

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO
CIVIL DIVISION

CITY OF COLUMBUS, et al., :
Plaintiffs, : Case No. 20 CVH11-7256
-vs- : JUDGE HOLBROOK
BUREAU OF CRIMINAL IDENTIFICATION :
AND INVESTIGATION, et al., :
Defendants. :

**DECISION AND ENTRY GRANTING, IN PART, AND DENYING, IN PART,
DEFENDANTS' MOTION TO DISMISS**

This matter is before the Court on the motion of Defendant-Respondents Bureau of Criminal Identification and Investigation and Joseph Morbitzer, Superintendent, Bureau of Criminal Identification and Investigation (collectively, "BCI&I") to dismiss made pursuant to Civ.R. 12(B)(1) and Civ.R 12(B)(6). Plaintiffs City of Columbus, City of Dayton (collectively, the "Cities") and Meghan Volk (Cities and Volk collectively, "Relators") responded to the motion with a memorandum in opposition to which BCI&I has replied. Having carefully reviewed the amended complaint, arguments of counsel, and relevant law, the Court issues the following decision.

BACKGROUND

On February 9, 2021, Relators filed their amended complaint for declaratory judgment and a writ of mandamus. See Amended Complaint. Boiled down to its simplest terms, Relators allege that BCI&I has failed to fulfill its statutory obligation to procure and report disqualifying criminal conviction information into the state and federal background check system databases. As a result of this neglect, Relators submit they have

been uniquely harmed and face a significant possibility of future injury should BCI&I not be declared to be in violation of R.C. 109.57(A)(1) or ordered to comply with the same.

In response to the amended complaint, BCI&I filed the instant motion to dismiss. Within the motion, BCI&I raises two general arguments. First, BCI&I asserts Relators lack standing to bring this action. Alternatively, BCI&I argues the amended complaint fails to state a claim for either declaratory judgment or a writ of mandamus.

Naturally, in response to the motion, Relators take exactly the opposite position.

LAW AND ANALYSIS

BCI&I has moved to dismiss the amended complaint pursuant to both Civ.R. 12(B)(6) and Civ.R. 12(B)(1). In order for a court to dismiss a complaint under Civ.R. 12(B)(6), it must appear beyond a doubt from the complaint that the plaintiff can prove no set of facts entitling him or her to recovery. *O'Brien v. University Comm. Tenants Union*, 42 Ohio St.2d 242, 245 (1975). A similar standard applies to Civ.R. 12(B)(1) motions: the court must dismiss if the complaint fails to allege any cause of action cognizable in the forum. *Blankenship v. Cincinnati Milacron Chems., Inc.*, 69 Ohio St.2d 608, 611 (1982).

A. Standing

The Court first addresses BCI&I's standing argument. "Before an Ohio court can consider the merits of a legal claim, the person or entity seeking relief must establish standing to sue." *Ohio Pyro, Inc. v. Ohio Dept. of Commerce, Div. of State Fire Marshal*, 115 Ohio St.3d 375, 2007-Ohio-5024, ¶ 27. Traditional standing principles require litigants to show, at a minimum, that they have suffered "(1) an injury that is (2) fairly traceable to the defendant's allegedly unlawful conduct, and (3) likely to be redressed by the requested relief." *Moore v. Middletown*, 133 Ohio St.3d 55, 2012-Ohio-3897, ¶ 22.

Standing does not depend on the merits of the plaintiff's claim. *Id.* at ¶ 23. Rather, standing depends on whether the plaintiffs have alleged such a personal stake in the outcome of the controversy that they are entitled to have a court hear their case. *Clifton v. Blanchester*, 131 Ohio St.3d 287, 2012-Ohio-780, ¶ 15; *State ex rel. Dallman v. Franklin Cty. Court of Common Pleas*, 35 Ohio St.2d 176, 178-179 (1973).

According to BCI&I's motion, Relators have not demonstrated the minimum required to establish their standing to pursue this action. With respect to Volk, the Court agrees. As to the Cities, the Court finds that the amended complaint sufficiently establishes their standing.

