

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 103514

**STATE OF OHIO, EX REL.
MICHAEL CLAY**

RELATOR

vs.

**CUYAHOGA COUNTY MEDICAL EXAMINERS
OFFICE**

RESPONDENT

**JUDGMENT:
WRIT GRANTED**

Writ of Mandamus
Motion No. 492634
Order No. 492635

RELEASE DATE: February 3, 2016

FOR RELATOR

Michael Clay, pro se
Inmate No. 533044
Mansfield Correctional Institution
P.O. Box 788
Mansfield, Ohio 44901

ATTORNEYS FOR RESPONDENT

Timothy J. McGinty
Cuyahoga County Prosecutor
By: Barbara R. Marburger
Assistant County Prosecutor
The Justice Center - Courts Tower
1200 Ontario Street
Cleveland, Ohio 44113

KATHLEEN ANN KEOUGH, P.J.:

{¶1} Michael Clay has filed a complaint for a writ of mandamus. Clay seeks an order from this court that requires the Cuyahoga County Medical Examiner's Office ("coroner") to provide him with all x-rays, photographs, and written reports that were created during the autopsy of his daughter in Cuyahoga Coroner Case No. IN00260612 - Autopsy No. AU000082729. The coroner has filed a motion for summary judgment, which we deny for the following reasons.

{¶2} In order for this court to issue a writ of mandamus, Clay must establish a clear legal right to the requested autopsy file, a clear legal duty on the part of the coroner to provide the requested autopsy file, and the lack of an adequate remedy in the ordinary course of the law. *State ex rel. Waters v. Spaeth*, 131 Ohio St.3d 55, 2012-Ohio-69, 960 N.E.2d 452; *State ex rel. Husted v. Brunner*, 123 Ohio St.3d 288, 2009-Ohio-5327, 915 N.E.2d 1215. Herein, Clay's request for all x-rays, photographs, and written reports, that were created during the autopsy of his deceased daughter, is premised upon R.C. 313.10.

{¶3} Ordinarily, many of the autopsy records maintained by the coroner are not considered "public records" and are exempted from release to the general public. R.C. 313.10 provides in pertinent part that:

(A)(2) Except as otherwise provided in division (D) or (E) of this section, the following records in a coroner's office are not public records:

(a) Preliminary autopsy and investigative notes and findings made by the coroner or by anyone acting under the coroner's direction or supervision;

(b) Photographs of a decedent made by the coroner or by anyone acting under the coroner's direction or supervision;

(c) Suicide notes;

(d) Medical and psychiatric records provided to the coroner, a deputy coroner, or a representative of the coroner or a deputy coroner under section 313.091 of the Revised Code;

(e) Records of a deceased individual that are confidential law enforcement investigatory records as defined in section 149.43 of the Revised Code;

(f) Laboratory reports generated from the analysis of physical evidence by the coroner's laboratory that is discoverable under Criminal Rule 16.

* * *

(C) (1) The coroner shall provide a copy of the full and complete records of the coroner with respect to a decedent to a person who makes a written request as the next of kin of the decedent. The following persons may make a request pursuant to this division as the next of kin of a decedent:

(c) * * * , the parents of the decedent, with each parent having an independent right to make a request pursuant to this division

* * *

(G) As used in this section:

(1) "Full and complete records of the coroner" includes, but is not limited to, the following:

(a) The detailed descriptions of the observations written by the coroner or by anyone acting under the coroner's direction or supervision during the progress of an autopsy and the conclusions drawn from those observations that are filed in the office of the coroner under division (A) of section 313.13 of the Revised Code;

(b) Preliminary autopsy and investigative notes and findings made by the coroner or by anyone acting under the coroner's direction or supervision;

(c) Photographs of a decedent made by the coroner or by anyone acting under the coroner's direction or supervision;

(d) Suicide notes;

(e) Medical and psychiatric records provided to the coroner, a deputy coroner, or a representative of the coroner or a deputy coroner under section 313.091 of the Revised Code;

(f) Records of a deceased individual that are confidential law enforcement investigatory records as defined in section 149.43 of the Revised Code;

(g) Laboratory reports generated from the analysis of physical evidence by the coroner's laboratory that is discoverable under Criminal Rule 16.

