.*, 128 Ohio St.3d 256, 2011-Ohio-625, ¶ 24.

“If a record does not meet the definition of a public record, or falls within one of the exceptions to the law, the records custodian has no obligation to disclose the document.” *State ex rel. Plunderbund Media v. Born*, Slip Opinion No. 2014-Ohio-3679, ¶ 18. In this respect, however:

Exceptions to disclosure under the Public Records Act, R.C. 149.43, are strictly construed against the public-records custodian, and the custodian

has the burden to establish the applicability of an exception. A custodian does not meet this burden if it has not proven that the requested records fall squarely within the exception.

State ex rel. Cincinnati Enquirer v. Jones-Kelley, 118 Ohio St.3d 81, 2008-Ohio-1770, paragraph two of the syllabus.

Under R.C. 149.43(A)(1), records kept by any public office are “public records” unless they fall under an exception. “The attorney-client privilege, which covers records of communications between attorneys and their government clients pertaining to the attorneys’ legal advice, is a state law prohibiting release of these records.” *State ex rel. Besser v. Ohio State Univ.*, 87 Ohio St.3d 535, 542 (2000), citing *State ex rel. Nix v. Cleveland*, 83 Ohio St.3d 379, 383 (1998). The Ohio Supreme Court has recognized that itemized attorney billing statement may contain a mixture of exempt and non-exempt information under R.C. 149.43. See *State ex rel. Anderson v. Vermillion*, 134 Ohio St.3d 120, 2012-Ohio-5320, ¶ 15. In this situation, narrative portions are exempt from disclosure, but public entities must disclose nonexempt portions, including “the general title of the matter being handled, the dates the services were performed, and the hours, rate, and money charged for the services.” *Id.* See also *State ex rel. Dawson v. Bloom-Carroll Local School Dist.*, 131 Ohio St.3d 10, 524, 2011-Ohio-6009, ¶ 29.

This Court has conducted an in camera review of the unredacted invoices that were filed under seal by the City. Having done so, we agree with the City’s position that it has disclosed all of the nonexempt portions of the records with one exception: the portion of each invoice titled “Professional Fee Summary” describes the “hours, rate, and money charged for the services,” and is not exempt under R.C. 149.43. The narrative descriptions of the work performed and the billing information that correlates

to the narratives is summarized within the "Professional Fee Summary," so those items need not be disclosed apart from the "Professional Fee Summary."

With respect to the information contained in the "Professional Fee Summary" only, Pietrangelo has established that he is entitled to a writ of mandamus to compel the City to provide unredacted copies of the attorney billing records.

Statutory Damages and Attorney Fees

Pietrangelo also claims that he is entitled to the maximum amount of damages authorized by R.C. 149.43(C)(1), which authorizes statutory damages up to a maximum amount of \$1,000. Although injury is presumed in the event that a writ of mandamus issues to compel compliance with R.C. 149.43, a court may decline to award damages if it determines:

(a) That, based on the ordinary application of statutory law and case law as it existed at the time of the conduct or threatened conduct of the public office or person responsible for the requested public records that allegedly constitutes a failure to comply with an obligation in accordance with division (B) of this section and that was the basis of the mandamus action, a well-informed public office or person responsible for the requested public records reasonably would believe that the conduct or threatened conduct of the public office or person responsible for the requested public records did not constitute a failure to comply with an obligation in accordance with division (B) of this section;

(b) That a well-informed public office or person responsible for the requested public records reasonably would believe that the conduct or threatened conduct of the public office or person responsible for the requested public records 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)/(b). We conclude that, as the Ohio Supreme Court determined in *Anderson*, a large portion of the billing statements at issue in this case were exempt from disclosure and, given the interplay between *Dawson* and *Anderson*, a well-informed public office could reasonably have believed that the nonexempt portion of the

billing statements could be withheld from disclosure. *Anderson* at ¶ 26. As in *Anderson*, therefore, we conclude that Pietrangelo is not entitled to statutory damages.

Pietrangelo is also not entitled to attorney fees under R.C. 149.43(C)(2)(b) because “[t]he Supreme Court of Ohio has consistently held that an award of attorney fees is not available to the aggrieved party under the public records act absent evidence that the party paid, or was obligated to pay, an attorney to prosecute the action.” *State ex rel. Bott Law Group, L.L.C. v. Ohio Dept. of Natural Resources*, 10th Dist. Franklin No. 12AP-448, 2013-Ohio-5219, ¶ 46. Pietrangelo, an attorney licensed in the State of Ohio, represented himself in this action. As such, he is not entitled to attorney fees under R.C. 149.43(C)(2)(b). *Bott Law Group* at ¶ 45.

