

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Cesar Barros, :
Appellant :
v. :
City of Allentown and : No. 2129 C.D. 2012
Allentown Police Department : Submitted: May 3, 2013

OPINION NOT REPORTED

MEMORANDAUM OPINION
PER CURIAM

FILED: July 3, 2013

Cesar Barros (Barros) contests the order of the Court of Common Pleas of Lehigh County (trial court) that denied Barros’s petition for review and determined that records requested by Barros were exempt from disclosure.

I. Background.

A. Original Action.

Barros, an inmate confined in the State Correctional Institution at Smithfield in Huntingdon, Pennsylvania, requested, on June 8, 2008, the Allentown Police Department (APD) provide him with a complete copy of Criminal File #99-85124 under the Criminal History Records Information Act (CHRIA).¹

On January 20, 2009, Barros petitioned for review with this Court and stated the APD did not acknowledge his request or respond. This Court transferred the matter to the trial court because it involved a local government agency.

¹ 18 Pa. C.S. §§9101-9183.

The APD argued that Barros did not have personal jurisdiction to sue because the APD was not a legal entity that could be sued, and because Barros did not serve original process on the City of Allentown (City). The APD also stated that Barros could access all records available to him via the Right-to-Know Law (RTKL).²

The trial court determined that the APD was a subdivision of the City and was immune from suit. Because Barros failed to obtain personal jurisdiction over a proper defendant, the trial court dismissed the petition. The trial court also determined that service was defective.

On May 6, 2011, Barros appealed the common pleas court's denial of his request for a copy of his criminal file to this Court. In Cesar Barros v. Allentown Police Department, (No. 851 C.D. 2011, filed January 30, 2012), this Court affirmed.

B. Right-to-Know Request.

On April 11, 2011, Barros filed a Right-to-Know request with the City.³

² Act of February 14, 2008, P.L. 6, 65 P.S. §§67.101- 67.3104.

³ Barros's request stated the following:

To whom it may concern:

I, Cesar Barros, hereby request a complete copy of the above Criminal Complaint File under the Criminal History Record Information Act, [18] Pa.C.S. §§ 9109-9183, and under the Right-to-Know-Law, 65 P.S. Section 67.101 et seq.

(Footnote continued on next page...)

On May 9, 2011, Barros's request was granted in part and denied in part by the City, Office of City Solicitor. A letter to Barros from Frances A. Fruhwirth, Assistant City Solicitor, stated that thirty-two pages in the file were deemed subject to disclosure under CHRIA and were provided to Barros. The letter stated that Social Security Numbers on some of the information were redacted under Section 708(b)(6) of the RTKL, 65 P.S. §67.708(b)(6). The thirty-two pages consisted of a two-page Incident Report and Barros's own criminal history.

On May 17, 2011, Barros appealed the partial denial of access to the District Attorney of Lehigh County.

In a Final Determination on May 31, 2011, the District Attorney, James B. Martin (DA Martin) denied Barros access to criminal records, other than those records the City released to him in response to his RTKL request. DA Martin reasoned:

After a review of CHRIA and File #99-85124," [sic] I have determined that requested information that was not disclosed to Mr. Barros is exempt from disclosure under CHRIA and meets the statutory definitions of "intelligence information, investigative information, or treatment information," which was the basis for the City's partial denial.

(continued...)

Barros's Right-to-Know Request, April 11, 2011, at 1; Supplemental Reproduced Record (S.R.R.) at R.18b.

I also find that the information is exempt under the following sections of the RTKL: Section 708(b)(5) “a record of an individual’s medical, psychiatric or psychological history...” Section 708(b)(16)(ii) “a record of an agency relating to or resulting in a criminal investigation, including...investigative materials, notes, correspondence, videos and reports;” Section 708(b)(16)(vi)(A) “a record that, if disclosed, would do any of the following...reveal the institution, progress or result of a criminal investigation;” and Section 708(b)(6)(i)(A) “a record containing all or part of a person’s Social Security number, driver’s license number...or other personal identification number.”

