

IN THE CIRCUIT COURT FOR BALTIMORE CITY

Justine Barron
Plaintiff

v.

Case No. 24C19002626

Patricia Trikeriotis and
Hon. W. Michel Pierson
Defendants

MEMORANDUM OPINION AND ORDER

Justine Barron filed a Complaint along with a Motion for Summary Judgment in the Circuit Court for Baltimore City against Patricia Trikeriotis, the court reporter, and Judge W. Michel Pierson, the Administrative Judge, praying that a mandamus be issued ordering Ms. Trikeriotis to provide her with a copy of the audio recording of the motions hearing held on September 10, 2015 in the consolidated cases of *State v. Goodson, et al.*, case nos. 115141032 through 11514037. She prays in the alternative that the Court issue an injunction commanding Ms. Trikeriotis to provide her with a copy of the audio recording or issue a declaratory judgment declaring that the administrative order that denied her access to the copy is invalid. Defendants filed a Motion to Dismiss¹ (or, in the alternative,

¹ Defendants argued initially that service upon Judge W. Michel Pierson was defective. Plaintiffs subsequently cured the service issue, and at the hearing before this Court on August 15, 2019, defendants acknowledged that service was now proper, withdrawing that portion of their motion.

a cross-motion for summary judgment)² and a motion in opposition to Ms. Barron's Motion for Summary Judgment. Ms. Barron filed a motion in opposition to defendants' Motion to Dismiss.

Facts

The facts involved in this case are contained in the pleadings of the parties. On April 17, 2019, Justine Barron, a journalist, filed a request in the Circuit Court for Baltimore City for a copy of the audio recording of a motions hearing in *State v. Goodson, et al.*, case nos. 115141032 through 11514037. The Baltimore City Court Reporting Services Office sent Ms. Barron an email advising her to send payment in the amount of \$40.00 and stated that "we will prepare your audio." Ms. Barron emailed back an image of a \$40.00 money order. Five days later, the office notified her that the recording would be "available tomorrow." Ms. Barron responded that she would prefer to pick up the recording the day following.

On April 24, 2019, Judge W. Michel Pierson issued Administrative Order 2019-02, addressing copies of audio recordings. The Order reads as follows:

"Pursuant to the terms of Maryland Rule 16-504(h)(1)(C), it is, this 24th day of April, 2019, ORDERED that no copies of audio recordings maintained by the Office of the Court

² Maryland Rule 2-322(c) provides in pertinent part as follows:

"If, on a motion to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment"

Reporter^[3] shall be made available to persons other than parties to the relevant proceeding or counsel to the relevant proceeding.”

Based on the administrative order, the Court Reporting Services Office notified Ms. Barron that it would not provide her with the requested copy of the audio recording. In a subsequent email to plaintiff, defendant Ms. Trikeriotis explained that the policy was “not specific to this particular case, but rather a general order that only parties may receive copies of recordings.” Plaintiff filed this petition thereafter.

On August 15, 2019, this Court held a hearing in the Circuit Court for Baltimore City on the parties’ cross-motions for summary judgment. The parties’ arguments reflected the arguments presented in the pleadings filed in this Court. At the hearing, I asked counsel if there exists any dispute as to any material facts, and whether, if summary judgment was denied, Judge Pierson or his designee would present any evidence that the administrative order was applicable only to plaintiff’s request. Counsel for defendants categorically stated that this Order was a “blanket order” not limited to this specific request or case and that counsel was unaware of any reason or reasons Judge Pierson may have harbored in issuing the Order. Furthermore, according to defendants, Judge Pierson was not required to offer any reasons supporting the administrative order. The parties agreed that there was no dispute as to the material facts and that a ruling based on the motions for summary judgment was appropriate.

³ The Baltimore City Court Reporting Services Office is the office’s current official title.

Arguments of the Parties

Before this Court, plaintiff argues that Administrative Order 2019-02 conflicts with Maryland Rule 16-504(h). She maintains that the plain language and legislative history of the Rule require the court reporter to provide her with the copy she requested. She contends that interpreting the Rule exception “as ordered by the court” to allow a general ban on copies of audio recordings would override the Rule’s presumption that members of the public are entitled to copies—“an exception that swallows the rule.”

