STATE OF MAINE

SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT

Law Docket No. CUM-14-227

MICHAEL A. DOYLE

Plaintiff-Appellant

vs.

TOWN OF SCARBOROUGH et al

Defendants-Appellee

ON APPEAL FROM THE SUPERIOR COURT
COUNTY OF CUMBERLAND

APPELLANT'S REPLY BRIEF

Submitted By:

Michael A. Doyle
3 Shady Lane
Falmouth, Maine 04105
207.766.6644

TABLE OF CONTENTS

I. INTRODUCTION

Appellant had no mail delivery to his home from approximately January 3, 2017 until January 17, 2017. Consequently, time must toll from the 17th to the 31st for this reply brief to be timely.

STATEMENT OF FACTS

1. Page 3, Appellee offers no evidence or sworn affidavit that there were no emails between Moulton and Bedor or Moulton and Fowler. All we have is unsubstantiated claims by Appellee that no emails exist. Appellee's use of 1,137 emails accessed by Appellant seems to be in error. Appellant inspected 1,372 emails at counsel's office. Upon the production of the 1,169 emails for the *in camera* review the court took possession of the emails and they became part of the record of this action.

STANDARD OF REVIEW

2. Page 5, Appellee refers to factual findings and clear error however, there are no facts in the emails the question for review is what they mean under the FOAA law. Each email on its own must be reviewed to establish whether or not it is a fact or law or a mixture of the two.

3. Page 6, This is not a trade secret suit and as such should be decided on each email's discussion of public access qualified material and can be lumped together under headings that were previously disclosed within the 1,372 emails already reviewed. Such as sick time leave of Capt. St. Pierre, record search for complaints against a patrol officer, the personal cell phone number of Chief Tolan of the Falmouth P.D., and the personal cell phone number of Robert Schwartz, Executive Director of the Chief's Association. Further in this case there was no 'competent evidence' to make a decision that was not clearly erroneous. No facts were presented versus what the meaning behind the email. To make an intelligent and thoughtful appeal Appellant would need to know what each email covered. How could it be impractical for this to be done during the six months they were under review by the Superior Court? It would be a decision on less than ten emails per workday.
4. Page 7, Appellee's production of 27 of the 1,169 emails in question appears to be an opportunity to game the court's Order when the Meeghan Sargent email was also in the 1,372 emails reviewed in counsel's office and again 'supplied' as one of the non-provided emails ordered to be produced. Would a direct comparison of all 27

'questionable' ordered emails produced show that none of them weren't already reviewed in the 1,372 emails and there were no new ordered emails produced at all?

ARGUMENT

5. Page 7, Documents on pages 51 to 71 of the appendix were required to demonstrate various waivers of 'protected' information and were so labeled. Those documents were part of the 1,372 emails reviewed by Appellant and this Court needed to see the level of misdirection Appellees were engaged in.
6. Page 8, Judge Wheeler took the emails into the case and made them part of the record that is before the Law Court now. Appellee has the burden of proof to show why the emails are protected after providing numerous emails that disclosed the same type of information that Appellees now claim as protected. Consequently, the Superior Court erred in supplying only 27 questionable withheld emails when Appellees already waived these defenses.
7. Page 9, This case does not involve private transactions. Based solely on the 1,372 emails already supplied it is Appellant's belief that most, if not all, of the withheld emails involve public records that should be

supplied to Appellant. Appellee presents Appellant with a Catch 22 to prove the Superior Court committed clear error when Appellant can't see the emails and point out a clear error. If the emails discussed town business they are in fact subject to disclosure.

8. Page 10, Appellees refer to *Doyle v. Town Falmouth* regarding personal phone calls, totally unrelated to emails that protection has been waived repeatedly in the 1,372 previously reviewed emails. For whatever reason the Law Court chose to ignore *Smith v. Maryland* 442 U.S. 735 (1979) in that appeal where the phone numbers were redacted. In the *Smith* case the Court ruled that "…he did not have a reasonable expectation of privacy in the numbers dialed…"
   That would indicate that all the numbers on the cell phone bill should have been supplied to the Appellant unredacted. A decision that this Appellant expects to revisit in the near future in another case currently in preparation.
9. Page 11, Appellee takes us on a trip to unrelated cases that are totally different from the case at hand. However, Appellees fails to explain, how over a period of years, it is possible that nearly half of all emails from one employee to another employee are not public records.
10. Page 13, Appellant can't list 'contentions' or cite exceptions for

appeal on items he can't see. This is another example of the Catch 22 of this case.

11. Page 14, To be clear under *Smith* there is no protection for any phone number once it is dialed and all the numbers on the cell phone bills in *Doyle v. Town of Falmouth* by law should have been ordered by the Law Court to be produced. If a request for an *In Camera* review could result in any waiver of rights it would be incumbent on any court to advise the requester of that review of any rights he might be waiving in that consent. In this case no comment by the court was made as to rights being waived for the review.

12. Page 16, Once again Appellant can't brief what you can't see.

13. Page 21, It remains Appellant's belief that he was fully justified in appealing this decision based upon three previous FOAA type cases before the same judge where she denied access to the courts and Appellant thought this was a similar misruled case. This judge went on to award fees to Appellee's counsel for preparation of a response to this Appellant motion for sanctions for lying in a sworn affidavit when Appellant produce a recording of the threat. Judge Wheeler allowed the threat to go unsanctioned and the false swearing in an affidavit to go unsanctioned, yet decided Appellee's counsel should be

paid to write a defense for the threat and the false affidavit. A series of events that define ridiculous conduct from the bench. It would appear that Appellee's contention is that no decision should be appealed. If a judge has a hostile attitude to FOAA requests from this Appellant, wouldn't it make sense that something of this magnitude should be reviewed by a less prejudiced set of eyes? Or is any appeal involving 1,169 emails hidden from the Appellant and only discovered in direct examination of the Town Manager considered frivolous? That alone would indicate a knowingly planned decision to not comply with the FOAA law of Maine, combined with counsel's threat against Appellant, and the hostile attitude of the hearing judge would form a confluence of bad conduct that would indicate an appeal was likely the only resort left to get justice.

14. Page 23, Appellee's quote beginning "Asserting propositions of law… The very nature of this case is based in common sense. How is it possible for two employees to exchange 1,169 emails and only 27 of them are part of the public record? It challenges the very credibility of Appellee's counsel. Is no lie to big a lie?

15. Page 24, No costs or fees are warranted as this appeal was filed in good faith based upon a history of bad conduct by Appellee's counsel

and prejudicial conduct by the hearing judge. In footnote 6 the email was included in the Appeal as an example of a reviewed email as part of the 1,372 and its duplicate as provided as one of the ordered 27 from the withheld group. It obviously can't properly be in both groups and it is likely that the 27 ordered emails were not provided by Appellee under order by the court.

CONCLUSION

Most, if not all of the withheld emails, should be turned over to Appellant. All requested fees and costs should be denied as this appeal was justified by misconduct of counsel by withholding emails, threating Appellant, and lying in a sworn affidavit, to include the prejudicial conduct of Judge Wheeler.

.

Dated: Falmouth, Maine
January 25, 2017

_____
Michael A. Doyle, Pro Se

3 Shady Lane
Falmouth, Maine 04105
207.766.6644

TABLE OF AUTHORITIES

Table of Cases: