

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

David Crockett, :
 :
 Appellant :
 :
 : No. 2295 C.D. 2011
 :
 v. :
 : Submitted: June 22, 2012
 :
 Southeastern Pennsylvania :
 Transportation Authority, a.k.a :
 SEPTA, and Nicholas J. Staffieri, :
 Esquire and C. Neil Petersen :

BEFORE: HONORABLE RENÉE COHN JUBELIRER, Judge
HONORABLE PATRICIA A. McCULLOUGH, Judge
HONORABLE ROCHELLE S. FRIEDMAN, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE McCULLOUGH

FILED: September 11, 2012

David Crockett (Crockett) appeals from the November 28, 2011 order of the Court of Common Pleas of Philadelphia County (trial court), denying his amended petition for mandamus, request for damages, and motion for sanctions against Southeastern Pennsylvania Transportation Authority (SEPTA).

On December 26, 2010, Appellant submitted a request to SEPTA under the Right-to-Know Law (RTKL)¹ seeking the following information with respect to an accident that occurred on September 1, 2010, while he was exiting a SEPTA train:

- 1) The names of all the SEPTA personnel operating this specific train at the time of the accident along with their identification/badge numbers.

¹ Act of February 14, 2008, P.L. 6, 65 P.S. §§67.101–67.3104.

- 2) A copy of the SEPTA report for this specific accident/incident filed by the SEPTA personnel operating the train at the time of the accident.
- 3) The identification number of the coach/car involved in the accident.
- 4) Any and all maintenance records for the specific coach/car prior to and after this specific incident/accident.
- 5) The make/model/manufacture and date of service for the coach/car listed above.
- 6) Any and all accident/incident reports associated with the SEPTA personnel operating the train as listed above. These reports requested are for the history of their employment with SEPTA not just for this specific train, shift or tour.
- 7) The training and work history of all the SEPTA personnel who operated the train listed above.
- 8) Any and all accident/incident reports associated with STEPWELLS and STEPWELL COVERS or TRAP DOORS over the STEPWELLS for all SEPTA trains within the entire SEPTA system.

(Original Record at Item No. 14.)

On January 12, 2011, SEPTA responded to the request and provided the accident report but withheld records related to maintenance or personnel, citing the investigative and personal information/personnel records exceptions of the RTKL.² On January 25, 2011, Crockett filed an appeal with the Pennsylvania Office of Open Records (OOR). On February 24, 2011, OOR issued a final determination granting in part and denying in part Crockett's request for records. Specifically, OOR ordered SEPTA to provide the following to Crockett within 30 days: the names of the

² See Sections 708(b)(6)(i)(A), (b)(7), and (b)(17) of the RTKL, respectively. 65 P.S. §§67.708(b)(6)(i)(A), (b)(7), (b)(17).

SEPTA personnel operating the train; the identification number of the coach/car involved in the accident; the maintenance records for the specific coach/car prior to and after this incident/accident; the make/model/manufacture and date of service for the coach/car; and the training histories and non-accident work histories for the SEPTA personnel who operated the train at the time of the accident. OOR denied Crockett's request seeking the identification badge numbers of SEPTA personnel, accident work histories of all SEPTA personnel, and accident reports associated with all stepwells, stepwell covers, and stepwell trap doors. Neither Crockett nor SEPTA appealed OOR's determination.

On March 28, 2011, Crockett filed a petition for writ of mandamus with this Court alleging that SEPTA had not complied with OOR's February 24, 2011 final determination.³ More specifically, Crockett alleged that SEPTA failed to provide the maintenance records of the coach/car involved, the make/model/manufacture and date of service for the coach/car, and the training and non-accidental work histories of the SEPTA personnel who operated the train on the day of the accident. Crockett sought an order requiring SEPTA to provide him with these documents, as well as any costs, fees, or civil penalties the Court deems appropriate. By order dated April 12, 2011, we transferred the matter to the trial court.

On the same day that Crockett filed his mandamus petition, SEPTA sent Crockett a letter with the following documents attached: maintenance records of car number 282 for the period from August 2010 to September 2010; redacted training files of the crew in charge of West Trenton Line Train no. 707; and redacted accident/incident reports taken from the personnel files of the crew. On April 5,

³ Crockett v. [SEPTA], (Pa. Cmwlth., No. 158 M.D. 2011).