Plaintiff argues next that Administrative Order 2019-02 is a “local rule” barred by Rule 1-102. She argues that Rule 16-504(h) creates a presumption that members of the public are entitled to copies of court audio recordings and that a circuit court cannot override or conflict with this state-wide Rule and presumption for all cases within its jurisdiction.

Plaintiff asserts that an administrative order cannot satisfy the exception in Rule 16-504(h). She argues that as there is a separate reference to administrative judges in the same Rule, the Court of Appeals did not intend the more general phrase “by the court” to refer to administrative judges. Rather, the exception refers to orders issued by presiding judges for specific cases. She argues that such reading is consistent with Maryland law that limits the authority of administrative judges to internal management of the circuit courts.

Turning to the legislative history of Rule 16-504(h), plaintiff notes that the Court of Appeals Standing Committee on Rules of Practice and Procedure discussed in committee the level of access the public should have to copies of audio recordings. She reasons that the Rule’s current version reflects a policy choice by the Court of Appeals to provide the

public access to recordings. Finally, plaintiff argues that the Order is inapplicable to her request because she requested the copy and received confirmation that it was available to her two days before Judge Pierson signed the Order. She contends that nothing in the Order addresses the application of the policy retroactively. Thus, plaintiff argues, even if the order is valid, it does not apply to her.

Defendants argue that an administrative judge has the authority to bar the public's access to copies of audio recordings and that the Order at issue applies to plaintiff's request. They argue that the phrase "the court" refers by its plain meaning to administrative judges, noting that other sections of the Maryland Rules include administrative judges in "the court" or refer explicitly to "the presiding judge" where there is a distinction. They contend that their reading makes sense because some cases have no assigned presiding judge; an administrative judge should have the authority to issue orders for recordings in those cases.

On the issue of local rules, defendants argue that the Order is an internal administrative order, not a local rule. They argue that form matters—this Order was labeled an administrative order rather than a rule and was not enacted by the circuit court as a rule. They assert that the Order governs the conduct of court personnel in the performance of their duties, namely answering requests for copies of audio recordings. It may affect the public, they argue, but it operates primarily to set internal procedures for necessary administrative tasks.

On the issue of retroactivity, defendants argue that the Order was not applied retroactively. Because the Order was issued before that transaction, they argue that it was applied properly to her attempt to purchase the recording *after* the Order took effect.

Finally, defendants argue that two of plaintiff's requested forms of relief are inappropriate in this case. Regarding mandamus, they argue that mandamus is inappropriate because Ms. Trikeriotis did not have a clear legal duty to act. Regarding injunctive relief, defendants argue that plaintiff failed to allege irreparable harm in the absence of an injunction because the burden upon her amounted only to inconvenience.

Discussion

Summary judgment is appropriate when there exists no genuine dispute of any material fact and the moving party is entitled to judgment as a matter of law. *Appiah v. Hall*, 416 Md. 533, 546–47 (2010). As indicated, both parties argue that there is no dispute of any material fact; they each claim entitlement to judgment as a matter of law.

The first issue is whether Administrative Order 2019-02 of the Baltimore City Circuit Court, as either a local rule or a local practice, conflicts with Rule 16-504(h). Article IV, § 18(a) of the Maryland Constitution grants the Court of Appeals the authority to establish general rules regulating practice and procedure in the courts of this state.⁴ The

⁴ Article IV, § 18(a) of the Maryland Constitution, addressing the rule-making power of the Court of Appeals, reads as follows:

“The Court of Appeals from time to time shall adopt rules and regulations concerning the practice and procedure in and the administration of the appellate courts and in the other courts of this State, which shall have the force of law until rescinded, changed or modified by the Court of Appeals or otherwise by law. The power of courts other than the Court of Appeals to make rules of practice and procedure, or administrative rules, shall be subject to the rules and regulations adopted by the Court of Appeals or otherwise by law.”

