

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

K.B.,

Petitioner,

v.

DELAWARE COUNTY OFFICE OF
JUDICIAL SUPPORT, and MARY J.
WALK, in her official capacity as
Director of the Delaware County Office
of Judicial Support,

Respondents.

Civil Action No. 446 MD 2023

Original Jurisdiction

2024 JUL 26 PM 2:00

**REPLY IN SUPPORT OF PETITIONER'S APPLICATION FOR
SUMMARY RELIEF IN THE FORM OF JUDGMENT ON THE
PLEADINGS**

FAEGRE DRINKER BIDDLE &
REATH LLP

John S. Yi (ID No. 318979)
Brian R. Kisielewski (ID No. 307395)
Bridgette C. Lehman (ID No. 330003)
One Logan Square, Suite 2000
Philadelphia, PA 19103
(215) 988-2700
john.yi@faegredrinker.com
brian.kisielewski@faegredrinker.com
bridgette.lehman@faegredrinker.com
anya.gersoff@faegredrinker.com

AMERICAN CIVIL LIBERTIES
UNION OF PENNSYLVANIA

Stephen Loney, Jr. (ID No. 202535)
Andrew Christy (ID No. 322053)
P.O. Box 60173
Philadelphia, PA 19102
215-592-1513 x138
sloney@aclupa.org
achristy@aclupa.org

LEGAL AID OF SOUTHEASTERN
PENNSYLVANIA

Erica N. Briant (ID No. 318908)
625 Swede Street
Norristown, PA 19401
ebriant@lasp.org

ARGUMENT

I. K.B.'s Application is Ripe for Resolution Given the Parties Agree on the Material Facts.

The parties do not disagree about any material facts, and the Court can resolve this matter on the pleadings because the only questions for the Court to resolve are questions of law. Motions for judgment on the pleadings rely solely upon the factual record developed by the parties' pleadings, including any attachments thereto. *Com. v. Riverview Leasing, Inc.*, 648 A.2d 580, 582 (Pa. Cmwlth. Ct. 1994). Where, as here, there are no disputes of fact remaining for contemplation by a fact-finder, a party is entitled to seek judgement as a matter of law. *Buehl v. Beard*, 54 A.3d 412, 416 (Pa. Cmwlth. Ct. 2012). K.B.'s Application and supporting Memorandum of Law relies solely upon facts either: (1) averred in Petitioner's Complaint and substantiated in Respondents' Answer, (2) based on uncontested documentary evidence in the form of exhibits attached to the pleadings, or (3) introduced in Respondents' Answer or New Matter. *See* Petitioner's Application, pp. 2-11; Petitioner's Memorandum, pp. 2-6.¹

Reviewing Respondent's Answer and Memorandum of Law confirms that the parties are in agreement as to the factual events giving rise to this litigation, as the only instances in which Respondents purport to deny K.B.'s factual statement is in

¹ This references paragraphs strictly containing factual information; this is not meant to include paragraphs describing legal assertions.

a few narrow circumstances where Respondents disagree with K.B.’s characterization of either a document or Respondents’ statements.

The core undisputed facts boil down to the following factual assertions:

Factual Assertion	Pleading Cites	Briefing Cites
The Honorable Judge Scanlon of Delaware County Court of Common Pleas signed an Expungement Order on March 13, 2023, in light of K.B.’s pardon from Governor Wolf.	Exhibit 1, Petition ¶ 1; Exhibit 2, Answer ¶ 1.	Petitioner’s Application ¶ 1; Petitioner’s Memo at p. 3; Respondent’s Response ¶ 1; Respondents’ Opposition Brief at pp. 2-3.
The Expungement Order stated that: “A balance of \$897.75 was owed prior to the Governor’s granting of a pardon in this matter.”	Petition Ex. A at 2.	Petitioner’s Application ¶ 12; Petitioner’s Memo at p. 3; Respondents’ Opposition Brief at p. 2.
K.B.’s Expungement Order was not processed until after he filed the instant Petition for Review.	Petition ¶ 65; Answer ¶ 65.	Petitioner’s Application ¶ 3; Petitioner’s Memo at p. 3; Respondent’s Response ¶ 3; Respondents’ Opposition Brief at p. 3.
Respondents created and maintain an internal policy whereby they do not process expungement orders signed by judges if Respondents believe there are outstanding court costs in the case.	Answer ¶ 48; New Matter ¶ 117.	Petitioner’s Application ¶ 24; Petitioner’s Memo at pp. 2-3; Respondents’ Opposition Brief at p. 3.
To comply with the policy they created, Respondents note in the CPCMS computer system whether any unpaid costs have been waived prior to processing the expungement.	Answer ¶ 48.	Petitioner’s Application ¶ 23; Petitioner’s Memo at pp. 2-3; Respondent’s Response ¶ 23; Respondents’ Opposition Brief at p. 3.

