

IN THE SUPREME COURT OF OHIO

David Esrati, *Pro Se* : Case Number 2021-1480
Relator/Appellant, : Second District Case No.: CA 29050
vs. : Trial Case No.: 2018 CV 00560
Dayton Metro Library, et al. :
Respondents/Appellees. :

RESPONDENTS-APPELLEES DAYTON METRO LIBRARY'S AND JEFFREY TRZECIAK'S RESPONSE TO RELATOR-APPELLANT DAVID ESRATI'S MEMORANDUM IN SUPPORT OF JURISDICTION

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**STATEMENT OF WHY THE CASE DOES NOT INVOLVE
QUESTIONS OF PUBLIC OR GREAT GENERAL INTEREST**

This court should decline to hear Petitioner-Appellant David Esrati's (hereafter "Appellant") appeal because this case does not involve a substantial constitutional question, nor does it involve a question of public or great general interest. This matter is before the Court on Appellant's appeal from a decision by the Second District Court of Appeals, which was made pursuant to Appellant's appeal from a decision by the Montgomery County Court of Common Pleas. The Montgomery County Court of Common Pleas denied two of Appellant's motions – a motion entitled "Motion for Sanctions" and a motion entitled "Motion Requesting Damages and Hearing Motion for Sanctions." Appellant appealed the trial court's decision to the Second District Court of Appeals. The court of appeals upheld the trial court's decision, finding that the trial court did not abuse its discretion in denying both of Appellant's motions.

In upholding the trial court's decision, the Second District Court of Appeals did not misapply or misinterpret the law, it did not create new law, nor did it change existing law. Rather, the court of appeals relied upon well-settled law regarding the discretion of a trial court to rule on, and deny, a motion for sanctions and a motion requesting a hearing and damages beyond what is legally provided for in a public records *mandamus* action. The application of law by the Second District Court of Appeals and the sound discretion of the Montgomery County Court of Common Pleas are not questions of public or great general interest.

It is clear that Appellant recognizes this fact, because rather than make an argument as to why the legal considerations underlying his appeal represent a question of public or great interest, Appellant instead provides a litany of allegations against political figures of Montgomery County, demands for disbarment of attorneys and judges, and conspiracy theories about the Ohio Sunshine Laws. In his "Memorandum in Support of Jurisdiction", Appellant does not ask this Court to

review and overturn the decision of the Second District Court of Appeals, but rather claims that the Ohio public records law “will be forever emasculated”, asserts that Montgomery County is “operated like a criminal organization”, and demands the “removal and disbarment from office” of prosecutors and judges from Montgomery County by this Court.

Despite sixteen (16) pages of oddball accusations and general complaining, Appellant has failed to explain why this case involves questions of public or great general interest.

Appellant has repeatedly attempted to insert his various and sundry complaints about Montgomery County political figures into this case, but this is wholly inappropriate for a *mandamus* action. Despite Appellant’s dramatic pleadings at every stage of this case and Appellant’s theatrical conduct during Second District oral arguments, this case boils down to a public records request made by Appellant and, following litigation initiated by Appellant, the production of these requested records in the timeline and in the format ordered by the trial court. The record is clear that the trial court made its ruling pursuant to law and that Appellees Dayton Metro Library and Tim Kambitsch (since replaced by Jeffrey Trzeciak) (hereafter “Appellees”) complied at all times with the trial court’s orders. The issues raised by Appellant subsequent to the trial court’s decision, namely Appellant’s motion for sanctions and Appellant’s motion seeking a hearing and additional damages, have been fully and properly adjudicated in accordance with sound law.

Appellant’s attempts to turn this case in to a grab-bag of Appellant’s many and varied personal grievances make clear that this case is not of public or general interest. Accordingly, the Court should decline jurisdiction and refuse this discretionary appeal.

STATEMENT OF THE FACTS

Appellant visited the main branch of the Dayton-Metro Library on August 19, 2017. Memorandum in Support of Jurisdiction, page 2. There he began taking photographs of the building and various library patrons. *Id.* A private-security guard approached Appellant and attempted to prevent Appellant from taking photographs of patrons without their consent. *Id.* Appellant expressed his disagreement, whereupon additional security personnel escorted Appellant from the building. *Id.*

Later that day, Appellant made a public records request for the library's security camera footage of this incident. *Id.*, page 3. This request was ultimately denied. *Id.* On February 1, 2018, Appellant filed his Petition for Writ of Mandamus, seeking an order for the library to produce this video.

PROCEDURAL HISTORY

On February 1, 2018 Appellant, through counsel, filed an original action in *mandamus* alleging violations of the Ohio Public Records Act by Appellees Dayton Metro Library and Tim Kambitsch, the Executive Director of the Dayton Metro Library. On February 2, 2018, Appellant filed an Amended action in *mandamus*. The Amended Complaint had no substantive additions or subtractions. In his Amended action, Appellant alleged that he had previously requested security tapes maintained by the Dayton Metro Library and that these records were not provided to him. In filing this action in *mandamus*, Appellant asked the trial court for a writ of *mandamus* requiring the Appellees to make certain records available to Appellant and awarding attorney fees and expenses to Appellant.

On October 5, 2018, Appellant filed a motion for summary judgment on Appellant's mandamus claim, attaching the affidavits of David Esrati and Daniel J. Durocher, Appellant's

attorney. Also on October 5, 2018, Appellees filed a motion for summary judgment on the mandamus action, with the affidavit of Tim Kambitsch attached.