Maryland Rules are legislative in nature. *Ginnavan v. Silverstone*, 246 Md. 500, 504–05

(1967). Rule 16-504(h) states as follows:

“(1) *Generally.* Except (A) for proceedings closed pursuant to law, (B) as otherwise provided in this Rule, or (C) *as ordered by the court*, the authorized custodian of an audio recording shall make a copy of the audio recording or, if practicable, the audio portion of an audio-video recording, available to any person upon written request and, unless waived by the court, upon payment of the reasonable costs of making the copy.”

(Emphasis added). Rule 16-504(h) clearly, and on its face, grants the public access to audio recordings subject to three specific exceptions. The only relevant exception herein is the “as ordered by the court” provision.

Rule 16-504(h) creates a presumption of public access to copies of court audio recordings. The Rule mandates custodians to make copies available “[e]xcept . . . as ordered by the court.” Administrative Order 2019-02 of the Baltimore City Circuit Court conflicts with Rule 16-504(h) and is invalid. This Court agrees with plaintiff that interpreting Rule 16-504(h)(1)(C) to allow a blanket ban on access to audio recordings would allow the exception to swallow Rule 16-504(h).

The legislative history of Rule 16-504(h) suggests that the Court of Appeals adopted the Rule with the intent to provide public access to copies of audio recordings. At the hearing before the Court of Appeals, Judge Alan Wilner, as chair of the Court of Appeals Standing Committee on Rules of Practice and Procedure, discussed “whether members of the public should have a right to purchase a copy and use it as they wish.” *Standing Comm. on Rules of Practice and Procedure, 178th Report: Part I*, at 7 (2013) (hereinafter “Rules Committee”). The Rules Committee presented to the Court of Appeals alternative versions

of the proposed rule, providing version (a) the right of the public to purchase the audio recording and (b) the right to listen to the recording. The report explained the Rules Committee's recommendation as follows:

“A majority of the Committee . . . voted to allow the public to purchase and possess a redacted copy of an audio recording but agreed that both policies should be presented to the Court for its consideration.”

~~Id.~~ at 8. The current Rule reflects both the majority view of the Rules Committee to afford members of the public the right to purchase recordings and the policy choice of the Court of Appeals to do the same. The Court of Appeals chose clearly in the Rule to permit all persons, not just parties to an action or attorneys in the case, to secure an audio copy of the court proceedings, subject to limited exceptions that do not apply here.

Plaintiff argues that Rule 16-504(h) does not contemplate an administrative judge, in the capacity as an administrative judge, to order denial of copies of audio recordings. She maintains that the “as ordered by the court” exception refers only to the *presiding judge* in a particular case. I reject this argument. An administrative judge, as a circuit court judge, has under certain circumstances the power and authority to deny an individual access to an audio recording in a particular case. A blanket order denying the public access to copies of audio recordings in every case (in other words, a blanket denial applying to all cases), however, is in direct conflict with Rule 16-504(h). As such, it is invalid.

Plaintiff argues that Administrative Order 2019-02 is a “local rule” barred by Rule 1-102. Defendants argue that the Order is not a local rule but rather a permissible internal

administrative order.⁵ Rule 1-102, addressing circuit and local court rules, reads as follows:

“Unless inconsistent with these rules, circuit and local rules regulating (1) court libraries, (2) memorial proceedings, (3) auditors, (4) compensation of trustees in judicial sales, and (5) appointment of bail bond commissioners and licensing and regulation of bail bondsmen, are not repealed. *No circuit and local rules, other than ones regulating the matters and subjects listed in this Rule, shall be adopted.*”

(Emphasis added). Rule 1-102 is consistent with Article IV, § 18(a) of the Maryland Constitution:

“The power of courts other than the Court of Appeals to make rules of practice and procedure, or administrative rules, shall be subject to the rules and regulations adopted by the Court of Appeals or otherwise by law.”

The Maryland Constitution and the Rules enacted by the Court of Appeals are clear that local rules (and practices) cannot be inconsistent with rules adopted by the Court of Appeals. *See Bastian v. Watkins*, 230 Md. 325 (1963). Where a local rule (or practice) is inconsistent with the Maryland Rules, the local rule is invalid and must yield. *See Piersma v. Seitz*, 10 Md. App. 439, 443 n.1 (1970). Whether this administrative order is a local rule, impermissible under Rule 1-201, or merely a local practice in conflict with Rule 16-504(h), the Order is impermissible and invalid.

