



IN THE COURT OF COMMON PLEAS OF CENTRE COUNTY,
PENNSYLVANIA
CIVIL ACTION – LAW

MICHELLE and CASEY GROVE,
a married couple,

Plaintiffs,

DOCKET NO.

2018-3617

vs.

GREGG TOWNSHIP,
a Pennsylvania municipality, and

Type of Case: Mandamus

JENNIFER SNYDER,
a municipal officer,

Type of Pleading: Petition for Writ of Mandamus

Defendants.

Filed on Behalf of:

MICHELLE and CASEY GROVE,
Plaintiffs

Counsel of Record for this Party:

Christopher B. Wencker
Attorney for Plaintiffs
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PA I.D. Number: 315596

IN THE CENTRE COUNTY COURT OF COMMON PLEAS
COMMONWEALTH OF PENNSYLVANIA

MICHELLE and CASEY GROVE,
a married couple,

Plaintiffs,

vs.

GREGG TOWNSHIP,
a Pennsylvania municipality, and

JENNIFER SNYDER,
a municipal officer,

Defendants.

CASE NO.

(Assigned to Hon. 2018-3617)

PETITION FOR WRIT OF MANDAMUS

COME NOW the Plaintiffs, by and through counsel undersigned, SHOAF AND WENCKER, LLC, and pursuant to Pa.R.Civ.P. 1091, *et seq.*, respectfully petition this Honorable Court for the issuance of a writ of mandamus against the Defendants, and in support thereof state as follows:

1. The Plaintiffs are a married couple and residents of Gregg Township, Centre County, Pennsylvania. The Plaintiff CASEY GROVE is a Constable, elected by the residents of Gregg Township.
2. The Defendant GREGG TOWNSHIP is a township of the second class located in Centre County, Pennsylvania.
3. The Defendant JENNIFER SNYDER is the Secretary and Right-To-Know Officer for Gregg Township. Her principal place of business is located in Centre County, Pennsylvania.
4. Although the records requests described herein were each submitted by only one of the Plaintiffs, each of the Plaintiffs has an interest in each of the records requested, and each request should be considered as having been made by both of the Plaintiffs.

1 5. Jurisdiction and venue are proper in this Court pursuant to 42 Pa.C.S.A. § 931 and Pa.R.Civ.P.
2 1092(c)(2).

3 **COUNT ONE – Security Camera Footage**

4 6. The Plaintiffs incorporate the allegations in the above paragraphs herein.

5 7. On December 29, 2016, Plaintiffs submitted a written request to Defendants for production of
6 security camera footage from that date of two individuals, pursuant to Pennsylvania’s Right-to-
7 Know Law, 65 P.S. § 67.101 et seq. (“RTK Law”).

8 8. On January 23, 2017, the Defendants denied the request, citing exemptions from the RTK Law
9 relating to public safety and physical security.

10 9. The Plaintiffs appealed the denial of their RTK Law request to the Pennsylvania Office of Open
11 Records (“OOR”). The OOR granted the Plaintiffs’ appeal.

12 10. The Defendants filed a petition for review in this Court. This Court reversed the OOR’s decision
13 in an Order dated July 26, 2017.

14 11. The Plaintiffs appealed this Court’s ruling to the Commonwealth Court. On June 25, 2018, the
15 Commonwealth Court, in case no. 1186 CD 2017, reversed the Order of this Court dated July
16 26, 2017. That ruling was not appealed further.

17 12. As a result of the June 25, 2018, Order of the Commonwealth Court, the Plaintiffs are entitled to
18 the security camera footage that they originally requested.

19 13. Despite repeated requests for the security camera footage, after the Order of the Commonwealth
20 Court was issued and served on the Defendants, the Defendants have refused to release the
21 security camera footage.

22 14. The Plaintiffs seek this Court’s Order directing the Defendants to release the security camera
23 footage.

1 15. The Plaintiffs lack any other adequate remedy at law for the relief they seek, as an award of
2 damages will not satisfy their need for the security camera footage, and damages are not available
3 to the Plaintiffs pursuant to 42 Pa.C.S.A. §§ 8541 and 8545.

4 16. Pursuant to 65 P.S. § 67.1304, the Plaintiffs are entitled to an award of their reasonable attorneys'
5 fees incurred herein.

6 17. Pursuant to 65 P.S. § 67.1305, the Plaintiffs are entitled to a civil penalty of not more than \$500
7 per day as a result of the Defendants' failure to comply with the Order of the Commonwealth
8 Court. Additionally, the Plaintiffs are entitled to a civil penalty of not more than \$1,500, as a
9 result of the Defendants' bad-faith denial of access to the requested records.

10 **COUNT TWO – Meeting Minutes**

11 18. The Plaintiffs incorporate the allegations in the above paragraphs herein.

12 19. On December 22, 2016, the Plaintiffs submitted a request to the Defendants, pursuant to the RTK
13 Law, seeking, inter alia, minutes of all meetings of the Old Gregg School Advisory Board.