1. Relators' Injury.

Initially, Relators must show they have suffered an injury in fact, defined as an invasion of a legally protected interest that is concrete and particularized, as well as actual or imminent, not hypothetical or conjectural. *Bourke v. Carnahan*, 163 Ohio App.3d 818, 2005-Ohio-5422, P10 (10th Dist.), citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992). A threatened injury can qualify as an injury in fact for standing purposes. *Hamilton v. Ohio Dept. of Health*, 10th Dist. No. 14AP-1035, 2015-Ohio-4041, ¶ 19. However, the "'threatened injury must be certainly impending to constitute injury in fact' and [] '[a]llegations of possible future injury' are not sufficient." (Emphasis sic.) *Clapper v. Amnesty Internatl. USA*, 568 U.S. 398, 409 (2013), quoting *Whitmore v. Arkansas*, 495 U.S. 149, 158 (1990). At the pleading stage, general factual allegations of injury may suffice, for on a motion to dismiss the court will presume that general allegations embrace those specific facts that are necessary to support a claim. *Bourke*, 2005-Ohio-5422, P10.

An individual "must generally show that he or she has suffered or is threatened with direct and concrete injury in a manner or degree different from that suffered by the

public in general, that the law in question has caused the injury, and that the relief requested will redress the injury." *Bowers v. State Dental Bd.*, 142 Ohio App.3d 376, 380 (10th Dist.2001). "Injury that is borne by the population in general and does not affect plaintiff in particular is typically insufficient to confer standing upon the plaintiff to bring suit against a defendant." *Wurdlow v. Turvy*, 10th Dist. No. 12AP-25, 2012-Ohio-4378, ¶ 15.

Here, the allegations in the amended complaint fail to demonstrate Volk has suffered a particularized injury. Instead, the fear, emotional distress, and frustration suffered by Volk as a result of BCI&I's alleged failures is the same that is suffered by the public in general. In other words, the Court is not convinced that Volk's status as a parent of children attending public school is sufficient to distinguish her injury under the circumstances here. It certainly does not require having a child in public school to fear for children at risk of preventable gun violence. Because Volk has not suffered an injury in fact, the Court finds that she does not have standing to pursue this action.

Notwithstanding the forgoing, the Court finds the Cities have sufficiently alleged the invasion of a legally protected interest. Specifically, the Cities have the obligation to conduct criminal background checks imposed by both Ohio Revised Code and applicable City Codes. Certainly, they have an interest in ensuring that the information they receive via said background checks is complete and accurate. Furthermore, the amended complaint is replete with allegations of BCI&I's invasion of such right. Finally, paragraphs 100 through 109 of the amended complaint contain general allegations related to Relators' injuries – "BCI's years'-long failures to discharge its obligations as set forth above have injured and continue to injure Plaintiffs in numerous ways" – as well as

specific allegations of injuries ranging from financial to informational in kind. Amended Complaint at ¶¶100-109.

The Court, however, is not persuaded that the Cities' allegations of injuries related to a "significant risk of future gun violence" are sufficient to form the basis to bring this action. Certainly, the avoidance of gun violence is of paramount concern. No one is more acutely aware of its impacts than this Court. Nevertheless, the amended complaint merely presents the Court with pure speculation as to potential for this type of injury. The law is clear. The mere possibility of future gun violence is insufficient to establish standing.

Based on the forgoing, the Court finds that the amended complaint, as it relates to the Cities, alleges a sufficient injury to satisfy the first element of the standing analysis.

2. Traceable to BCI&I's Conduct.

The next step in the analysis is whether the Cities have shown that the alleged injury is fairly traceable to the allegedly unlawful conduct. This is commonly referred to as the causation prong of the standing test. The causation need not be proximate. *Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 134 S. Ct. 1377 (2014). To that end, the fact that an injury is indirect does not destroy standing as a matter of course. See *United States v. Students Challenging Regulatory Agency Procedures (SCRAP)*, 412 U.S. 669, 689 (1973) (indirect "attenuated line of causation to the eventual injury" was sufficient to satisfy standing requirements at the pleading stage). However, the Supreme Court has cautioned that standing, albeit not precluded, is generally more difficult to establish when the injury is indirect. *Summers v. Earth Island Inst.*, 555 U.S. 488, 493 (2009); *Allen v. Wright*, 468 U.S. 737, 751 (1984).