In addition, I have determined that Rule 160 of the Rules of Juvenile Court Procedure limits public access to juvenile record information and that the complainant, Mr. Barros, is not among the enumerated parties who are permitted by the Rule to inspect juvenile records.

I also find that information sought under the RTKL would have been given to the requester in the discovery stage of his case in Lehigh County Court.

Final Determination by James B. Martin, District Attorney, June 2, 2011, at 3; S.R.R. at R.30b.

On June 15, 2011, Barros petitioned for review with the trial court. On June 30, 2011, the City moved to dismiss⁴ Barros’s petition for review and alleged that the APD was not a proper defendant because it was a department of the City and was not a separate legal entity. The City also alleged that DA Martin

⁴ Because preliminary objections are not permitted in statutory appeals, the trial court erred when it dismissed Barros’s appeal on the City’s preliminary objections. This Court has found such an error to be harmless where the court could have treated the preliminary objections as a motion to dismiss. See Strickland v. University of Scranton, 700 A.2d 979 (Pa. Super. 1997).

lacked standing and was not a proper defendant. The City also asserted that there was an identical action pending before this Court.

Barros filed a Motion for Leave to File an Application to Amend the Caption and a Motion for Leave to File Preliminary Objections on July 12, 2011. On July 20, 2011, DA Martin appeared and joined in the City's motion to dismiss.

On July 21, 2011, the trial court granted the City's Motion and dismissed Barros's Petition for Review because his appeal of the trial court's decision to deny access to the requested records was pending appeal. The trial court also denied the Motion for Leave to Amend the Caption as moot because Barros's Petition for Review had been dismissed.

Barros appealed to this Court and contended the trial court erred because it applied the wrong legal standards when it granted the motion to dismiss. Barros also contended that the trial court erred when it denied his motion to amend the caption.

This Court determined that the APD was a properly named defendant in the right to know action. This Court also determined that DA Martin was an adjudicator and not a properly named defendant. This Court also held that the trial court did not err when it denied Barros's motion to amend the caption. This Court vacated and remanded to the trial court for consideration on the merits the question of whether DA Martin properly denied Barros's request. Also, on remand, this Court directed the trial court to grant the motion to dismiss DA Martin.

II. Present Action.

A. Background.

1. Remand.

On remand the trial court granted the motion in the nature of preliminary objections of DA Martin and dismissed him from the case. The trial court scheduled a hearing for September 24, 2012.

2. Barros's Motion.

On August 26, 2012, Barros moved for leave to supplement the record and requested that the trial court conduct an in camera review of documents for a confession of Miguel Quinones (Quinones) and the results of an alleged polygraph of Quinones.

3. Mandamus.

On August 28, 2012, Barros petitioned for a writ of mandamus and alleged:

3. It appears that the District Attorney's Office is claiming that it will not be aggrieved by the release of the requested documents in question. However, there is the question of whether the documents in question are in the custody of the Allentown Police Department and/or the District Attorney's Office. . . . Therefore, Petitioner [Barros] seeks to compel the District Attorney's Office to respond to, and address Petitioner's [Barros] Petition for Review. . . .

. . . .

5. Petitioner [Barros] contends that there is a rationale [sic] basis to differentiate between the function of the District Attorneys' [sic] Office and the Office of Open Records and that this Court is best suited to answer this question by conducting an independent review of the entire relevant record and applicable law de novo.

Furthermore, it is well established, that any person whose rights or legal relations are affected by a statute may have the Court determine any question of construction arising under the statute, and obtain [sic] a declaration of his or her rights, or legal relations. . . .

6. The District Attorney's Office is part of the chain of custody of the specific public judicial documents in question. . . . Therefore, the original . . . of the documents in question must be either in the custody of the Allentown Police Department or the District Attorney's Office. Furthermore, the District Attorney's Office file is also 'discoverable.'

Petition for Writ of Mandamus, August 28, 2012, Paragraph Nos. 3 and 5-6 at 1-2.⁵ Barros requested that the trial court compel DA Martin to respond to, and address his petition for review.