On July 29, 2019, the trial court issued its Decision, Order, and Entry on this case, granting Appellant's Motion for Summary Judgment and finding in favor of the Appellant on the matter of Appellant's *Writ of Mandamus*. The Court ordered Appellees to "release the following videos depicting Esrati's ejection from the Dayton Metro Library on August 19, 2017." The Court further ordered that Appellees "edit the video only to the extent necessary to obscure the faces of the other library patrons in the video." The Court further ordered Appellees to pay Appellant statutory damages and the court costs associated with the matter before the Court. The Appellees complied with the Court's order and ruling.

On January 31, 2020, the trial court issued a second Decision, Order, and Entry pursuant to a SUA SPONTE hearing regarding the surveillance footage. This Decision, Order, and Entry provided clarification on which camera angles from the surveillance footage was to be provided to the Appellant. The Appellees complied with the Court's order and ruling.

On September 25, 2020, Appellant filed a "Motion for Sanctions" with the trial court. In this Motion, Appellant appeared to allege that Appellees statements regarding the surveillance footage capabilities were false, and thus constituted frivolous conduct pursuant to R.C. 2323.51(A)(2). The specific statements by Appellees alleged to be false were that the surveillance footage could not be produced with times codes due to the Court's requirement that the footage be edited to obscure patron faces. On October 16, 2020, Appellees filed their "Response to Motion for Sanctions". On October 23, 2020, Appellant filed his "Surreply Response to DML Response to Motion for Sanctions."

On December 30, 2020, Relator filed a “Motion Requesting Damages and Hearing Motion for Sanction” with the trial court. In this Motion, Relator sought a hearing before the court to present witnesses and asked for additional damages above and beyond the fines allowed by statute to be awarded to Appellant. On January 12, 2021, Appellees filed their “Response to Motion for Hearing.”

On February 5, 2021, the trial court issued its “Decision, Entry and Order Denying Defendant’s Motion for Sanction and Motion Requesting Damages and Hearing Motion for Sanction”, ruling on Appellant’s Motion for Sanctions and Motion for Damages and Hearing. The trial court denied both of Appellant’s motions. The trial court found that Appellant’s motion was time-barred by statute, that Appellees had not performed any frivolous conduct, that Appellant had not been adversely affected by Appellees’ conduct or the court proceedings, that there were no grounds for contempt of court, and that Ohio Civ.R. 11 was inapplicable to the case at hand.

Appellant appealed the Decision, Entry and Order Denying Defendant’s Motion for Sanction and Motion Requesting Damages and Hearing Motion for Sanction, filing the Notice of Appeal on March 5, 2021. This appeal was filed in the Second District Court of Appeals, case number CA 29050. Oral arguments were held on October 5, 2021. The Second District affirmed the trial court’s decision on October 22, 2021.

Appellant filed his Notice of Appeal of the Second District decision to this court on December 6, 2021.

ARGUMENTS IN RESPONSE TO PROPOSITIONS OF LAW

I. RESPONSE TO PROPOSITION OF LAW NO. 1

Appellant’s first Proposition of Law is merely an assertion that the Prosecutor is bound by the Ohio Open Meetings law and Rule 3.8 – Special Responsibilities of a Prosecutor. He then includes subsection (d) of this rule. Appellees assume Appellant is attempting to argue that the undersigned counsel somehow ignored this rule or the Ohio Open Meetings law when he caused the requested records to be produced in the manner ordered by the trial court, or that Appellant is attempting to argue that the Prosecutor may not represent the Appellees in this matter. To the latter possible argument from Appellant, the Montgomery County Prosecutor is the statutory counsel for the Dayton Metro Library, which is a tax-supported library in Montgomery County. See R.C. 309.09(A); R.C. 3375.06. To the former possible argument, Appellant makes no accusations as to how the undersigned counsel failed to follow the Ohio Open Meetings law and Rule 3.8. There are further no facts or demonstrations of Appellant’s supposed argument in the record. Appellant has not made a proposition of law, but rather a general, and vague, statement.

II. RESPONSE TO PROPOSITION OF LAW NO. 2

Appellant’s second Proposition of Law implies that the Ohio Sunshine Laws offer no protections for citizens from “vindictive discretionary courts” which can “totally sidestep all enforcement and reimbursement.” Appellant seems to forget that he was successful in his *mandamus* action, that he received the sought-after records, and that he was awarded the maximum amount of damages allowable by law. Appellant’s *mandamus* action, then, represents the protections of the Ohio Sunshine Laws in action, as applied by the law as written and through the enforcement of the courts.

III. RESPONSE TO PROPOSITION OF LAW NO. 3

Appellant once again makes general and vague statements about the political climate of Montgomery County and Dayton, Ohio, and the “retribution” Appellant has experienced as a result of his blog, Esrati.com. Appellant certainly has many axes to grind and personal grievances to air, but this Court is not the appropriate venue in which to air them. Appellant makes no demonstration of how these statements relate to his *mandamus* action or his appeal, beyond an allegation that his blog is the reason Appellant was not awarded attorneys fees in his *mandamus* action. (Appellant conveniently disregards R.C. 149.43(C)(3)(b), which places the decision on whether to award attorney’s fees in a public records *mandamus* squarely in the discretion of the trial court.) Once again, Appellant has not made a proposition of law, but rather has afforded himself another opportunity to make grand, but nebulous, allegations.

CONCLUSION

For these reasons, this Court should decline jurisdiction and refuse to accept this appeal.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on December 17, 2021, the foregoing document was served on all parties or their counsel of record through the court's e-filing system, if they are registered users or, if they are not, by placing a true and correct copy in the United States mail, postage prepaid, to their address of record.

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