Guided by this Court's prior findings and the legal framework set forth above, the Court also concludes that the amended complaint sufficiently alleges the traceability of

the Cities' informational injuries to BCI&I's alleged misconduct. Again, the amended complaint is full of allegations that BCI&I's database contains incomplete and inaccurate information related to criminal felony convictions, and that BCI&I is responsible for the content of the database. The amended complaint further alleges that the Cities' use BCI&I's database for employment decisions, and that their police forces use the database during criminal investigations. If proven to be true, incomplete and inaccurate information in BCI&I's database is necessarily and directly attributable to the informational injuries suffered by the Cities who use the database.

3. Likelihood a Favorable Decision Will Redress the Injury.

Finally, the Court addresses the third prong of the standing test - redressability, i.e. the relief the Cities seek must provide redress for the injury. An injury is redressable if a court order can provide "substantial and meaningful relief." *Larson v. Valente*, 456 U.S. 228, 243 (1982). "[A] plaintiff satisfies the redressability requirement when he shows that a favorable decision will relieve a discrete injury to himself. He need not show that a favorable decision will relieve his every injury." *Id.* at 244 n.15; accord. *Massachusetts v. EPA*, 549 U.S. 497, 525 (2007). The relevant standard is likelihood—whether it is "likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision." *Friends of the Earth, Inc. v. Laidlaw Environmental Services (TOC) Inc.*, 528 U.S. 167, 181 (2000).

Here, the Cities' prayer for relief in the amended complaint seeks a declaratory judgment that BCI&I:

* * * must procure from wherever procurable and file for record photographs, pictures, descriptions, fingerprints, measurements, and other information that may be pertinent of all persons who have been convicted of committing Qualifying Crimes in Ohio.

* * * ha[s] failed and continue[s] to fail to carry out [its] legal obligations *
* *

* * * ha[s] obstructed and continue[s] to obstruct the ability of clerks of Court to fulfill the clerks' statutory duties of providing criminal disposition data to BCI, by, among other things, rejecting such data in the absence of fingerprints and/or an Incident Tracking Number, in violation of R.C. 109.57, and failing to make reasonable improvements to the technology underlying their criminal history repository.

* * * must carry out the responsibilities of the Compact Officer of the National Crime Prevention and Privacy Compact (the "Compact") and ensure that information on individuals is kept complete and accurate so that all such records contain to the maximum extent feasible dispositions for all arrest data.

* * *

And as to their claim for a mandamus, Relators seek an Order from Court requiring BCI&I "to fulfill [its] statutory obligation to procure, from wherever procurable, and file for record photographs, pictures, descriptions, fingerprints, measurements, and other information that may be pertinent of all persons who have been convicted of committing a Qualifying Crime within Ohio." Amended Complaint at ¶¶115, 117. Further, to effectuate the relief sought, Relators seek an injunction directing BCI&I to timely:

procure from wherever procurable and file for record photographs, pictures, descriptions, fingerprints, measurements, and other information that may be pertinent of all persons who have been convicted of committing Qualifying Crimes in Ohio, and take such steps as are necessary to fulfill these obligations;

take such steps as are necessary to accept disposition records from courts regardless of whether an arrest record or ITN number already exists;

take such steps as are necessary to eliminate technological barriers that block BCI from accepting and/or procuring information concerning individuals convicted of committing Qualifying Crimes;

take such steps as are necessary to procure all criminal disposition information necessary to fulfill the above responsibilities; and

take such steps as are necessary to carry out the responsibilities of the Compact Officer of the National Crime Prevention and Privacy Compact, and ensure that information on individuals is kept complete and accurate so that all such records contain to the maximum extent feasible dispositions for all arrest data.

Were this Court to Order the relief sought in the prayer, it is likely that the Cities' informational injuries would be redressed. Undoubtedly, a declaration or order that BCI&I must timely carry out its legal obligations to cure any prior deficiencies will alleviate some inaccuracies in the database. The Court does not expect that it will cure all deficiencies; however, that is not the standard.

Based on the forgoing, the Court concludes that the Cities have sufficiently established their standing to proceed with this action.

B. Failure to State a Claim

The Court next considers BCI&I's argument that the amended complaint fails to state a claim for a declaratory judgment or a petition for a writ of mandamus.

