

SUPREME COURT OF OHIO

State ex rel. Gooden v. Kagel

Gooden, 138 Ohio St. 3d at 343 (Ohio 2014) · No. 2013-1159 · Decided March 13, 2014

SUMMARY

The Ohio Supreme Court affirmed dismissal of Martine Gooden’s mandamus action seeking victim-loss statements from the Marion County Clerk of Courts. The court held that Gooden failed to comply with R.C. 2969.25(C) by omitting the required inmate-account statement and failed to establish by clear and convincing evidence that the requested documents existed or were in the clerk’s possession or control.

CASE DETAILS

COURT	Supreme Court of Ohio
WRITING FOR THE COURT	O'Connor, C.J.; Pfeifer, J.; O'Donnell, J.; Lanzinger, J.; Kennedy, J.; French, J.; O'Neill, J.
JURISDICTION	Ohio
DECIDED	March 13, 2014
DOCKET	2013-1159
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from the dismissal of a petition for a writ of mandamus seeking certified copies of victim-loss statements under Ohio's Public Records Act.
STANDARD OF REVIEW	The court applied the statutory requirements for an inmate seeking waiver of filing fees and required clear and convincing evidence that the requested public records existed and were subject to the respondent's legal duty to produce them.
PRECEDENTIAL VALUE	Published Ohio Supreme Court opinion; binding precedent in Ohio subject to subsequent treatment.
PARTIES	Martine P. Gooden v. Julie Kagel, Clerk of Courts

TOPICS

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PRACTICE AREAS

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mandamus

appellate procedure

QUESTIONS PRESENTED

1. Whether Gooden's mandamus petition was fatally defective because he failed to attach the inmate-account statement and other documentation required by R.C. 2969.25.
2. Whether Gooden was entitled to a writ of mandamus compelling the clerk to produce victim-loss statements when he failed to prove by clear and convincing evidence that the statements existed or were in the clerk's possession or control.

HOLDINGS

1. An inmate who seeks waiver of filing fees in a mandamus action must comply with R.C. 2969.25(C), including attaching a statement of the inmate account; failure to do so is a fatal defect warranting dismissal.
2. A relator seeking public records through mandamus must prove by clear and convincing evidence that the requested records exist and that the respondent has a legal duty to produce them; an unsubstantiated allegation that the records exist is insufficient.

KEY QUOTATIONS

“Mandamus is the appropriate remedy to compel compliance with R.C. 149.43, Ohio’s Public Records Act.”
(¶ 6)

“Therefore, because he has failed to prove by clear and convincing evidence that the victim-loss statements he requested even existed, he cannot show that Kagel had a legal duty to produce them.” (¶ 8)

FACTUAL BACKGROUND

Gooden was ordered to pay restitution as part of a 2006 criminal sentence and sought certified copies of victim-loss statements allegedly used in that case. He claimed that he repeatedly requested the documents from Marion County Clerk of Courts Julie Kagel, but Kagel responded that she had never possessed them. Gooden supplied no proof of his requests, Kagel's denials, the documents' existence, or their filing in the clerk's records.

PROCEDURAL HISTORY

Gooden filed a mandamus petition in the Third District Court of Appeals against the Marion County Clerk of Courts. The court of appeals dismissed the petition after finding that Gooden failed to attach the documentation required by R.C. 2969.25 and failed to provide evidence that the requested victim-loss statements existed or were in the clerk's possession or control. The Supreme Court of Ohio affirmed.

DISPOSITION

affirmed

CASES CITED

- State ex rel. Physicians Comm't. for Responsible Medicine v. Ohio State Univ. Bd. of Trustees, 108 Ohio St. 3d 288, 2006-Ohio-903, 843 N.E.2d 174, ¶ 6
- State ex rel. Data Trace Information Servs., L.L.C. v. Cuyahoga Cty. Fiscal Officer, 131 Ohio St. 3d 255, 2012-Ohio-753, 963 N.E.2d 1288, ¶ 25
- State ex rel. Am. Civ. Liberties Union of Ohio, Inc. v. Cuyahoga Cty. Bd. of Commrs., 128 Ohio St. 3d 256, 2011-Ohio-625, 943 N.E.2d 553, ¶ 24
- State ex rel. McCaffrey v. Mahoning Cty. Prosecutor's Office, 133 Ohio St. 3d 139, 2012-Ohio-4246, 976 N.E.2d 877, ¶ 26

OPINION

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2014 Ohio 869

PER CURIAM.

