

STATE OF OHIO, MAHONING COUNTY

IN THE COURT OF APPEALS

SEVENTH DISTRICT

STATE OF OHIO ex rel.)	
WALLACE MITCHELL,)	CASE NO. 06 MA 118
)	
RELATOR,)	
)	<u>OPINION</u>
- VS -)	<u>AND</u>
)	<u>JOURNAL ENTRY</u>
HONORABLE JAMES EVANS,)	
COMMON PLEAS COURT,)	
MAHONING COUNTY, et al.,)	
)	
RESPONDENTS.)	

CHARACTER OF PROCEEDINGS: Petition for Writ of Mandamus.

JUDGMENT: Petition for Writ of Mandamus Dismissed
as Moot.

APPEARANCES:

For Relator:

Wallace Mitchell, Pro Se
#51443-060
USP Coleman II
U.S. Penitentiary
P.O. Box 1034
Coleman, Florida 33521

For Respondents:

Attorney Paul Gains
Prosecuting Attorney
Attorney Rhys Cartwright-Jones
Assistant Prosecuting Attorney
21 West Boardman Street, 6th Floor
Youngstown, Ohio 44503

JUDGES:

Hon. Joseph J. Vukovich
Hon. Cheryl L. Waite
Hon. Mary DeGenaro

Dated: September 19, 2007

PER CURIAM:

{¶1} Relator Wallace Mitchell filed a petition for writ of mandamus against Respondents the Honorable James C. Evans and the Mahoning County Clerk of Courts. He alleged violations of the Ohio Public Records Act as a result of Respondents' failure to comply with his requests to provide him with copies of the original complaints filed in *Butler v. Rossi*, Case No. 04DV0627 and *Douglas v. Butler*, Case No. 05CV2488.

{¶2} In the midst of this court's consideration of summary judgment motions, Respondents successfully asked this court to stay the matter as they have decided to comply with Relator's request for the complaints at issue. Thereafter, on June 26, 2007, Respondents filed a motion to dismiss based upon mootness. This motion indicates that the two desired complaints were sent to Relator the same day as the filing of the motion. Moreover, the complaints are attached to the motion, and the motion is certified as being served upon Relator on the day of filing as well.

{¶3} When a Respondent complies with the public records request after the filing of a mandamus action, the mandamus petition is rendered moot and thus the writ must be denied. *State ex rel. Toledo Blade Co. v. Board of Hancock Co.* (1998), 82 Ohio St.3d 34, 36. Specifically, Relator has now received the documents originally requested in the letters attached to his summary judgment motion. Accordingly, this mandamus action is hereby dismissed.

{¶4} Contrary to Respondents' request, however, we refuse to assess costs against Relator. A dismissal for mootness based upon Respondents' eventual submission to the Public Records Act does not make them the prevailing party. Regardless, costs are to be awarded to the prevailing party *unless the court otherwise directs*. See Civ.R. 54(D). This court has the discretion to make either party bear the costs. See *State ex rel. Frailey v. Wolfe* (2001), 92 Ohio St.3d 320, 321-322 (court of appeals in best position to determine if writ prompted Respondent's compliance).

{¶5} For the foregoing reasons, the petition is dismissed as moot and costs are assessed against Respondent clerk of courts as the record keeper and obligor under the Public Records Act. The clerk is directed to serve upon the parties notice of this judgment and its date of entry upon the journal. Civ.R. 58(B).

Vukovich, J., concurs
Waite, J., concurs
DeGenaro, P.J., concurs