1. Declaratory Judgment

A declaratory judgment action is a civil action that provides a remedy in addition to other legal and equitable remedies that may be available. *Burge v. Ohio Atty. Gen.*, 10th Dist. No. 10AP-856, 2011-Ohio-3997, ¶ 7, citing *Victory Academy of Toledo v. Zelman*, 10th Dist. No. 07AP-1067, 2008-Ohio-3561, ¶ 8. The purpose of the Declaratory Judgments Act, codified at R.C. Chapter 2721, is "to settle and afford relief from uncertainty and insecurity with respect to rights, status and other legal relations," and courts are to liberally construe and administer it. *One Energy Ents., LLC v. Ohio Dept. of Transp.*, 10th Dist. No. 17AP-829, 2019-Ohio-359, ¶ 30, citing *Swander Ditch Landowners' Assn. v. Joint Bd. of Huron & Seneca Cty. Commrs.*, 51 Ohio St.3d 131, 134, (1990). As is pertinent to this matter, R.C. 2721.03 states:

[A]ny person whose rights, status or other legal relations are affected by a * * * statute * * * may have determined any question of construction or validity arising under the * * * statute * * * and obtain a declaration of rights, status, or other legal relations under it.

R.C. 2721.03. Further, "to be entitled to declaratory relief, a plaintiff must demonstrate: (1) a real controversy exists between the parties, (2) the controversy is justiciable in nature, and (3) speedy relief is necessary to preserve the rights of the parties." *Steele v. Collins*, 10th Dist. No. 09AP-9, 2009-Ohio-4836, ¶9, citing *Harris v. Ohio Adult Parole Auth.*, 10th Dist. No. 06AP-374, 2007-Ohio-142, ¶11. A court may dismiss a complaint for declaratory judgment without addressing the merits if there is no justiciable issue between the parties or a grant of declaratory judgment will not terminate the controversy. *Id.*

Finally, as a general matter, a court of common pleas has jurisdiction to issue a declaratory judgment regarding a question of the construction or validity of a statute and to declare rights, status, and other legal relations under it. *State ex rel. Gelesh v. State Med. Bd. of Ohio*, 172 Ohio App.3d 365, 2007-Ohio-3328, ¶ 24 (10th Dist.).

BCI&I submits that the Cities' claim for a declaratory judgment fails to state a claim upon which relief may be granted because there is no controversy between the Cities and BCI&I. Alternatively, BCI&I argues that the declaration that the Cities seek will not resolve, or terminate, the controversy. The Court disagrees.

According to the amended complaint, the Cities claim that pursuant to R.C. 109.57(A)(1) BCI&I has an affirmative obligation to procure criminal disposition information, and that they rely on BCI&I's CCH database containing complete and accurate information when obtaining background checks. Conversely, BCI&I argues the Cities have no legal interest in the outcome. Further, BCI&I claims that its sole

responsibility under the statute is to administer the CCH database because Ohio law specifically requires other public entities who generate the criminal disposition to report the information to the CCH database repository. A simple review of the parties' arguments demonstrates to this Court that there is a genuine dispute between the parties concerning BCI&I's obligations under R.C. 109.57(A)(1). Further, as set forth above, the Cities use the CCH database when conducting background checks and therefore have an interest the outcome of the matter. In sum, the Court finds the Cities have adequately alleged a real controversy between the parties here.

Now, considering BCI&I's argument that the requested declaration does not resolve the controversy, the Court does not disagree with BCI&I that the relief sought by the Cities here will not absolve the systemic issues related to gun background checks; however, that is not the standard by which this Court is to evaluate the adequacy of the pleading. See *WWSD, LLC v. Woods*, 2022-Ohio-952 (10th Dist.) (reconsidered on other grounds) (a declaratory judgment does not have to be the sole remedy available to a party, and does not need to be the final and complete remedy in a controversy); *State ex rel. Thernes v. United Local School. Bd. Dist. Of Edn.*, 7th Dist. No. 07 CO 45, 2008-Ohio-6922.; *Gates Mills Investment Co. v. Village of Pepper Pike* (Nov. 21, 1974), 8th Dist. No. 33291, 1974 Ohio App. LEXIS 2870, at *10 (Krenzler, dissenting) (judgment reversed) ("the action must at least terminate some uncertainty or some controversy before the trial court may entertain the action and it is not necessary to terminate all uncertainty or all controversy"); *Superior Dairy, Inc. v. Stark County Milk Producers' Ass'n*, 89 Ohio App. 26, 30 (5th Dist.1950) ("[The Declaratory Judgments Act] does not prohibit a court from making a declaration even if the uncertainty or controversy would not be terminated.").

