

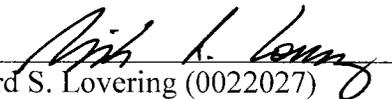
IN THE SUPREME COURT OF OHIO

STATE OF OHIO ex rel.	:	
Schiffbauer, et al.	:	Case No. 2014-0244
	:	
Relator,	:	
	:	ORIGINAL ACTION IN
v.	:	MANDAMUS
	:	
Larry Banaszak, et al.	:	
	:	
Respondent.	:	

RESPONDENTS' LARRY BANASZAK AND ROBERT GATTI (REFERRED TO COLLECTIVELY AS "THE UNIVERSITY") MOTION TO STRIKE RELATOR'S MOTION FOR STATUTORY DAMAGES AND ATTORNEY FEES

Pursuant to Sup. Ct. R. 18, Respondents move to strike Relator's Motion for Statutory Damages and Attorney Fees because it is an untimely Motion for Reconsideration of this Court's May 21, 2015 decision which did not award Relator's then pending request for statutory damages and attorney fees which had been asserted in the Complaint pursuant to R.C. 149.43(B) and (C) as discussed in the Memorandum attached hereto.

Respectfully Submitted,


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MEMORANDUM IN SUPPORT

Relator's Motion for Statutory Damages and Attorney Fees should be stricken because it is an untimely Motion for Reconsideration. The issue of whether statutory damages and attorney fees should be awarded under R.C. 149.43(B) and (C) was properly before this Court based on Relator's request for those statutory damages and fees pursuant to R.C. 149.43(B) and (C) in the Complaint when the Court issued its decision on the merits in this case on May 21, 2015. The Court already had before it all the information that it needed to consider the issue of statutory damages and fees, including that this was a previously undecided and unsettled question of law. The Relator's original February 14, 2014 Complaint for Writ of Mandamus specifically cited R.C. 149.43(B) and (C) and specifically requested statutory damages and fees pursuant to those provisions in both the body of the Complaint and in the wherefore clause.¹ This Court considered the Complaint and in the May 21, 2015 decision chose not to award attorney fees that had been requested in the Complaint pursuant to R.C. 149.43(B) and (C). Pending requests which are not granted are deemed denied.²

If Relator intended to seek reconsideration of Court the Court's failure to grant statutory damages and attorney fees pursuant to R.C. 149.43(B) and (C) as specifically requested in the

¹ See: February 14, 2014 Complaint for Writ of Mandamus at Paragraph 11 provides in relevant part: "For instituting this Mandamus action commanding Respondents to comply with its obligations under R.C. 149.43(B), Relator requests that the Court award it all court costs, reasonable attorney's, and statutory damages as provided in R.C. 149.43(C). Based on the ordinary application of the statutory law and case law as it existed at the time Relator requested access to the Records, Respondents could not have reasonably believed that their refusal to grant access to the Records complied with R.C. 149.43(B), nor could they have reasonably believed that their refusal would serve the public policy underlying the Ohio Public Records Act."

² See, e.g., *State of Ohio v. Kelso*, 2015-Ohio-2091, 2015 Ohio App. LEXIS 2020 (7th Appellate District 2015); *Hosta v. Chrysler*, 2008-Ohio-4392, 2008 Ohio App. LEXIS 3704 (2nd Appellate District 2008); *Savage v. Cody Zeigler, Inc.* 2006-Ohio-2760, 2006 Ohio App. LEXIS 2601 (4th Appellate District 2006); and *Roberts v. State Farm Insurance*, 2005-Ohio-809, 2005 Ohio App. LEXIS 851 (2nd Appellate District 2005).

Complaint, Relator was required to file a Motion for Reconsideration within ten days of the Court's May 21, 2015 Opinion pursuant to Sup.Ct. R. 18. Relator failed to do so. Having missed the opportunity to seek reconsideration, Relator now attempts an end-run around Sup.Ct. R. 18 in the form of a Motion for Statutory Damages and Attorney Fees. Relator's Motion is untimely pursuant to Sup. Ct. R. 18 and must therefore be stricken.

The issue of Relator's request for statutory damages and attorney fees was before this Court when the May 21, 2015 decision on the merits was issued. Relator sought an award of fees in her Complaint and the University opposed the award of those fees. The Court did not address the issue of attorney fees in its decision. This Court favors quick resolution of all of the issues in a public records case. As a result, it is the common practice of this Court to address the issue of attorney fees in its decision on the merits.³

If Relator contends the Court improperly failed to address her request for damages and fees, Relator was required to file a Motion for Reconsideration. Pursuant to Sup. Ct. R. 18.02(A), a motion for reconsideration must be filed within 10 days of the filing of this Court's judgment entry or order with the Clerk, unless otherwise provided in Rule 12.08(B). Such a motion may be filed regarding a decision on the merits of the case.⁴ Ohio courts hold that the general test for whether to grant a motion for reconsideration "is whether the motion calls to the attention of the court an obvious error in its decision or raises an issue for our consideration that was either not considered at all or was not fully considered by the court when it should have

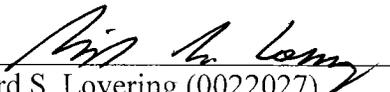
³ See: e.g., *State ex rel. Cincinnati Enquirer v. Sage*, 2015 Ohio 974; *State ex rel. O'Shea & Assoc. v. Cuyahoga Metro. Hous. Author.*, 131 Ohio St. 3d 149, 2012 Ohio 115, 962 N.E.2d 297; *State ex rel. Striker v. Cline*, 2011 Ohio 5350; *State ex rel. Cincinnati Enquirer v. Ronan*, 127 Ohio St. 3d. 236, 2010 Ohio 5680, 938 N.E.2d 347 (2010).

⁴ *Id.* at (B)(4).

been.”⁵ This Court has held that reconsideration will only be granted when the court deems its prior decision to have been made in error.⁶ This Court’s rules also provide that a “motion for reconsideration shall not constitute a reargument of the case.”⁷

Because Relator’s pending motion is an untimely Motion for Reconsideration of the Court’s May 21, 2015 Opinion which did not award the statutory damages and fees under R.C. 149.43(B) and (C) specifically requested in the Complaint, the University respectfully requests that Relator’s pending Motion be stricken.

Respectfully Submitted,


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⁵ *Cleveland Clinic Found. v. Bd. of Zoning Appeals*, 2012-Ohio-6008, ¶ 2 (8th Dist. 2012) quoting *State v. Dunbar*, 8th Dist. No. 87317, 2007 Ohio 3261, ¶ 182, quoting *Matthews v. Matthews*, 5 Ohio App.3d 140, 143, 5 Ohio B. 320, 450 N.E.2d 278 (10th Dist. 1982).

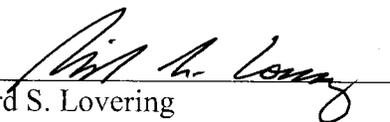
⁶ *State ex rel. Huebner v. W. Jefferson Village Council*, 75 Ohio St.3d 381, 383, 662 N.E.2d 339 (1996).

⁷ S.Ct.Prac.R. 18.02(B).

CERTIFICATE OF SERVICE

A copy of the foregoing *Respondents' Motion to Strike Relator's Motion for Statutory Damages and Attorney Fees* has been sent via the court's electronic system and by regular U.S. mail, postage pre-paid on June 22, 2015, to:

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