14 20. The Defendants provided access to some of the meeting minutes via a shared Google Drive file,
15 which contained many meetings' minutes all together. The Plaintiffs' access to this record was
16 limited to "read only." This access prevented the Plaintiffs from downloading or printing copies
17 of the minutes. Additionally, these minutes went back only to 2012, despite the fact that the Old
18 Gregg School Advisory Board has existed since no later than 2008 and had been taking minutes
19 of its meetings before 2012. Eventually, the Defendants unlocked the Google Drive file, but the
20 contents of the file still did not contain all of the Old Gregg School Board meeting minutes. The
21 Defendants provided some other minutes in other Google Drive files or by email, but still have
22 not provided all of the minutes requested by the Plaintiffs.

23 21. The Plaintiffs appealed the production of the meeting minutes to the OOR. On March 8, 2017,
24

1 the OOR issued a Final Determination, directing the Defendants to provide all meeting minutes
2 to the Plaintiffs that had not already been disclosed. This determination was not appealed.

3 22. As a result of the March 8, 2017, Final Determination of the OOR, the Plaintiffs are entitled to
4 production of the meeting minutes they have requested.

5 23. Despite request for the meeting minutes, after the Final Determination was issued and served on
6 the Defendants, the Defendants have refused to release the meeting minutes.

7 24. The Plaintiffs seek this Court's Order directing the Defendants to release the meeting minutes.

8 25. The Plaintiffs lack any other adequate remedy at law for the relief they seek, as an award of
9 damages will not satisfy their need for the meeting minutes, and damages are not available to the
10 Plaintiffs pursuant to 42 Pa.C.S.A. §§ 8541 and 8545.

11 26. Pursuant to 65 P.S. § 67.1304, the Plaintiffs are entitled to an award of their reasonable attorneys'
12 fees incurred herein.

13 27. Pursuant to 65 P.S. § 67.1305, the Plaintiffs are entitled to a civil penalty of not more than \$1,500,
14 as a result of the Defendants' bad-faith denial of access to the requested records.

15 **COUNT THREE – Facebook Correspondence**

16 28. The Plaintiffs incorporate the allegations in the above paragraphs herein.

17 29. On February 28, 2018, the Plaintiffs requested from the Defendants, pursuant to the RTK Law,
18 all Facebook correspondence from August 1, 2017, to February 28, 2018, from all Gregg
19 Township Supervisors and staff, regarding Resolution R-18-02, adopted by the Defendant
20 GREGG TOWNSHIP.

21 30. On March 28, 2018, the Defendants provided some records responsive to the Plaintiffs' request.

22 31. On March 30, 2018, the Plaintiffs requested attestations from the Defendants verifying that all
23 responsive records had been provided. The Defendants refused to comply.

1 32. On March 30, 2018, the Plaintiffs appealed to the OOR. During the appeal, the Plaintiffs
2 demonstrated that responsive records existed that were not disclosed by the Defendants. On May
3 7, 2018, the OOR issued a Final Determination, directing the Defendants to produce all records
4 responsive to the request. This determination was not appealed.

5 33. As a result of the May 7, 2018, Final Determination of the OOR, the Plaintiffs are entitled to
6 production of the Facebook correspondence they have requested.

7 34. Despite request for the Facebook correspondence, after the Final Determination was issued and
8 served on the Defendants, the Defendants have refused to release all of the Facebook
9 correspondence.

10 35. The Plaintiffs seek this Court's Order directing the Defendants to release the Facebook
11 correspondence.

12 36. The Plaintiffs lack any other adequate remedy at law for the relief they seek, as an award of
13 damages will not satisfy their need for the Facebook correspondence, and damages are not
14 available to the Plaintiffs pursuant to 42 Pa.C.S.A. §§ 8541 and 8545.

15 37. Pursuant to 65 P.S. § 67.1304, the Plaintiffs are entitled to an award of their reasonable attorneys'
16 fees incurred herein.

17 38. Pursuant to 65 P.S. § 67.1305, the Plaintiffs are entitled to a civil penalty of not more than \$1,500,
18 as a result of the Defendants' bad-faith denial of access to the requested records.

19 **COUNT FOUR – Email Correspondence**

20 39. The Plaintiffs incorporate the above allegations herein.

21 40. On March 12, 2018, the Plaintiffs requested from the Defendants, pursuant to the RTK Law,
22 email communications relating to the constable and RTK report, which is included in the agenda
23 for the meetings of the Board of Supervisors.