[Cite as State ex rel. Gooden v. Kagel, 138 Ohio St. 3d 343, 2014-Ohio-869.] THE STATE EX REL. GOODEN, APPELLANT, v. KAGEL, CLERK, APPELLEE. [Cite as State ex rel. Gooden v. Kagel, 138 Ohio St. 3d 343, 2014-Ohio-869.] Mandamus—R.C. 2969.25—Failure to attach required affidavits to petition is a fatal defect—Judgment denying writ affirmed. (No. 2013-1159—Submitted January 7, 2013—Decided March 13, 2014.) APPEAL from the Court of Appeals for Marion County, No. 9-13-0021. _____ Per Curiam. {¶ 1} This is an appeal from the denial of a petition for a writ of mandamus that sought public records. Because appellant, Martine Gooden, failed to file the required supporting documents with his petition and because he failed to prove that the documents he sought were within the possession or control of appellee, Julie Kagel, Marion County Clerk of Courts, we affirm. Facts {¶ 2} On April 24, 2006, Gooden was ordered to pay restitution to several victims as part of his sentence for a criminal conviction. In his petition for a writ of mandamus, Gooden claimed that despite several requests, Kagel had failed to provide to him certified copies of the victim-loss statement for each victim. {¶ 3} Gooden also claimed that the sentencing court failed to provide any creditable documentation of the victims' loss, which he asserted was "essential evidence that could sustain the judgment." He averred that he had repeatedly filed requests with Kagel seeking certified copies of the victim-loss statements from his criminal case but that Kagel had denied access to them. {¶ 4} The Third District Court of Appeals issued an alternative writ ordering Kagel to respond to the complaint. Kagel responded that she was not

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and had never been in possession of the documents Gooden was seeking. She also pointed out that Gooden appeared to be challenging the order for restitution, which could have been addressed in the direct appeal of his conviction. {¶ 5} The court of appeals found that Gooden had not filed the documentation required by R.C. 2969.25 with his petition for a writ of mandamus. The court further found that Gooden had failed to attach any proof of his requests for the victim-loss

statements or of Kagel's denial of those requests. The court also noted that Kagel had stated that victim-loss statements were not filed as part of any record related to Gooden in her custody and that Gooden had failed to point to a docket notation or other evidence that such statements had been filed. The court of appeals then held that Gooden had made only an unsubstantiated averment that the documents existed. For these reasons, the court dismissed the petition for a writ of mandamus. Legal Analysis {¶ 6} "Mandamus is the appropriate remedy to compel compliance with R.C. 149.43, Ohio's Public Records Act." *State ex rel. Physicians Commt. for Responsible Medicine v. Ohio State Univ. Bd. of Trustees*, 108 Ohio St. 3d 288, 2006-Ohio-903, 843 N.E.2d 174, ¶ 6; R.C. 149.43(C)(1). However, unlike in other mandamus cases, " '[r]elators in public-records mandamus cases need not establish the lack of an adequate remedy in the ordinary course of law.' " *State ex rel. Data Trace Information Servs., L.L.C. v. Cuyahoga Cty. Fiscal Officer*, 131 Ohio St. 3d 255, 2012-Ohio-753, 963 N.E.2d 1288, ¶ 25, quoting *State ex rel. Am. Civ. Liberties Union of Ohio, Inc. v. Cuyahoga Cty. Bd. of Commrs.*, 128 Ohio St.3d 256, 2011-Ohio-625, 943 N.E.2d 553, ¶ 24. Therefore, insofar as Gooden wants to obtain public documents, he correctly filed an action in mandamus. {¶ 7} However, R.C. 2969.25(C)(1) requires that an inmate who seeks waiver of the filing fees in an action, as Gooden requested, file both a waiver and an affidavit of indigence containing a statement of his balance in his inmate 2 January Term, 2014 account and a statement of his assets. Gooden failed to meet the requirements of R.C. 2969.25 because he failed to attach a statement of his inmate account as required by R.C. 2969.25(C). {¶ 8} Moreover, Gooden has provided no evidence that any victim-loss statements were submitted to the clerk in his case. Therefore, because he has failed to prove by clear and convincing evidence that the victim-loss statements he requested even existed, he cannot show that Kagel had a legal duty to produce them. *State ex rel. McCaffrey v. Mahoning Cty. Prosecutor's Office*, 133 Ohio St.3d 139, 2012-Ohio-4246, 976 N.E.2d 877, ¶ 26. {¶ 9} The court of appeals properly held that Gooden was not entitled to a writ of mandamus because he failed to meet the requirements of R.C. 2969.25 and because he failed to show that the victim-loss statements that he requested existed. Accordingly, we affirm the judgment of the court of appeals dismissing the petition for a writ of mandamus. Judgment affirmed.

O'CONNOR, C.J., and PFEIFER, O'DONNELL, LANZINGER, KENNEDY,

FRENCH, and O'NEILL, JJ., concur. _____ Martine P. Gooden, pro se.