* * *

{¶4} Attached to Clay's complaint for a writ of mandamus is a sworn affidavit and a birth certificate that establish that Clay is the biological father of the deceased child subject to an autopsy by the coroner. Thus, Clay has established that he possesses a clear legal right to the complete autopsy file of his deceased child per R.C. 310.10(C)(1). In addition, Clay possesses no other

adequate remedy in the ordinary course of the law to obtain the autopsy records from the coroner. Thus, we must determine whether the coroner possesses a clear legal duty to provide the complete autopsy file to Clay.

{¶5} The coroner, in an attempt to establish that it possesses no duty to provide Clay with the complete autopsy file, argues that when R.C. 149.43 (Ohio Public Records Statute), R.C. 2105.19 (Ohio Slayer Statute), and R.C. 313.10 (Coroner Public Records Statute) are read in *pari materia*, it is clear that no duty exists to provide Clay with the complete autopsy file. Specifically, the coroner argues in its motion for summary judgment that:

The body of laws governing the same subject must be read in *pari materia*. *In re Z.R., Ohio St.3d*, 2015-Ohio-3306, ¶ 19, citing *In re C.W.*, 104 Ohio St.3d 163, 2004-Ohio-6411, 818 N.E.2d 1176, ¶ 7. The General Assembly has clearly and specifically limited incarcerated persons' access to investigative records concerning their cases. Furthermore, the law clearly provides that a person, such as the Relator, who has caused the death of another shall not "in any way benefit by the death." R.C. 2105.19(A). It would be a brutal irony if, as a consequence of his having murdered his own child, Relator Clay had significantly greater access to confidential investigative records concerning the murder for which he is incarcerated than other incarcerated persons have. The Court should assume that the General Assembly intended a just and reasonable result when it enacted R.C. 313.10(C)(1)(c), and find that in light of the specific limitations on incarcerated persons' access to records concerning their own criminal investigative files, and in light of the prohibition in Ohio's Slayer Statute from Relator Clay benefitting from having caused his own daughter's death, the Cuyahoga County Medical Examiner does not have a clear legal duty to send the x-rays and photographs of Relator's victim's autopsy, or the coroner's investigative notes and findings to Mansfield Correctional Institution for Relator Clay.

{¶6} The doctrine of law, that the body of laws governing the same subject must be read in pari materia, is not applicable to this original action, because only the body of laws governing the same subject must be read in pari materia. *In re C.W., supra.*

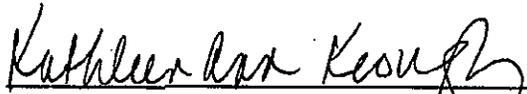
{¶7} R.C. 149.43 deals with public records and is not applicable herein, because the complete autopsy file is not a public record. In addition, Clay does not rely upon R.C. 149.43 in his complaint for a writ of mandamus.

{¶8} R.C. 2105.19 prevents an individual from financially benefitting from the death of a decedent, if the person caused the death of the decedent. Clay is not seeking any financial gain through his complaint for a writ of mandamus. Neither R.C. 149.43 or 2105.19 are statutes that are related to R.C. 313.10 and thus are not required to be read in para materia. Therefore, we find that pursuant to R.C. 313.10(C)(1), the coroner possesses a clear legal duty to provide Clay with the complete autopsy file. *State ex rel. Plain Dealer Publishing Co. v. Floyd*, 111 Ohio St.3d 56, 2006-Ohio-4437, 855 N.E.2d 35; *State ex rel. Ohio Academy of Trial Lawyers v. Sheward*, 86 Ohio St.3d 451, 715 N.E.2d 1062 (1999).

{¶9} Accordingly, we deny the coroner's motion for summary judgment and issue a writ of mandamus on behalf of Clay. Within a reasonable period of time, the coroner is ordered to provide Clay with the complete autopsy file created with regard to the death of his child, Cuyahoga Coroner Case No. IN00260612 -

Autopsy No. AU000082729, per R.C. 313.10(C)(1) and 313.10(G)(1). Costs to the coroner. The court directs the clerk of courts to serve all parties with notice of this judgment and the date of its entry upon the journal as required by Civ.R. 58(B).

{¶10} Writ granted.

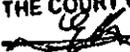


KATHLEEN ANN KEOUGH, PRESIDING JUDGE

EILEEN A. GALLAGHER, J., and
MELODY J. STEWART, J., CONCUR

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

FEB 03 2016

CUYAHOGA COUNTY CLERK
OF THE COURT OF APPEALS
By  Deputy