The entry of a declaration in this case would certainly terminate some of the uncertainty, or controversy, concerning the collection of criminal disposition information.

Because the amended complaint includes allegations of the existence of a controversy and demands a declaration that would address such controversy, the Court finds that the Cities have sufficiently plead a claim for a declaratory judgment.

2. Mandamus

Finally, the Court turns its attention to the Cities' petition for a writ of mandamus. To be entitled to a writ of mandamus, the Cities must establish by clear and convincing evidence that (1) they have a clear legal right to the requested relief, (2) BCI&I has a clear legal duty to provide it, and (3) the Cities do not have an adequate remedy in the ordinary course of the law. See *State ex rel. Linnabary v. Husted*, 138 Ohio St.3d 535, 2014-Ohio-1417, 8 N.E.3d 940, ¶ 13.

BCI&I raises four arguments in support of their dismissal of the Cities' petition for a writ of mandamus. First, BCI&I submits the Cities have no legal right to the relief requested. Second, BCI&I claims that the Cities are not seeking to compel the performance of any specific act. Third, argues that a writ of mandamus may not be used to control discretionary duties. And finally, BCI&I asserts that a mandamus cannot compel an impossibility. It is with respect to BCI&I's second argument that this Court agrees.

It is well-settled that a " writ of mandamus will not issue to compel the general observance of laws in the future." *State ex rel. Leslie v. Ohio Hous. Fin. Agency*, 105 Ohio St. 3d 261, 2005-Ohio-1508, P49, quoting *State ex rel. Kirk v. Burcham*, 82 Ohio St.3d 407, 409, 1998-Ohio-224. With respect to their petition for a writ of mandamus, the Cities' demand for relief seeks an Order from Court requiring BCI&I "to fulfill [its]

statutory obligation to procure, from wherever procurable, and file for record photographs, pictures, descriptions, fingerprints, measurements, and other information that may be pertinent of all persons who have been convicted of committing a Qualifying Crime within Ohio.” Amended Complaint at ¶¶115, 117. In other words, the Cities request BCI&I’s general observance with R.C. 109.57(A)(1).

Upon the forgoing, the Court finds that it is without jurisdiction to issue an extraordinary writ compelling BCI&I to generally comply with the law as prayed for in the amended complaint.

Conclusion

In sum, BCI&I’s Motion to Dismiss is hereby **GRANTED, in part** and, **DENIED, in part.**

Pursuant to the findings herein, Relator Meghan Volk’s claims herein are dismissed for lack of standing.

Pursuant to the findings herein, the petition for a writ of mandamus is dismissed for lack of jurisdiction.

The Cities’ claim for declaratory judgment remains pending for adjudication.

IT IS SO ORDERED.

Electronic notification to counsel of record

Franklin County Court of Common Pleas

Date: 10-30-2023
Case Title: CITY OF COLUMBUS ET AL -VS- BUREAU OF CRIMINAL
IDENTIFICATION & INVE ET AL
Case Number: 20CV007256
Type: DECISION

It Is So Ordered.

The image shows a handwritten signature in black ink that reads "Michael J. Holbrook". The signature is written over a circular blue seal. The seal contains the text "COMMON PLEAS" at the top, "FRANKLIN COUNTY, OHIO" around the inner edge, and "IN GOD WE TRUST" and "ALL THINGS ARE POSSIBLE" around the bottom edge.

/s/ Judge Michael J. Holbrook

Court Disposition

Case Number: 20CV007256

Case Style: CITY OF COLUMBUS ET AL -VS- BUREAU OF
CRIMINAL IDENTIFICATION & INVE ET AL

Motion Tie Off Information:

1. Motion CMS Document Id: 20CV0072562021-02-2399980000
Document Title: 02-23-2021-MOTION TO DISMISS -
DEFENDANT: BUREAU OF CRIMINAL IDENTIFICATION & INVE
Disposition: MOTION GRANTED IN PART