

**COURT OF APPEALS OF OHIO
NINTH APPELLATE DISTRICT
LORAIN COUNTY, OHIO**

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|-----------------------------------|---|------------------------------------|
| GIBSON BROS., INC, et al., |) | |
| |) | CASE NO. 20CA011648 |
| Plaintiffs-Appellees, |) | |
| |) | |
| v. |) | |
| |) | |
| OBERLIN COLLEGE, et al. |) | |
| |) | |
| Defendants, |) | STATEMENT OF WEWS-TV |
| |) | IN RESPONSE TO MAGISTRATE’S |
| and |) | JULY 20, 2020 ORDER |
| |) | |
| WEWS-TV |) | |
| |) | |
| Appellant. |) | |

In accordance with the July 20, 2020 Magistrate’s Order, WEWS-TV respectfully submits this statement addressing the Court’s jurisdiction to consider WEWS-TV’s appeal of the Entry and Ruling on Non-Parties’ Motion for Access to Sealed Case Document issued by the Lorain County Court of Common Pleas on April 29, 2020 and journalized on May 5, 2020 (“Order”).¹ The Order denied the motion of WEWS-TV, Advance Ohio, and the Ohio Coalition for Open Government for access to a sealed exhibit to Defendants’ combined summary judgment reply brief (“Exhibit G”). Movants filed the motion in accordance with the public’s presumptive right of access to judicial documents under the First Amendment, the Ohio Constitution, and Ohio Superintendence Rule 45.

¹ WEWS-TV incorporates by reference its July 7, 2020 Statement in Response to Magistrate’s Order which addressed whether the order at issue is a final and appealable order. The instant statement addresses the specific question of whether this Court has jurisdiction to hear the appeal even though Sup.R. 47 allows parties aggrieved by a court’s failure to comply with the requirements of Superintendence Rules 44 through 47 to seek redress through mandamus.

ARGUMENT

Ohio Superintendence Rule 47(B) provides that a party aggrieved by a court's failure to comply with the requirements of Superintendence Rules 44 through 47 may seek redress via a writ of mandamus. However, the Rule's plain language makes clear that mandamus is not the exclusive form of remedy. *See* Sup.R. 47(B) ("A person aggrieved by the failure of a court or clerk of court to comply with the requirements of Sup. R. 44 through 47 *may* pursue an action in mandamus pursuant to Chapter 2731. of the Revised Code.") (emphasis added). Additionally, the Ohio Revised Code provides that where there is "a plain and adequate remedy in the ordinary course of law," a writ of mandamus "must not be issued." R.C. 2731.05. Rather, "[t]o be entitled to extraordinary relief in mandamus, [a party] must establish a clear legal right to the sealed records, a clear legal duty on the part of the court to unseal them, and *the lack of an adequate remedy in the ordinary course of law.*" *State ex rel. Cincinnati Enquirer v. Lyons*, 2014-Ohio-2354, ¶ 11, 140 Ohio St. 3d 7, 10, 14 N.E.3d 989, 992–93 (emphasis added).

Consistent with this principle, the Ohio Supreme Court has denied requests for mandamus relief when a direct appeal was available. *See State ex rel. Richfield v. Laria*, 2014-Ohio-243, ¶ 12–13, 138 Ohio St.3d 168, 170, 4 N.E.3d 1040, 1043 (denying petitioner's request for a writ of mandamus for access to sealed records where petitioner failed to pursue a direct appeal); *State ex rel. Pontillo v. Pub. Emp. Retirement Sys. Bd.*, 98 Ohio St.3d 500, 2003-Ohio-2120, ¶ 23–35 (rejecting mandamus petition because petitioner failed to pursue a direct appeal); *contra S.C. Appellee v. T.H. Appellant*, Summit App. No. 29594, 2020-Ohio-2698, ¶ 8 (citing cases which erroneously conclude, without analysis, that mandamus is the exclusive remedy when a trial court denies a motion under Sup. R. 45).

Indeed, in *Laria*, the court found that “[m]andamus cannot be used as a substitute for appeal.” *Laria*, 2014-Ohio-243, ¶ 11 (quotations and citations omitted). There, the Village of Richfield filed a writ of mandamus seeking an order from the Ohio Supreme Court to compel a municipal court to produce sealed criminal records after the municipal court denied Richfield’s motion to unseal the records. *Id.* at ¶ 1–2. Because Richfield “improperly requested court records under the Public Records Act . . . rather than under Sup.R. 44 through 47” the Ohio Supreme Court denied the writ, but held that even if Richfield had requested the records under the Rules of Superintendence, mandamus relief was not appropriate as it “could have appealed the trial court’s denial of its motion and the refusal to unseal the records. Richfield had an adequate remedy at law and therefore cannot satisfy the requirements of a writ of mandamus.” *Id.* at ¶ 2.

Here, WEWS-TV also has an adequate remedy at law: appeal of the Order denying its motion to unseal Exhibit G, which WEWS-TV now pursues before this Court. “Through decisional law, the Supreme Court has indicated that the Rules of Superintendence are not designed to alter basic substantive rights.” *In re K.G.*, 9th Dist. Wayne No. 10CA0016, 2010-Ohio-4399, ¶ 11, *citing State v. Singer*, 50 Ohio St.2d 103, 110 (1977). Where, as here, WEWS-TV’s presumptive rights of access to Exhibit G stems from the First Amendment and the Ohio Constitution, the Rules of Superintendence do not alter WEWS-TV’s substantive right to appeal a decision denying those rights. *See* R.C. 2503.03 (“Every final order, judgment, or decree of a court . . . may be reviewed on appeal by a court of common pleas, a court of appeals, or the supreme court, whichever has jurisdiction.”). And, through this direct appeal, an adequate remedy exists in the ordinary course of law.

In any event, this Court has jurisdiction over both direct appeals and mandamus actions. *See* Ohio Constitution, Article 4, Section 3(B)(1)(b) and 3(B)(2). Sup.R. 47(B) serves to codify a long-recognized constitutional right: that a party aggrieved by a court’s refusal to grant access to court records may pursue an action in mandamus. However, the Rule cannot extinguish WEWS-TV’s concurrently existing constitutional right to invoke this Court’s jurisdiction to review, modify or reverse the trial court’s judgment. *See ProgressOhio.org v. Kasich*, 129 Ohio St.3d 449, 2011-Ohio-4101 (dismissing original action filed pursuant to statute conferring jurisdiction and explaining that “[i]t is a well-established principle of constitutional law that when the jurisdiction of a particular court is constitutionally defined, the legislature cannot by statute restrict or enlarge that jurisdiction unless authorized to do so by the constitution.”) .

CONCLUSION

For the foregoing reasons WEWS-TV respectfully submits that this Court has jurisdiction to consider the WEWS-TV’s appeal of the Lorain County Court of Common Pleas’ Entry and Ruling on Non-Parties’ Motion for Access to Sealed Case Document.²

Dated: August 10, 2020

Respectfully submitted,

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² Alternatively, should the Court conclude that direct appeal is unavailable, WEWS-TV will file a request for a writ of mandamus in due course.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served on August 10, 2020, via email, pursuant to App.R. 13(C)(6) of the Appellate Rules of Civil Procedure, upon the following:

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