Supreme Court of Ohio Clerk of Court - Filed April 22, 2016 - Case No. 2016-0436

IN THE SUPREME COURT OF OHIO

STATE EX REL.	)	
DOUGLAS E. ODOLECKI	)	CASE NO. 2016-0436
	)	
Relator	)	
	)	
vs.	)	
	)	
FRANK D. CELEBREZZE, JR., et al.	)	
	)	
Respondents	)	

BRIEF IN OPPOSITION TO MOTION TO DISMISS OF PARMA MUNICIPAL COURT, JUDGE DEANNA O'DONNELL, AND MARTY VITTARDI, CLERK OF COURT

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MEMORANDUM

Respondents Parma Municipal Court, Judge Deanna O'Donnell and Marty Vittardi Clerk of Court reinforce Mr. Odolecki's argument that they are responsible for the preparation of an indigent defendant's trial transcript at the City's cost. In fact, the authority cited to and relied upon in their own motion to dismiss acknowledges that the duty to order transcripts belongs to respondent Parma Municipal Court.

Under Ohio law, official capacity suits are tantamount to suits against the political subdivision or entity of which the public official is an agent. *Lambert v. Clancy*, 125 Ohio St. 3d 231, 2010-Ohio-1483. As the Clerk of Court, Respondent Vittardi performs acts necessary to carry out the activities of the Parma Municipal Court. Relying upon *State, ex rel. Sersich v City of Warren***,** 3 Ohio App.3d 448 (1982) respondents incorrectly argue the opposite, that the Clerk of Court cannot be compelled to prepare a transcript at the City's expense because that duty belongs to the court, not the municipality. In *Sersich,* however, the relator sought an order of mandamus directing both the court as well as the *court reporter* (who actually was an employee of the municipality and not the court), to prepare a transcript at the City's expense. The Eleventh District denied mandamus as to the court reporter but did grant a writ as to the Warren Municipal Court. The operative stipulated facts in *Sersich* are identical to those presented herein:

> 3. The court reporter who has been requested to transcribe the record of said proceedings into written form, pursuant to Appellate Rule 9(A), will not transcribe and file the record unless either paid in advance or guaranteed payment.
>
> 4. LEO SERSICH has filed an affidavit of indigency and the CITY OF WARREN has no evidence that LEO SERSICH is not indigent.
>
> *Id.* at 449

In *Sersich,* just as here, identical procedures were followed by the relators, who requested preparation of the trial transcript at the City's expense with an affidavit of indigence. Here, just as in *Sersich,* the Parma Municipal Court has no evidence that Mr. Odolecki is not indigent and, to the

contrary, has already regarded him as indigent, having accepted his affidavit of indigence in lieu of a deposit for filing his appeal.

Under these identical circumstances, the Eleventh District Court of Appeals held that it was the duty of the Warren Municipal Court to provide a trial transcript at the City's expense and granted a writ of mandamus to that effect. Thus, having established that Vittardi is an agent of the Parma Municipal Court, it is incumbent upon him to prepare the transcript at the City's expense, consistent with *Serlich*, the authority cited to and relied upon in its very own motion to dismiss.

Mr. Odolecki's counsel even went one step further to obtain a transcript by calling the Clerk of Court directly and asking why a transcript had not yet been prepared. The answer given, which respondents do not deny, is that it is the court's policy not to prepare a transcript at the City's expense absent a court order from the court of appeals compelling it to do so. In essence, it is the Parma Municipal Court's established procedure not to act in these matters until directed by a superior court to do so.

Accordingly, the Ohio Supreme Court should satiate the respondents' desire for clear direction from a superior court by denying their motion to dismiss and compelling them to prepare a trial transcript at the City's expense forthwith.

Respectfully submitted,

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/s/ John W. Gold

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CERTIFICATE OF SERVICE

A copy of the foregoing was sent via Electronic Mail on the 23rd day of April, 2016, to the following:

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