

[Cite as *Blue v. Ryan*, 2017-Ohio-8072.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
Nos. 106166, 106180, 106181, and 106182

MARIO BLUE

RELATOR

vs.

JUDGE MICHAEL J. RYAN

RESPONDENT

**JUDGMENT:
WRITS DISMISSED**

Writs of Mandamus and Procedendo
Order No. 510266

RELEASE DATE: October 3, 2017

FOR RELATOR

Mario Blue, pro se
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Cleveland, Ohio 44122

ATTORNEYS FOR RESPONDENT

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Cuyahoga County Prosecutor
By: Charles E. Hannan
Assistant County Prosecutor
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MARY EILEEN KILBANE, P.J.:

{¶1} Relator, Mario Blue, has filed four separate original actions, against respondent Judge Michael J. Ryan, requesting writs of mandamus and prohibition and seeking declaratory judgment, permanent injunction, and “writ of certiorari.” These cases have been consolidated upon respondent’s motion. Although the complaints and the grounds are not entirely clear, relator appears to be challenging a child support order issued by Judge Ryan, objects to his ordering him to pay child support payments through state and county child support collection agencies, and seeks to prohibit the garnishment of his wages in connection with the order. For the reasons that follow, we dismiss all four actions sua sponte.

{¶2} To be entitled to a writ of mandamus, Blue must establish (1) a clear legal right to the requested relief, (2) a clear legal duty on the part of Judge Ryan to provide it, and (3) the lack of an adequate remedy in the ordinary course of law. *See State ex rel. Waters v. Spaeth*, 131 Ohio St.3d 55, 2012-Ohio-69, 960 N.E.2d 452, ¶ 6.

{¶3} To be entitled to a writ of prohibition, Blue must establish that (1) Judge Ryan exercised or is about to exercise judicial power, (2) the exercise of that power is unauthorized by law, and (3) denial of the writ will cause injury for which no other adequate remedy exists in the ordinary course of the law. *See State ex rel. Bell v. Pfeiffer*, 131 Ohio St.3d 114, 2012-Ohio-54, 961 N.E.2d 181, ¶ 18.

{¶4} “Sua sponte dismissal of a complaint for failure to state a claim upon which relief can be granted is appropriate if the complaint is frivolous or the claimant obviously cannot prevail on the facts alleged in the complaint.” *State ex rel. Kreps v. Christiansen*, 88 Ohio St.3d 313, 316, 725 N.E.2d 663 (2000), citing *State ex rel. Bruggeman v. Ingraham*, 87 Ohio St.3d 230, 231, 718 N.E.2d 1285 (1999).

{¶5} The complaints before us fail to establish any factual grounds to issue a writ of mandamus or prohibition. Apart from omitting any facts that demonstrate a clear legal right to relief or respondent’s clear legal duty to provide it, we cannot discern from the allegations the precise act Blue seeks to compel Judge Ryan by mandamus. Nor can we discern the grounds for prohibition. Indeed, many of the allegations and requested relief are directed toward entities that are not even named parties to the action. And while Blue appears to be dissatisfied with a support order, prohibition does not lie to attack the underlying order. *See State ex rel. Davet v. Sutula*, 131 Ohio St.3d 220, 2012-Ohio-759, 963 N.E.2d 811, ¶ 2 (petitioner may not use an extraordinary writ when there is an adequate remedy in the ordinary course of law, including an appeal).

{¶6} Moreover, to the extent that Blue asks this court to grant him a declaratory judgment or a permanent injunction, we do not have original jurisdiction to do so. *See State ex rel. Dynamic Indus. v. Cincinnati*, 147 Ohio St.3d 422, 2016-Ohio-7663, 66 N.E.3d 734, ¶ 9. Nor do we have original jurisdiction to grant a “writ of certiorari.”

{¶7} We further note that Blue’s petitions for mandamus fail to comply with R.C. 2731.04, which requires that an application be made “by petition, in the name of the state

on the relation of the person applying, and verified by affidavit.” Blue’s failure to comply with these requirements also provides an independent basis to dismiss his mandamus actions. *See Shoop v. State*, 144 Ohio St.3d 374, 2015-Ohio-2068, 43 N.E.3d 432, ¶ 10.

{¶8} Accordingly, we dismiss these consolidated cases against Judge Ryan sua sponte. Costs assessed against relator. The clerk is directed to serve upon the parties notice of this judgment and its date of entry upon the journal. Civ.R. 58(B).

{¶9} Writs dismissed.

MARY EILEEN KILBANE, PRESIDING JUDGE

MELODY J. STEWART, J., and
SEAN C. GALLAGHER, J., CONCUR