

Circuit Court for Talbot County
Case No. C-20-CV-24-000044

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND

No. 1247

September Term, 2024

DEON A. TURNER

v.

KATHLEEN M. DUVALL

Leahy,
Albright,
Kehoe, Christopher B.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: November 7, 2025

*This is a per curiam opinion. Under Rule 1-104, the opinion is not precedent within the rule of stare decisis nor may it be cited as persuasive authority.

In March 2024, Deon A. Turner, appellant, filed a “Notice of Writ of Mandamus/Complaint” in the Circuit Court for Talbot County, naming Kathleen M. Duvall, the Clerk of the Circuit Court for Talbot County, appellee, as the defendant. In the complaint, appellant alleged that he had made a Maryland Public Information Act (MPIA) request seeking documents for several criminal cases in which he was a defendant, including transcripts of the proceedings, certified copies of in camera proceedings, and certified copies of case summaries and numerous case filings. In response to this request, appellee sent him numerous documents, including “[a]ll transcripts the court has possession of[.]” However, appellee noted in her response that: (1) there were “not...any copies of in camera proceedings for any case,” and (2) for any transcripts not included, appellant would need to contact the court reporter to arrange for the transcripts to be created at his cost. Appellant claimed that in not providing all the requested information, appellee had acted in “bad faith” and violated his due process rights. As relief, he requested the court to order appellee to “fulfill his request in its entirety.” He also sought \$400,000 in actual damages, and \$150,00 for “mental anguish” and “frustration.”

Appellee filed a motion to dismiss on the grounds that: (1) she had not been properly served; (2) she was entitled to statutory qualified immunity to the extent appellant was seeking damages; and (3) appellant had failed to state a claim upon which relief can be granted. On July 31, 2024, the court granted the motion to dismiss appellant’s claim for monetary damages on the ground that appellee was entitled to qualified immunity. As to appellant’s request that appellee be required to provide him with the records he requested, the court treated her response regarding the transcripts as an implicit denial of a fee waiver

request, and found that the denial of that request was not “arbitrary or capricious” as appellant had not demonstrated that waiving the transcription fees was in the public interest. This appeal followed. On appeal, appellant contends that the court erred in granting the motion to dismiss. For the reasons that follow, we shall affirm.

With respect to appellant’s claim for damages, Section 5-522(b) of the Courts and Judicial Proceedings Article provides that State personnel are “immune from suit in courts of the State and from liability in tort for a tortious act or omission that is within the scope of the public duties of the State personnel and is made without malice or gross negligence[.]” Here, appellee is undisputedly a State official. Moreover, all of her allegedly tortious acts were committed during her handling of appellant’s records request, and thus were within the scope of her public duties. *See* Cts. & Jud. Proc. Art. § 2-201(a)(4) (providing that the clerk is required to “provide copies of records or papers in [her] custody to a person requesting a copy, under the seal of the court if required”). Finally, although appellant made the conclusory allegation that appellee’s responses to his requests were made in “bad faith,” he failed to allege any facts that, even if true, would support a finding of malice or gross negligence. *See Cooper v. Rodriguez*, 443 Md. 680, 708 (2015) (defining gross negligence as “an intentional failure to perform a manifest duty in reckless disregard of the consequences as affecting the life or property of another” (quotation marks and citation omitted)); *Barbre v. Pope*, 402 Md. 157, 182 (2007) (noting that only “well-pled facts showing ‘ill-will’ or ‘evil or wrongful motive’ are sufficient to take a claim outside of the immunity . . . provisions of the [Maryland Tort Claims Act]”). Consequently, the

court did not err in finding that appellant had failed to state a claim for damages against appellee.

We further conclude that the court did not err in denying appellant’s request that the court order appellee to “fulfill his request in its entirety.” To be sure, the custodian of a judicial record must provide copies of that judicial record if it is in their possession. But there is no evidence that appellee was in possession of either the “copies of in camera proceedings” or the trial transcripts appellant was requesting. In other words, there is nothing to suggest that those documents were ever created and filed with the court. Instead, appellant was essentially seeking to force appellee to prepare the transcripts for him at no cost.

However, the MPIA does not obligate a custodian of records to create records that do not exist. See Gen. Prov. Art. § 4-205(c)(4)(iii).¹ And even if such a requirement existed, appellee could only waive the fees required to prepare the transcripts upon a showing that such a waiver “is in the public interest.” But appellant’s records request made no such showing.

In sum, appellant’s complaint failed to state a claim for damages against appellee as she was entitled to statutory qualified immunity. Similarly, his complaint failed to demonstrate that he was entitled to have appellee produce the remaining records that he requested, as those records were not in appellee’s custody, and she did not have a duty to

¹ The result would be the same if we analyzed appellant’s claim under the Judicial Access Rules, as appellee suggests. See Md. Rule 16-919(c)(1) (stating that the custodian of judicial records is “not required to create a new judicial record or reformat existing judicial records not necessary to be created or reformatted for judicial functions”)

create a record that did not exist. Consequently, the court did not err in denying appellee's motion to dismiss the complaint.

**JUDGMENT OF THE CIRCUIT
COURT FOR TALBOT COUNTY
AFFIRMED. COSTS TO BE PAID BY
APPELLANT.**