Delaware County Court of Common Pleas President Judge Cartisano directed Respondents to process K.B.'s Expungement Order after K.B. filed this Petition to Review.	New Matter ¶ 119.	Petitioner's Application ¶ 29; Petitioner's Memo at p. 4; Respondent's Response ¶ 29; Respondents' Opposition Brief at pp. 3-4.
After Judge Cartisano's direction, Respondents processed K.B.'s Expungement Order without a separate court order expressly waiving court costs.	New Matter ¶ 120.	Petitioner's Application ¶ 30; Petitioner's Memo at pp. 4-5; Respondent's Response ¶ 30; Respondents' Opposition Brief at p. 4.
President Judge Cartisano has previously directed Respondents to process an expungement order under indistinguishable circumstances, and Respondents complied with that instruction.	Petition Ex. H; Petition ¶ 47; Answer ¶ 47.	Petitioner's Application ¶¶ 32-35; Petitioner's Memo at pp. 5-6; Respondent's Response ¶¶ 32-35; Respondents' Opposition Brief at p. 4.

With these core facts agreed upon by both Petitioner and Respondents, this dispute distills down to questions of law ripe for the Court's determination.

II. Respondents Defy Court Orders by Relying on an Internal Policy.

Respondents' Opposition Brief puts forth a single misleading theme: Respondents did not process K.B.'s Expungement Order because Respondents lack the legal authority to waive court costs. Yet this premise is flawed from the beginning, as no one—not K.B., not the trial judge who ordered expungement, and not President Judge Cartisano—asked Respondents to somehow exercise independent judgment to waive costs. Instead, whether those costs still legally

existed or not (and they did not), Respondents were legally required to comply with the Expungement Order, just as they finally did *after* K.B. filed this lawsuit.² All they had to do was follow the text of the Order, without inventing their own additional requirements. Because there was no barrier to their compliance with the Expungement Order for six months before filing this lawsuit, Respondents have violated the law and are liable for their actions.

As has been consistently confirmed by Respondents, the policy that they applied when they disregarded the Expungement Order was created entirely by Respondents, not by AOPC. *See* Respondents' Opposition Brief, at pp. 3-4. There is no technological impediment preventing Respondents from processing an expungement order when outstanding court costs remain associated with the underlying case, as they have demonstrated in at least two instances. *See id* at 4. It is Respondents who choose to continue to enforce this policy, even in the face of instructions by the President Judge of Delaware County Court of Common Pleas that an expungement order "is a court order and as such must be timely processed and followed." Ex. H.

² Respondents engage in some selective quoting from the Expungement Order to suggest that the judge thought that K.B. still owed court costs. The full quote from the Expungement Order shows that the court was noting that costs were owed prior to the pardon: "The balance of \$897.75 *was owed prior to* the Governor's granting of a pardon in this matter." Petition Ex. A at 6 (emphasis added). Regardless, the Expungement Order expressly did not condition expungement on payment. Instead, it simply ordered Respondents to comply with the Order and expunge K.B.'s case. It is undisputed that Respondents' refusal to do so was premised solely on their internal policy.

