

SUPREME COURT OF NEBRASKA

Huff v. Brown

305 Neb. 648 (2020) · No. No. S-19-271 · Decided April 23, 2020

SUMMARY

The Nebraska Supreme Court reviewed a writ of mandamus concerning a public-records request made to the Furnas County sheriff. The court held that substitution of the current sheriff for the former sheriff was proper because the duty to provide records follows the office, but concluded that the requester failed to establish a clear duty to provide records for which he had not timely responded to a fee-deposit request. The court affirmed in part and reversed and remanded in part.

CASE DETAILS

COURT	Supreme Court of Nebraska
WRITING FOR THE COURT	Miller-Lerman, J.; Heavican, C.J.; Cassel, J.; Stacy, J.; Funke, J.; Papik, J.
JURISDICTION	Nebraska
DECIDED	April 23, 2020
DOCKET	No. S-19-271
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Brown appealed a district court order that substituted him for the former sheriff as defendant and granted in part Huff's petition for a writ of mandamus seeking public records.
STANDARD OF REVIEW	Mandamus is a law action. Factual findings in a bench trial have the effect of a jury verdict and are reviewed for clear error. Whether to grant mandamus is reviewed for abuse of discretion.
PRECEDENTIAL VALUE	published
PARTIES	Doug Brown, sheriff of Furnas County v. Herchel H. Huff

TOPICS

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PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether the district court properly substituted current Sheriff Doug Brown for former Sheriff Kurt Kapperman.
2. Whether Huff established the elements necessary for a writ of mandamus under Nebraska's public-records statutes.
3. Whether Huff's failure to respond within 10 business days to the custodian's estimated copying cost relieved the sheriff of a duty to provide the requested jail records.
4. Whether a public-records custodian has a duty to obtain records held by another governmental custodian or to investigate and identify other custodians when the requested records are not in the custodian's possession.

HOLDINGS

1. A public-records mandamus action directed to the office of a records custodian does not abate when the individual holding that office changes; the successor may be substituted as the defendant.
2. A requester seeking mandamus under Neb. Rev. Stat. § 84-712.03 must show that the requester is entitled to examine the records, that the requested documents are public records, and that access was denied; in the general mandamus context, the requester must also show a clear right to relief and a corresponding clear duty by the respondent.
3. When a custodian estimates that requested copies will cost more than \$50 and requires a deposit, the requester must respond within 10 business days by proceeding with the request, negotiating to narrow or simplify it, or withdrawing it; absent such a response, the custodian has no continuing duty to fulfill the request.
4. A public-records custodian has a clear duty to provide only records of which that office or person is the custodian; the custodian is not required to obtain records maintained by another governmental office merely because the records may be relevant or because the other office might provide them upon request.

KEY QUOTATIONS

"The duty, if any, to provide public records stays with the office of the records' custodian and is transferred to the new holder of the office." (657)

"Therefore, under § 84-712.03(1)(a), the requesting party's initial responsibility includes demonstrating that the requested record is a public record that he or she has a clear right to access under the public records statutes and that the public body or custodian against whom mandamus is sought has a clear duty to provide such public records." (660)

"Without a response, under § 84-712(4), Kapperman was no longer under a duty to fulfill the request for jail records." (662)

"A specific custodian only has a clear duty under the public records statutes to provide the public records of which he or she is custodian." (666)

FACTUAL BACKGROUND

Huff, an inmate, submitted a multipart public-records request to the Furnas County sheriff seeking records relating to his criminal case, jurors, witnesses, attorneys, sheriff's compensation, vehicle impoundment, and jail records. Former Sheriff Kapperman stated that no responsive records existed for most requests and estimated that producing Huff's jail records would cost approximately \$750, requiring a deposit. Huff did not show that he timely responded to the deposit request or that Brown's office was the custodian of the records that Kapperman said did not exist.

PROCEDURAL HISTORY

Huff requested public records from former Furnas County Sheriff Kurt Kapperman. After Kapperman responded that most records did not exist and required a \$750 deposit for certain jail records, Huff filed a mandamus petition. The district court substituted current Sheriff Doug Brown for Kapperman, granted mandamus as to many requests, denied it as to medical records and records concerning other county officers, and waived copying fees. Brown appealed.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The district court's order was affirmed insofar as it denied mandamus, reversed insofar as it granted mandamus, and remanded with directions to deny Huff's petition for a writ of mandamus in its entirety.

CASES CITED

- *Aksamit Resource Mgmt. v. Nebraska Pub. Power Dist.*, 299 Neb. 114, 907 N.W.2d 301 (2018)
- *State ex rel. Neb. Health Care Assn. v. Dept. of Health*, 255 Neb. 784, 587 N.W.2d 100 (1998)
- *State ex rel. Rhiley v. Nebraska State Patrol*, 301 Neb. 241, 917 N.W.2d 903 (2018)
- *Russell v. Clarke*, 15 Neb. Ct. App. 221, 724 N.W.2d 840 (2006)
- *Evertson v. City of Kimball*, 278 Neb. 1, 767 N.W.2d 751 (2009)