Conclusion

A writ of mandamus is granted to compel the City to provide Pietrangelo with copies of the relevant attorney billing statements with the “Professional Fee Summary” portion unredacted. In all other respects, Pietrangelo’s petition is denied.

Costs are taxed to Respondents.

The clerk of courts is hereby directed to serve upon all parties not in default notice of this judgment and its date of entry upon the journal. *See* Civ.R. 58(B).


Judge

Concur:
Whitmore, J.
Moore, J.

COURT OF APPEALS

STATE OF OHIO)

FILED
LORAIN COUNTY

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

COUNTY OF LORAIN)

2014 OCT 20 P 12:40

STATE OF OHIO ex rel. CLAYTON JAMES DEWITT
PIETRANGELO, II

CLAYTON JAMES DEWITT
RON NABAKOWSKI

C.A. No. 14CA010571

Relator

v.

9th APPELLATE DISTRICT

ENTERED

CITY OF AVON LAKE, OHIO, et al.

Respondents

JOURNAL ENTRY

This matter is before the Court pursuant to Relator's motion to set aside the magistrate's order under Civ.R. 53(D)(2)(b). Relator moved to strike portions of Respondents' answer. This Court's Magistrate denied the motion. Relator has moved to set aside the magistrate's order under Civ.R. 53(D)(2)(b), and Respondent has opposed the motion. Relator asserts two grounds for the motion: (1) that the magistrate's order is "perfunctory" and contains no findings of fact, and (2) that he was "entitled as a matter of law" to have portions of Respondents' answer stricken.

With respect to Relator's first argument, this Court notes that the Rules of Civil Procedure do not generally require findings of fact. *See* Civ.R. 52. *Compare State ex rel. Add Venture, Inc. v. Gillie*, 62 Ohio St.2d 164, 165 (1980) (limiting the application of Civ.R. 52 to "judgments."). A magistrate is not required to provide findings of fact when acting under Civ.R. 53(D)(2)(a), and Relator's motion is not well taken on this basis.

Civ.R. 12(F) permits a court to strike from responsive pleadings "any insufficient claim or defense or any redundant, immaterial, impertinent, or scandalous matter."

Contrary to Relator's position, Civ.R. 12(F) does not entitle him as a matter of law to the relief he requested. Instead, it permits a court to exercise its discretion to strike offensive matter. *State ex rel. Morgan v. new Lexington*, 112 Ohio St.3d 33, 2006-Ohio-6365, ¶ 26. *Maxim Ents., Inc. v. Haley*, 9th Dist. Summit No. 24666, 2009-Ohio-5541, ¶ 7. Relator moved this Court to strike Respondents' affirmative defenses for three reasons. First, he argued that the matters labeled as "affirmative defenses" by Respondents are not affirmative defenses in the technical sense of the term and must be stricken. Even if this Court assumes this proposition to be true, the validity of an alleged affirmative defense is an issue that can be determined upon consideration of the merits without prejudice to Relator, and the motion was properly denied in this respect. Second, Relator argued that Respondents' affirmative defenses are unsupported or inaccurate. This is a matter that is more properly determined upon consideration of the merits of this case, and the motion was also properly denied in this respect. Finally, Relator maintained that Respondents' references in paragraph five of his affirmative defenses to pleadings filed by Relator in a related case are "scandalous" to the extent that they impugn his reputation as an attorney. Viewing the language at issue in its context, however, the motion was properly denied in this respect as well.

With respect to Respondents' initial averments set forth in paragraphs 1, 2, 3, 8, 9, 10, 11, 12, 13, 14, 15, and 16 of the answer, Relator argued that the statements therein are frivolous, nonresponsive, or both. Having examined the paragraphs at issue, this Court cannot agree. Indeed, this Court's review of the allegations of the complaint to which Respondent pleaded indicate that the averments frequently consist of lengthy paragraphs setting forth multiple factual and legal propositions, sometimes with

citations to legal authority. Under these circumstances, the motion to strike portions of Respondents' answer was properly denied.

The motion to set aside the magistrate's order dated August 8, 2014, is denied.

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke at the end, positioned above a horizontal line.

Judge

COURT OF APPEALS

STATE OF OHIO)
COUNTY OF LORAIN)

)ss: FILED LORAIN COUNTY

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

2014 AUG 18 P 1:32

STATE OF OHIO
PIETRANGELO, II

ex rel. JAMES E. CLERK OF COMMON PLEAS
RON NABAKIWSKI

C.A. No. 14CA010571

ENTERED

Relator

v.