4. Hearing.

At hearing on September 24, 2012, Joseph N. Hanna (Chief Hanna), Assistant Chief of Police Operations for the Allentown Police Department, testified that under CHRIA, records dealing with "intelligence," "investigation," and "medical records" were exempt from disclosure. Notes of Testimony, September 24, 2012, (N.T.) at 8; S.R.R. at R.72b. With respect to Barros's right to know request, Chief Hanna explained that after he denied the request Barros appealed to the District Attorney's Office. N.T. at 10-11; S.R.R. at R.74b-R.75b. Chief Hanna listed the records that were withheld from Barros. Chief Hanna indicated that the records which were withheld were investigative materials and exempt from disclosure under CHRIA. N.T. at 14-15; S.R.R. at R.78b-R.79b. On cross-

⁵ The petition for writ of mandamus is contained in the Supplemental Reproduced Record but is not denoted by page numbers.

examination, Chief Hanna did not recall whether he found a confession by Quinones or a polygraph test of Quinones in the file, but he explained that these documents were “most likely” not in the file because they were not listed on Chief Hanna’s affidavit of documents released to Barros and documents denied to Barros. N.T. at 27-29; S.R.R. at R.91b-R.93b. On redirect, Chief Hanna reiterated with respect to the confession and the polygraph that “[t]o the best of my knowledge, they were not in there [in the file] and that’s why they are not noted in the affidavit.” N.T. at 35; S.R.R. at R.99b. At any rate, Chief Hanna testified that these documents would qualify for an exclusion under CHRIA as investigative materials. N.T. at 36; S.R.R. at R.100b. During the proceeding, Chief Hanna telephoned Captain Medero of the APD and asked him to review the file for the confession and polygraph result. Captain Medero did not find those documents. N.T. at 91; S.R.R. at R.155b.

Barros testified that he needed the confession and the polygraph to form the basis of a new Post Conviction Relief Act⁶ filing. N.T. at 62-63; S.R.R. at R.126b-R.127b. Barros also indicated that he desired access to the following information which was denied to him: “Pennsylvania State Police forensic lab reports Communication center incident review. . . . Internal police wanted notice for Jose Quinones. . . . Reports on individual mistakenly apprehended. . . . And . . . three signed witness statements.” N.T. at 64-65; S.R.R. at R.128b-

⁶ 42 Pa.C.S. §§9541-9546.

R.129b.⁷ Barros requested that the trial court conduct an in camera review of the documents for which he was denied access.

5. Trial Court's Disposition.

The trial court announced that it would rule on the underlying petition for review after it received the file from the APD. The trial court denied the petition for writ of mandamus. The trial court granted the motion for leave to supplement the record and stated that it would conduct an in camera review of the APD file.⁸

When the City submitted the file to the trial court, the City also enclosed a copy of a letter from Chief Hanna which stated:

In preparation of these documents, I had an opportunity to discuss and query the lead investigator in this case, former Allentown Police Detective Richard Heffelfinger. It was his recollection that co-defendant, Michael Quinones, was brought from Rikers Island prison in New York to Lehigh County during the course of the Cesar Barros homicide trial. Mr. Quinones was represented by Attorney Albert Nelthrop. Detective Heffelfinger recalls a proffer offered and a subsequent polygraph conducted upon Mr. Quinones. Following said polygraph, Mr. Quinones provided testimony at trial. Detective Heffelfinger believes that all of these events transpired on the same day under the direction of Lehigh County Assistant District Attorney Christie Bonesch. He did not

⁷ Heather Gallagher, senior deputy district attorney, testified regarding the procedures of the District Attorney's office in reviewing right to know appeals and in determining whether to grant a right to know request made to the District Attorney's Office.

⁸ The trial court also granted a motion for leave to amend Barros's petition for review filed on June 28, 2011. Barros sought to amend his petition to assert a common law right to judicial documents.

believe that any statement by Mr. Quinones was ever memorialized.

If Detective Heffelfinger's account is accurate it would lend to a plausible explanation as to the absence of a documented statement, and polygraph results.

Letter from Chief Hanna, October 2, 2012, at 1; S.R.R. at R.179b.