2011, SEPTA sent a supplemental response that included maintenance records of car number 282 for the period from October 27, 2009, to August 5, 2010, and for the period from September 28, 2010, to March 31, 2011.⁴

On May 12, 2011, Crockett filed a motion with the trial court for leave to amend his original petition for writ of mandamus seeking to: add C. Neil Peterson, Esq., deputy counsel for OOR, and Nicholas J. Staffieri, Esq., general counsel for SEPTA, as parties in their individual and official capacities; include an additional allegation of error on OOR's part with respect to SEPTA's incident report; include additional mandamus counts relating to inspection of SEPTA's litigation/claim files and maintenance records of rail cars; include injunction requests prohibiting the destruction of records; and set forth additional facts and claims for damages under the RTKL and section 8303 of the Judicial Code, 42 Pa. C.S. §8303.⁵ By order dated June 23, 2011, the trial court granted Crockett leave to add Peterson and Staffieri in their official capacities only and to modify his claim for damages. The trial court denied Crockett's remaining requests. Crockett subsequently filed an amended petition in compliance with the trial court's order.

On July 20, 2011, Crockett filed a motion for sanctions seeking to: strike statements from SEPTA's answer to his petition for writ of mandamus and new

⁴ In August of 2011, SEPTA provided Crockett with additional information from its maintenance and reliability tracking system and vehicle maintenance information system with respect to car number 282. In September of 2011, SEPTA provided Crockett with still more information relating to the maintenance of car number 282, which SEPTA alleged involved the organization and compilation of records beyond what is required by the RTKL or any decision or order. These records dated back to 1988.

⁵ Section 8303 of the Judicial Code provides that "[a] person who is adjudged in an action in the nature of mandamus to have failed or refused without lawful justification to perform a duty required by law shall be liable in damages to the person aggrieved by such failure or refusal." 42 Pa. C.S. §8303.

matter; strike statements from SEPTA's objections to his motion for leave of the court to amend his original petition; strike statements referring to Crockett's potential personal injury lawsuit from SEPTA's memorandum of law in support of the above objections; and bar SEPTA from raising said statements in any future litigation documents. By order dated August 16, 2011, the trial court consolidated Crockett's amended mandamus petition and motion for sanctions and the matter proceeded to a hearing on November 22, 2011.⁶

Following this hearing, by order dated November 28, 2011, the trial court denied Crockett's amended petition for mandamus, request for damages, and motion for sanctions, determining that, based on SEPTA's production of numerous documents and materials, SEPTA had complied with OOR's February 24, 2011 final determination. The trial court noted that although SEPTA was unable to produce certain handwritten notes used to generate maintenance records, SEPTA had made a good faith effort to comply with OOR's determination. The trial court noted that SEPTA had provided Crockett with all records pertaining to car number 282 from 1988 to the present.

On appeal to this Court,⁷ Crockett alleges that the trial court erred in denying his amended petition for mandamus and request for damages because SEPTA failed to comply with OOR's final determination. Specifically, Crockett asserts that SEPTA failed to provide complete accident/incident reports. Crockett

⁶ On the day of the hearing, Crockett filed a second motion for leave to amend his mandamus petition to request physical inspection of the maintenance records of car number 282, rather than copies of said records. However, the trial court did not respond to this motion.

⁷ Our scope of review in a mandamus action is limited to determining whether the trial court abused its discretion or committed an error of law and whether sufficient evidence exists to support the trial court's findings. Orange Stones Co. v. City of Reading, 32 A.3d 287 (Pa. Cmwlth. 2011).

also argues that the trial court erred in denying his request for permission to amend his mandamus petition to request an inspection of the records. We disagree.

Mandamus is an extraordinary remedy designed to compel the performance of a ministerial act or a mandatory duty. Evans v. Pennsylvania Board of Probation and Parole, 820 A.2d 904 (Pa. Cmwlth. 2003), appeal quashed, 580 Pa. 550, 862 A.2d 583 (2004); Bell Atlantic Mobile Systems, Inc. v. Borough of Clifton Heights, 661 A.2d 909 (Pa. Cmwlth. 1995), appeal denied, 544 Pa. 652, 676 A.2d 1194 (1996). Mandamus may only be granted where there is a clear legal right in the plaintiff, a corresponding duty in the defendant, and a lack of any other appropriate and adequate remedy. Id.