Other courts around the country faced with similar issues have concluded the same and have held that local rules inconsistent with state-wide rules adopted by the highest

⁵ It is immaterial whether the Administrative Order at issue is termed a rule, order, or practice. It is clear that whatever the local policy determination, it cannot conflict with Maryland Rule 16-504(h).

court are invalid. See e.g., *Espinoza v. Martin*, 894 P.2d 688 (Ariz. 1995); *In re Harley C.*, 249 Cal. Rptr. 3d 783 (Cal. Ct. App. 2019); *In re Marriage of Brantley*, 674 P.2d 1388 (Colo. App. 1983); *Snell v. State*, 866 N.E.2d 392 (Ind. Ct. App. 2007); *Spudich v. N. Ind. Pub. Serv. Co.*, 745 N.E.2d 281 (Ind. Ct. App. 2001); *Drury v. Drury*, 32 S.W.3d 521 (Ky. Ct. App. 2000); *Perkins v. State*, 559 N.W.2d 678 (Minn. 1997); *State ex rel. State v. Riley*, 992 S.W.2d 195 (Mo. 1999); *H-B-S P'ship v. AIRCOA Hosp. Servs.*, 176 P.3d 1136 (N.M. Ct. App. 2007); *Tice v. Nationwide Life Ins. Co.*, 425 A.2d 782 (Pa. Super. Ct. 1981); *In re Estate of Young*, No. W2015-01753-COA-R3-CV, 2016 Tenn. App. LEXIS 55 (Tenn. Ct. App. Jan. 29, 2016); *United Mktg. Tech., Inc. v. First USA Merch. Servs., Inc.*, 812 S.W.2d 608 (Tex. Ct. App. 1991); *King Cty. v. Williamson*, 830 P.2d 392 (Wash. Ct. App. 1992); *Hefty v. Strickhouser*, 752 N.W.2d 820 (Wis. 2008).

Relief

This Court enters a declaratory judgment declaring that Administrative Order No. 2019-02 is invalid.

Plaintiff seeks a writ of mandamus. In considering whether a writ of mandamus should issue, it is important to keep in mind the extraordinary nature of this remedy. The Court of Appeals has explained the nature of the writ as follows:

“[C]ommon law mandamus is ‘an extraordinary remedy’ that ‘is generally used to compel inferior tribunals, public officials or administrative agencies to perform their function, or perform some particular duty imposed upon them which in its nature is imperative and to the performance of which the party applying for the writ has a clear legal right. The writ ordinarily does not lie where the action to be reviewed is discretionary or depends on personal judgment.’”

Falls Rd. Cmty. Ass'n, Inc. v. Baltimore Cty., 437 Md. 115, 139 (2014). It is well-settled that mandamus is not allowable where there is any other adequate remedy. *Philip Morris, Inc. v. Angeletti*, 358 Md. 689, 712 (2000).

Mandamus does not lie here for several reasons. First, plaintiff cannot show that she had a clear legal right to the audio recording when she applied for it. Mandamus lies only to enforce a plain ministerial duty, and a plain ministerial duty cannot exist only by declaring that an administrative order, issued by an administrative judge, is invalid. A court reporter, or for that matter, any clerk or court employee, cannot be expected to declare an order issued by an administrative judge invalid (or unconstitutional). *Cf. Kemp-Bradford VFW Post 4764 v. Wood*, 554 S.W.2d 344 (Ark. 1977). Courts have recognized "that nothing will justify a mere ministerial officer, who has no judicial power, in assuming that a statute is unconstitutional [or, that a rule or an administrative order is invalid]." *Id.* at 347. Second, unless there is some intervening proceeding establishing why the audio recording in this case should not be provided, plaintiff has a remedy. Plaintiff need only request the recording, pay the required fee, and receive the recording.

In light of the declaratory relief herein, no irreparable harm exists. No injunction will lie. In conclusion, I hold and declare that Administrative Order No. 2019-02 is invalid because it is inconsistent with Maryland Rule 16-504(h).

It is so ORDERED, this th 24 day of September 2019.

The Judge's signature appears
on the original document.

Judge Irma S. Raker

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MARILYN BENTLEY, CLERK