Notably, Respondents do not even try to respond to the legal analysis that a pardon “blots out the very existence of [the applicant’s] guilt, so that, in the eye of the law, he is thereafter as innocent as if he had never committed the offense.” *Commonwealth v. C.S.*, 534 A.2d 1053, 1054 (Pa. 1987). Once that happens, the judgment of sentence ceases to exist, as do the court costs that were assessed “incident to the judgment.” *Commonwealth v. Nicely*, 638 A.2d 213, 217 (Pa. 1994). The pardon, in effect, rewinds the clock so that no conviction ever occurred and, in doing so, removes not only the court proceeding (and its result) from the court record’s memory, but also any costs incurred from the case that no longer exist as a result of the pardon. The expungement, in turn, is legally required following the pardon because “pardon without expungement is not a pardon.” *C.S.*, 534 A.2d at 1054. In fulfilling the expungement, all records of the conviction are destroyed, “so that there is no trace or indication that such information existed.” 42 Pa.C.S. § 9102. Ultimately, the disposition of the costs in K.B.’s criminal case does not actually matter to resolving this case. Even *if* the trial court erroneously issued the Expungement Order, it is clear that Respondents have no authority to second-guess the trial court or add additional requirements on a party beyond what the court orders. Instead, Respondents “had the duty to comply with the Order.” *See, e.g., In re Administrative Order*, 936 A.2d at 9. This Court should enter judgment in favor of

K.B. because of Respondents' refusal to comply, which violated its statutory, rules-based, and constitutional duties.

III. As a Commonwealth Officer, Respondent Walk Is Not an Employee of a Local Agency Entitled to Immunity.

Even if Ms. Walk is correct that she is entitled to official immunity under 42 Pa.C.S. § 8546, that immunity is only personally for her in her individual capacity—not Respondent OJS—and only immunity for money damages. Thus, even under the best scenario for Respondents, K.B. can still receive money damages against OJS, as well as declaratory and injunctive relief and attorney's fees against both OJS and Ms. Walk.

But Ms. Walk is not correct. Ms. Walk has admitted that as Director of OJS, she serves as both the Prothonotary and Clerk of Courts. Application at 5; Answer to Application at 5. Instead of being “an employee of a local agency” under Section 8546's immunity provision, serving as the Clerk of Courts means she “is considered to be the Commonwealth government as a Commonwealth officer.” *Richardson v. Peters*, 19 A.3d 1047, 1048 (Pa. 2011); *see also Morgalo v Gorniak*, 134 A.3d 1139, 1147 (Pa. Commw. Ct. 2016) (*en banc*) (“Although the clerk of courts is considered county staff as opposed to a judicial officer, he is nevertheless an officer of a Commonwealth government.”). Commonwealth officers are decidedly not within the definition of “an employee of a local agency” under the relevant definitions section, which limits this type of official immunity only to a “government unit other

than the Commonwealth government.” 42 Pa.C.S. § 8501. Accordingly, any possible immunity under Section 8546 is not applicable, as this Court implicitly recognized in *Morgalo* when it instead addressed immunity for a clerk of courts under the Sovereign Immunity Act. *See Morgalo*, 134 A.3d at 1147 n.11. Indeed, it is because both Respondents are part of the Commonwealth government and Ms. Walk is a Commonwealth officer that this Court has original jurisdiction in this matter. *See Richardson*, 19 A.3d at 1048 (setting forth why this Court has original jurisdiction for claims against the Clerk of Courts). Ms. Walk’s immunity argument fails for that reason.³

Regardless, even if Ms. Walk is somehow subject to the possibility of official immunity under Section 8546, her actions demonstrate that she is not subject to immunity. The only basis she claims for immunity is that her conduct “was authorized or required by law, or that [s]he in good faith reasonably believed the