Pursuant to OOR's final determination, SEPTA was ordered to provide the following information to Crockett: the names of the SEPTA personnel operating the train; the identification number of the coach/car involved in the accident; the maintenance records for the specific coach/car prior to and after this incident/accident; the make/model/manufacture and date of service for the coach/car; and the training histories and non-accident work histories for the SEPTA personnel who operated the train at the time of the accident. As the trial court indicated, SEPTA provided Crockett with all of its records relating to car number 282, including records dating back to 1988, and voluminous maintenance records, training files, and accident/incident reports. Thus, we agree with the trial court that SEPTA complied with OOR's final determination.⁸

⁸ To the extent that Crockett argues that SEPTA failed to comply with OOR's final determination by not providing the handwritten notes that SEPTA utilized to compile the maintenance records, we note that Crockett did not include such notes in his original RTKL request and that SEPTA has since made these notes available to Crockett for his inspection. Indeed, in its brief, SEPTA indicates that Crockett had made arrangements to view these notes and other documents in June.

In the course of this argument, Crockett contends that SEPTA and the trial court erred by wrongly considering the intended use of the requested records, i.e., in relation to a personal injury suit. Crockett correctly notes that section 302(b) of the RTKL provides that “a local agency may not deny a requester access to a public record due to the intended use of the public record by the requester unless otherwise provided by law.” 65 P.S. §67.302(b). However, although SEPTA did reference Crockett’s potential underlying personal injury suit in the course of these proceedings, SEPTA did not deny Crockett access to the requested records on that basis. Instead, as the trial court indicated, SEPTA ultimately complied with OOR’s final determination and provided Crockett with the records he requested. Thus, any error in this regard on the part of SEPTA or the trial court was harmless.

Crockett also contends that the trial court erred in failing to issue a ruling with respect to his second motion for leave to amend his mandamus petition to seek physical inspection of the maintenance records of car number 282. We disagree.

Crockett filed this request on November 22, 2011, the day of the hearing before the trial court. The trial court stated its ruling at the conclusion of the hearing, i.e., SEPTA complied with OOR’s final determination and provided Crockett with the requested records, thereby negating this last minute request by Crockett. Further, such a request was unnecessary because section 701 of the RTKL specifically permits the inspection of a public record, stating that “unless otherwise provided by law, a public record, legislative record or financial record shall be accessible for inspection and duplication in accordance with this act.” 65 P.S. §67.701. Indeed, Crockett acknowledges this right to inspect in his brief.

Finally, Crockett contends that the trial court erred in failing to award him damages under section 8303 of the Judicial Code and/or section 1305 of the RTKL, 65 P.S. §67.1305. Again, we disagree.

As noted above, section 8303 of the Judicial Code provides that “[a] person who is adjudged in an action in the nature of mandamus to have failed or refused without lawful justification to perform a duty required by law shall be liable in damages to the person aggrieved by such failure or refusal.” 42 Pa. C.S. §8303. By its very terms, this section only applies to a petitioner who is successful in a mandamus action. In this case, the trial court found SEPTA to be in compliance with OOR’s final determination and ruled against Crockett by denying his mandamus petition.

Section 1305(a) of the RTKL provides for the award of a civil penalty of not more than \$1,500.00 if an agency denies access to a public record in bad faith. However, in the present case, the trial court specifically found that SEPTA acted in good faith in complying with OOR’s final determination. Thus, the trial court did not err in failing to award Crockett damages under either section 8303 of the Judicial Code or section 1305 of the RTKL.

Accordingly, the order of the trial court is affirmed.

PATRICIA A. McCULLOUGH, Judge

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ORDER

AND NOW, this 11th day of September, 2012, the order of the Court of Common Pleas of Philadelphia County, dated November 28, 2011, is hereby affirmed.

PATRICIA A. McCULLOUGH, Judge