- 1 41. On April 13, 2018, the Defendants produced some of the records responsive to the Plaintiffs'
2 request, and withheld the remainder, claiming those records were exempt from disclosure as
3 being protected by the attorney-client privilege and as reflecting internal deliberations.
- 4 42. On April 13, 2018, the Plaintiffs appealed to the OOR. The Plaintiffs acknowledged that an *in*
5 *camera* review of the withheld records would satisfy their interests.
- 6 43. On April 27, 2018, the Defendants agreed that an *in camera* review would be appropriate, but
7 failed to provide any evidence in support of their claim that the withheld records were exempt
8 from production pursuant to the RTK Law.
- 9 44. On May 14, 2018, the OOR issued a Final Determination, directing the Defendants to produce
10 all of the requested records. This determination was not appealed.
- 11 45. As a result of the May 14, 2018, Final Determination of the OOR, the Plaintiffs are entitled to
12 production of the email communications they have requested.
- 13 46. Despite requests for these records, after the Final Determination was issued and served on the
14 Defendants, the Defendants have refused to release the email communications.
- 15 47. On June 26, 2018, the Defendants, by and through their Solicitor, advised the Plaintiffs that the
16 Defendants "provided [the Plaintiffs] with all information responsive to [their] request, save for
17 obviously privileged materials." *See* Correspondence from David S. Gaines, Jr., to Michelle
18 Grove, dated June 26, 2018, attached hereto as "Exhibit A."
- 19 48. Despite the Defendants' assertions of privilege, the OOR determined that none of the requested
20 records were privileged, and ordered that all requested records be produced. Nonetheless, the
21 Defendants continue to wrongfully withhold requested records from the Plaintiffs, in bad faith.
- 22 49. The Plaintiffs seek this Court's Order directing the Defendants to release the email
23 communications.

1 50. The Plaintiffs lack any other adequate remedy at law for the relief they seek, as an award of
2 damages will not satisfy their need for the email communications, and damages are not available
3 to the Plaintiffs pursuant to 42 Pa.C.S.A. §§ 8541 and 8545.

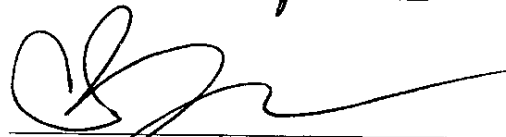
4 51. Pursuant to 65 P.S. § 67.1304, the Plaintiffs are entitled to an award of their reasonable attorneys'
5 fees incurred herein.

6 52. Pursuant to 65 P.S. § 67.1305, the Plaintiffs are entitled to a civil penalty of not more than \$1,500,
7 as a result of the Defendants' bad-faith denial of access to the requested records.

8 WHEREFORE, the Plaintiffs pray that judgment be entered in their favor and against the
9 Defendants, as follows:

- 10 1. Commanding that the Defendants release the requested records;
11 2. Awarding the Plaintiffs their reasonable costs and attorneys' fees incurred herein;
12 3. Awarding the Plaintiffs civil penalties of \$500 per day since the issuance of the June 25, 2018,
13 Order of the Commonwealth Court, and \$1,500 per occurrence; and
14 4. Granting such other and further relief as this Court deems just in the premises.

15 RESPECTFULLY SUBMITTED this 5th day of September 2018.

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18 Christopher B. Wencker
19 PA S.Ct. ID No. 315596
20 *Attorney for Plaintiffs*
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22 201 Fifth Street, Suite 201
23 Huntingdon, Pennsylvania 16652
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VERIFICATION

I, Michelle Grove, am a Plaintiff in the foregoing Petition for Writ of Mandamus. I verify that the statements made therein are true and correct to the best of my knowledge, information, and belief. I understand that false statements therein are made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

9/4/2018
Date

Michelle Grove
Plaintiff

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Submitted by:

Signature:

Name:

Attorney No. (if applicable):

Chris Wancker
Chris Wancker
315596

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Exhibit A

LAW OFFICES OF
MILLER KISTLER & CAMPBELL

RICHARD L. CAMPBELL
JOHN R. MILLER, III
TERRY J. WILLIAMS
TRACEY G. BENSON*
DAVID B. CONSIGLIO**
DAVID S. GAINES, JR.
MICHAEL S. LEVANDOSKI
JOHN W. LHOTA
MORGAN M. MADDEN

OF COUNSEL
FRED B. MILLER

*ALSO ADMITTED IN WEST VIRGINIA
**ALSO ADMITTED IN MARYLAND

PLEASE REPLY TO:
STATE COLLEGE OFFICE

June 26, 2018

720 SOUTH AHERN STREET, STE. 201
STATE COLLEGE, PA. 16801-4669
(814) 234-1500
FAX (814) 234-1549
AND
124 NORTH ALLEGHENY STREET
BELLEFONTE, PA. 16823-1695
(814) 355-5474
GENERAL FAX (814) 355-5340
REAL ESTATE FAX (814) 357-0264

JOHN R. MILLER, JR.
(1919-2007)

ROBERT K. KISTLER
(1925-2012)

Michelle Grove
P.O. Box 253
Spring Mills, PA 16875

Re: Michelle Grove v. Gregg Township
OOR No. AP 2018-0638

Dear Ms. Grove:

It is my understanding that you have recently requested information regarding appeal number AP 2018-0638. As you know, Gregg Township provided you with information relating to that appeal on May 16, 2018, and at that time, I wrote that, "rather than go back and forth regarding the Office of Open Records on the *in camera* review, I have been asked to simply provide you with the information" responsive to your request. I then provided you with all information responsive to your request, save for obviously privileged materials. Nothing has changed since the date of that writing, and there is nothing more to add to the record. Put differently, the Township has already provided you with the documentation responsive to your request.

Please let me know if you have any questions.

Very truly yours,



David S. Gaines, Jr.

CC: Gregg Township