By order dated October 15, 2012, the trial court denied Barros's petition for review, "After said review, the Court found, by a preponderance of the evidence, that the documents requested by Plaintiff [Barros] are exempt from disclosure under the Criminal History Record Information Act because they constitute 'intelligence information, investigative information, or treatment information.'" Trial Court Opinion, December 19, 2012, at 2-3; S.R.R. at R.185b-R.186b.

B. Issues Presented by Barros.

Barros raises the following issues:

1. Whether the Common Pleas Court committed an error of law when it denied the Petition For Review insofar as it conducted an in camera review of some but not all of the requested documents in question; Wherein, Appellant [Barros] also alleged a Common-Law right of access to the requested public judicial documents in question?
2. Whether the Common Pleas Court abused its discretion when it denied the Petition For Writ of Mandamus; Wherein, Appellant [Barros] also sought a declaration of his rights and legal relations pursuant to section 7533 of the Declaration [sic] Judgment [sic] act; 42 Pa.C.S. §7533?

Barros's Brief at 4.⁹

1. Appeal of Denial of Petition for Review.

Initially, Barros argues that the trial court erred because it conducted an in camera review of some but not all of the documents in question. Again, Barros asserts that the trial court erred because it did not review the polygraph or the confession of Quinones. Barros asserts that he believes that Quinones failed the polygraph test and that someone prosecuting the homicide for which both Quinones and Barros were charged misinformed the criminal court in order to excuse and/or minimize Quinones's culpability in the homicide.

The problem with Barros's reasoning is that the trial court did conduct an in camera review of Barros's criminal file. Chief Hanna informed the trial court that the polygraph and the confession were not part of the file. The trial court could not review what was not there. Because nothing in the record indicated that the requested documents were part of the file, the trial court did not err when it did not permit Barros access to them.

2. Appeal of Denial of Petition for Writ of Mandamus.

⁹ This Court's standard of review in a RTKL case is whether an error of law was committed, constitutional rights were violated, or necessary findings of fact are supported by substantial evidence. Chester Community Charter School v. Hardy ex rel. Philadelphia Newspaper, LLC, 38 A.3d 1079, 1082 n.4 (Pa. Cmwlth. 2012). Our scope of review is plenary. Id. This Court's scope of review of a decision to grant relief in a mandamus action is limited to a determination of whether the trial court abused its discretion or committed error in applying the law. In re Subdivision of Marie Crowley Lands, 736 A.2d 40 (Pa. Cmwlth. 1999).

Barros next contends that the trial court erred when it denied his petition for writ of mandamus and did not order DA Martin to respond to and address his petition for review. This Court already determined in the previous Barros decision that DA Martin should be dismissed from the case and directed the trial court to do so on remand.

Mandamus is an extraordinary writ designed to compel performance of a ministerial act or mandatory duty where there exists a clear legal right in the plaintiff, a corresponding duty in the defendant and want of any other adequate and appropriate remedy. Princeton Sportswear Corp. v. Redevelopment Authority, 40 Pa. 274, 333 A.2d 473 (1975).

Here, DA Martin performed a quasi-judicial function when he determined which records Barros could access, pursuant to Section 503(d)(2) of the Right-to-Know Law, 65 P.S. §67.503(d)(2). There was no ministerial or mandatory duty for which Barros had a clear legal right. DA Martin did not have to release files to Barros unless Barros was entitled to them under the applicable law, and he could not release documents which were not in the file of the APD.

Accordingly, this Court affirms.¹⁰

¹⁰ Barros also asserts that he sought a declaration of his rights pursuant to Section 7533 of the Declaratory Judgments Act, 42 Pa.C.S. §7533. Barros asserted in his petition for writ of mandamus that the trial court could enter declaratory judgment on the different functions of the District Attorney's Office and the Office of Open Records. In this regard the trial court properly determined that mandamus did not lie.

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	:
Appellant	:
	:
v.	:
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City of Allentown and	:
Allentown Police Department	:
	No. 2129 C.D. 2012
	:

PER CURIAM

ORDER

AND NOW, this 3rd day of July, 2013, the order of the Court of Common Pleas of Lehigh County in the above-captioned matter is affirmed.