³ Respondents did not plead nor argue that OJS or Ms. Walk are subject to any other type of immunity other than the argument under 42 Pa.C.S. § 8546. Any such arguments are now waived. *See, e.g., Dep’t of Transportation v. Pace*, 439 A.2d 1320, 1321 (Pa. Commw. Ct. 1982) (“We begin with the basic premise that defenses not pleaded must be deemed to have been waived.”). *See also* Pa.R.C.P. 1030(a) (requiring that all immunity defenses be raised in a New Matter in a responsive pleading); Pa.R.C.P. 1032(a) (explaining that, subject to exceptions not relevant here, a “party waives all defenses and objections which are not presented either by preliminary objection, answer or reply”). Waiver issues aside, sovereign immunity is inapplicable here as CHRIA liability is a recognized exception to the Commonwealth’s immunity from suit. *See Haron v. Penn. State Police*, 171 A.3d 344, 353-55 (Pa. Commw. Ct. 2017) (finding a Commonwealth agency violated CHRIA and owed plaintiff actual and real damages, including attorney fees and costs, in spite of defendant’s claims of sovereign immunity).

conduct was authorized or required by law.” 42 Pa.C.S. § 8546(2). Ms. Walk cannot meet that standard here. As she has admitted:

- OJS alone created the policy that it will not process expungement orders where OJS believes there are unpaid costs, a policy that Ms. Walk continues to enforce;
- Ms. Walk has identified no law or court rule authorizing or requiring OJS to have that policy;
- The Expungement Order directed at OJS and Ms. Walk required expungement and service of the Order on other criminal justice agencies, which OJS and Ms. Walk refused to do pursuant to their policy; and
- The President Judge previously instructed Ms. Walk to comply with a court order for expungement, yet Ms. Walk continued to follow the OJS policy and disregard the Expungement Order until instructed by the president judge for a second time to comply with court orders. *See* Petitioner’s Memo at pp. 5-6; Respondents’ Opposition Brief at p. 4.

All of this points to conduct that shows Ms. Walk not only was not authorized or required by law to refuse to comply with the Expungement Order, but in fact she lacked a good faith basis to reasonably believe that she could continue disobeying court orders and the president judge’s prior instruction.

This Court can resolve the immunity question on this record. In the *Dorsey* case cited by Ms. Walk, the Court held that the register of wills was “not immune under the Tort Claims Act from liability” for a separate statutory violation. *Dorsey v. Redman*, 96 A.3d 332, 342 (Pa. 2014). The Court then assessed whether Section 8546 immunity applied and concluded that, although the Court *could* rule on that mixed question of law and fact with the record before it, it remanded to the trial court

to do so in the first instance. *Id.* at 346. Accordingly, because there is not a contested factual record here, this Court can apply the law to the facts and conclude that Ms. Walk is not immune from damages for her disobeying a court order.⁴

CONCLUSION

Without any legal basis, Respondents adopted a policy that permits them to disregard court orders to expunge cases. Their adherence to this policy in K.B.'s case was unlawful. Petitioner K.B. therefore respectfully requests that the Court grant his Motion for Judgment on the Pleadings and find Respondents OJS and Walk liable on Counts 1, 2, and 3 of Petitioner's Complaint.

Dated: July 18, 2024

/s/ John S. Yi

John S. Yi (PA ID No. 318979)
Brian R. Kisielewski (PA ID No. 307395)
Bridgette C. Lehman (PA ID No. 330003)
Anya L. Gersoff (pro hac vice request
forthcoming)
FAEGRE DRINKER BIDDLE &
REATH LLP
One Logan Square, Suite 2000
Philadelphia, PA 19103
(215) 988-2700
john.yi@faegredrinker.com
brian.kisielewski@faegredrinker.com

⁴ For the same reasons, this Court can also resolve whether Ms. Walk and OJS acted willfully in violating CHRIA even when they knew they had to comply with court orders. Because there is no genuine dispute about any material facts, the Court has the record necessary to resolve all issues at this stage.

bridgette.lehman@faegredrinker.com
anya.gersoff@faegredrinker.com

Stephen Loney, Jr. (PA ID No. 202535)
Andrew Christy (PA ID No. 322053)
AMERICAN CIVIL LIBERTIES UNION
OF PENNSYLVANIA
P.O. Box 60173
Philadelphia, PA 19102
215-592-1513 x138
sloney@aclupa.org
achristy@aclupa.org

Erica N. Briant (PA ID No. 318908)
LEGAL AID OF SOUTHEASTERN
PENNSYLVANIA
625 Swede Street
Norristown, PA 19401
ebriant@lasp.org