CITY OF AVON LAKE, OHIO, et al.

Respondents

JOURNAL ENTRY

Relator, James Pietrangelo, II, filed this action in mandamus to compel the City of Avon Lake to provide unredacted detailed invoices for attorney's fees paid to retained counsel in a litigation matter. Pietrangelo and the City filed cross-motions for summary judgment, which are now before the Court for decision.

Pietrangelo made a public records request for invoices from the law firm of Porter, Wright, Morris and Arthur, LLP for services rendered to the City in connection with litigation involving Pietrangelo. In response, the City provided invoices that set forth the identity of the law firm, the matter for which services were provided, the total amount billed, and expenses and disbursements made. Citing attorney-client privilege, the City redacted the following information:

narrative descriptions of particular legal services rendered, the exact dates on which such services were rendered, the particular attorney rendering each service, the time spent by each particular attorney on a particular day, the billing rate of each particular attorney, the total number of hours billed by each particular attorney during the period covered by the invoice, and the total fees attributable to each particular attorney for the period covered by the invoice.

Journal 149 Page 249

Pietrangelo sought a writ of mandamus compelling the City to provide unredacted invoices, arguing that “the dates, hours, and (fee) rates for legal services provided * * * are clearly public records/information, and non-exempt from production by the officials.” The parties filed cross-motions for summary judgment.

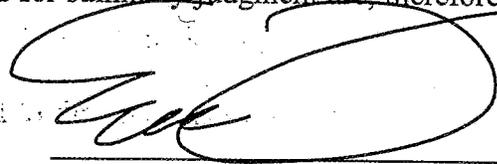
Civ.R. 56(C) provides the standard by which this Court determines whether summary judgment is appropriate:

Summary 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. No evidence or stipulation may be considered except as stated in this rule. A summary judgment shall not be rendered unless it appears from the evidence or stipulation, and only from the evidence or stipulation, that reasonable minds can come to but one conclusion and that conclusion is adverse to the party against whom the motion for summary judgment is made, that party being entitled to have the evidence or stipulation construed most strongly in the party's favor.

The moving party “bears the initial burden of informing the trial court of the basis for the motion, and identifying those portions of the record that demonstrate the absence of a genuine issue of material fact on the essential element(s) of the nonmoving party's claims.” *Vahila v. Hall*, 77 Ohio St.3d 421, 429 (1997), quoting *Dresher v. Burt*, 75 Ohio St.3d 280, 293 (1996). The nonmoving party then has a reciprocal burden to set forth specific facts, by affidavit or as otherwise provided by Civ.R. 56(E), which demonstrate that there is a genuine issue for trial. *Byrd v. Smith*, 110 Ohio St.3d 24, 2006-Ohio-3455, at ¶10. In order to prevail on a mandamus claim, a relator must establish a clear legal right to the relief requested, a corresponding clear legal duty on the part of the public office, and the lack of an adequate remedy at law. *State ex rel. Dreamer v. Mason*, 115 Ohio St.3d 190, 2007-Ohio-4789, ¶ 11.

In this case, we are unable to determine from the evidence before the Court whether either party is entitled to judgment as a matter of law. The critical issue in this case is whether the redacted information is “so inextricably intertwined with the privileged materials as to also be exempt from disclosure.” *State ex rel. Dawson v. Bloom-Carroll Local School Dist.*, 131 Ohio St.3d 10, 2011-Ohio-6009, ¶ 6, 28-29 (analyzing whether privilege attached to the contents of an attorney’s invoices after an in camera review of the relevant documents.). Without the ability to review this information – which has not been provided to this Court under seal – we cannot determine whether either party is entitled to judgment as a matter of law.

The parties’ respective motions for summary judgment are, therefore, denied.



Judge

ENTERED

COURT OF APPEALS

STATE OF OHIO)
COUNTY OF LORAIN)

) ss: FILED)
) LORAIN COUNTY)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

STATE OF OHIO ex rel. JAMES E. PIETRANGELO, II

2014 AUG - 8 P 12:11

CLERK OF COMMON PLEAS
RON NABAKOWSKI

C.A. No. 14CA010571

Relator

9th APPELLATE DISTRICT

v.

CITY OF AVON LAKE, OHIO, et al.

Respondents

MAGISTRATE'S ORDER

Relator has moved to strike portions of Respondents' answer and for attorney fees in connection with that motion.

The motions are denied.

C. Michael Walsh

C. Michael Walsh
Magistrate