

[Cite as *In re Barksdale*, 2010-Ohio-269.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 94221

IN RE: CHRISTOPHER BARKSDALE, ET AL.

RELATORS

vs.

JUDGE DAVID T. MATIA

RESPONDENT

**JUDGMENT:
COMPLAINT DISMISSED**

Writ of Mandamus
Motion No. 429243
Order No. 430120

RELEASE DATE: January 22, 2010

FOR RELATOR

Christopher S. Barksdale, pro se
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Cleveland, Ohio 44120

ATTORNEYS FOR RESPONDENT

William D. Mason
Cuyahoga County Prosecutor

By: Charles E. Hannan, Jr.
Assistant County Prosecutor
8th Floor Justice Center
1200 Ontario Street
Cleveland, Ohio 44113

MARY EILEEN KILBANE, J.:

{¶ 1} On November 9, 2009, relator Christopher Barksdale filed a complaint for a writ of mandamus against Judge David Matia. In his complaint, Barksdale asks this court to order Judge Matia to grant the motion to dismiss that was filed in Case No. 09 CV 689650 on April 21, 2009. On December 11, 2009, Judge Matia, through the Cuyahoga County Prosecutor, filed a motion to dismiss which Barksdale responded to on January 4, 2010. For the following reasons, we grant the motion to dismiss.

{¶ 2} Initially, we find that Barksdale's complaint for a writ of mandamus is defective since it is improperly captioned. A complaint for a writ of mandamus

must be brought in the name of the state, on relation of the person applying. Barksdale's failure to properly caption the complaint warrants dismissal. *Maloney v. Court of Common Pleas of Allen Cty.* (1962), 173 Ohio St. 226, 181 N.E.2d 270; *Dunning v. Judge Cleary* (Jan. 11, 2001), Cuyahoga App. No. 78763.

{¶ 3} Despite the above procedural defect, in order for this court to issue a writ of mandamus, a relator must establish that: 1) the relator possesses a clear legal right to the relief prayed; 2) the respondent possesses a clear legal duty to perform the requested act; and 3) the relator possesses no plain and adequate remedy in the ordinary course of the law. *State ex rel. Manson v. Morris* (1993), 66 Ohio St.3d 440, 613 N.E.2d 232, citing *State ex rel. Berger v. McMonagle* (1983), 6 Ohio St.3d 28, 451 N.E.2d 225.

{¶ 4} Moreover, mandamus is an extraordinary remedy which is to be exercised with caution and only when the right is clear. It should not be issued in doubtful cases. *State ex rel. Taylor v. Glasser* (1977), 50 Ohio St.2d 165, 364 N.E.2d 1; *State ex rel. Shafer v. Ohio Turnpike Comm.* (1953), 159 Ohio St. 581, 113 N.E.2d 14; *State ex rel. Cannole v. Cleveland Bd. of Edn.* (1993), 87 Ohio App.3d 43, 621 N.E.2d 850.

{¶ 5} Additionally, if a relator had an adequate remedy at law, regardless of whether it was used, relief in mandamus is precluded. *State ex rel. Tran v. McGrath*, 78 Ohio St.3d 45, 1997-Ohio-245, 676 N.E.2d 108; *State ex rel. Boardwalk Shopping Ctr., Inc. v. Court of Appeals for Cuyahoga Cty.* (1990), 56

Ohio St.3d 33, 564 N.E.2d 86; *State ex rel. Provolone Pizza , LLC. v. Callahan*, Cuyahoga App. No. 88626, 2006-Ohio-660; *State ex rel. Grahek v. McCafferty*, Cuyahoga App. No. 88614, 2006-Ohio-4741.

{¶ 6} To the extent that Barksdale asks this court to order Judge Matia to grant the motion to dismiss, mandamus is not appropriate because it may not be used to control judicial discretion, even if that discretion is grossly abused. *State ex rel. Ney v. Niehause* (1987), 33 Ohio St.3d 118, 515 N.E.2d 914. If Barksdale is asking this court to order Judge Matia to rule on the motion to dismiss, a review of the lower court docket indicates that Judge Matia denied the motion to dismiss which was journalized on November 30, 2009. Therefore Barksdale's request for a writ of mandamus is moot. *State ex rel. Grant v. Coleman* (1983), 6 Ohio St.3d 5, 450 N.E.2d 1163; *State ex rel. Jerninghan v. Cuyahoga Cty. Court of Common Pleas* (1996), 74 Ohio St.3d 278, 658 N.E.2d 723.

{¶ 7} Accordingly, we grant the motion to dismiss Barksdale's request for a writ of mandamus. Relator to bear costs. It is further ordered that the clerk shall serve upon all parties notice of this judgment and date of entry pursuant to Civ.R. 58(B).

Writ dismissed.

MARY EILEEN KILBANE, PRESIDING JUDGE

MELODY J. STEWART, J., and
MARY J. BOYLE, J., CONCUR