

[Cite as *State ex rel. Ali v. Walker*, 2009-Ohio-3901.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 92886

**STATE OF OHIO, EX REL.,
TARIQ AFI DUMISANI KHAN ALI**

RELATOR

vs.

SANDRA L. WALKER, JUDGE

RESPONDENT

**JUDGMENT:
WRIT DENIED**

WRIT OF MANDAMUS
MOTION NO. 420272
ORDER NO. 424628

RELEASE DATE: July 31, 2009

ATTORNEY FOR RELATOR

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SEAN C. GALLAGHER, P.J.:

{¶ 1} Relator, Tariq Afi Dumisani Khan Ali, is the defendant in *Midfirst Bank v. Ali*, East Cleveland Mun. Court Case No. 08CVG01613, an eviction action. Case No. 08CVG01613 has been assigned to respondent judge.

{¶ 2} Ali complains about various aspects of the proceedings in Case No. 08CVG01613, including: he did not receive notice of respondent's February 10, 2009 order granting a motion to add a new party plaintiff until February 14, 2009, which did not give him time to respond before a hearing scheduled February 17, 2009; respondent did not enforce the January 13, 2009 magistrate's order requiring the plaintiff in Case No. 08CVG01613 to brief the issues by February 3, 2009; and the lawyer filing a motion to add a new party plaintiff was not counsel of record. Ali requests that this court order respondent to: dismiss the claim in Case No.

08CVG01613 because the plaintiff did not comply with the court's January 13 order; strike the motion to add new party plaintiff; and provide Ali with an opportunity to respond to filings made in Case No. 08CVG01613.

{¶ 3} “The requisites for mandamus are well established: (1) the relator must have a clear legal right to the requested relief, (2) the respondent must have a clear legal duty to perform the requested relief and (3) there must be no adequate remedy at law. Additionally, although mandamus may be used to compel a court to exercise judgment or to discharge a function, it may not control judicial discretion, even if that discretion is grossly abused. *State ex rel. Ney v. Niehaus* (1987), 33 Ohio St.3d 118, 515 N.E.2d 914. Furthermore, mandamus is not a substitute for appeal. *State ex rel. Keenan v. Calabrese* (1994), 69 Ohio St.3d 176, 631 N.E.2d 119; *State ex rel. Daggett v. Gessman* (1973), 34 Ohio St.2d 55, 295 N.E.2d 659; and *State ex rel. Pressley v. Industrial Commission of Ohio* (1967), 11 Ohio St.2d 141, 228 N.E.2d 631, Paragraph Three of the Syllabus. Thus, mandamus does not lie to correct errors and procedural irregularities in the course of a case. *State ex rel. Tommie Jerningham v. Judge Patricia Gaughan* (Sept. 26, 1994), Cuyahoga App. No. 67787. Furthermore, if the relator had an adequate remedy, 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 and *State ex rel. Boardwalk Shopping Center, Inc. v. Court of Appeals for Cuyahoga County* (1990), 56 Ohio St.3d 33, 564 N.E.2d

86.” *State ex rel. Smith v. Fuerst*, Cuyahoga App. No. 86118, 2005-Ohio-3829, at ¶4.

{¶ 4} Respondent has filed what is captioned as a “motion to dismiss” but in which she also requests summary judgment. Attached to the motion are copies of various journal entries and other filings in Case No. 08CVG01613.

{¶ 5} Ali requests that this court direct respondent to dismiss Case No. 08CVG01613 and to issue other rulings. In light of the authorities cited in *Smith*, supra, Ali has clearly failed to state a claim for relief in mandamus. That is, Ali contends that respondent made various errors in her rulings. Clearly, Ali’s averments are not an appropriate subject for an original action in mandamus. He has not, therefore, demonstrated that he has a clear legal right to the relief requested or that respondent has a clear legal duty to perform the requested relief.

{¶ 6} Additionally, Ali filed an appeal which was dismissed as untimely. *Midfirst Bank v. Ali* (June 23, 2009), Cuyahoga App. No. 93499, Entry No. 423418. As indicated in *Smith*, although Ali failed to perfect a timely appeal, this court must conclude that he had an adequate remedy in the ordinary course of the law. As a consequence, relief in mandamus is not appropriate.

{¶ 7} Defects in Ali’s complaint and supporting documentation also provide a basis for dismissal. Loc.App.R. 45(B)(1)(a) requires that complaints in original actions be supported by an affidavit from the plaintiff or relator specifying the details of the claim. Although the acknowledgment on the affidavit accompanying the

complaint bears the stamp and seal of a notary, the notary did not sign the acknowledgment. Rather, her typewritten name appears on the signature line. See R.C. 147.55(A)(1) [form of acknowledgment for an individual]. Compare *State ex rel. McGrath v. McDonnell*, Cuyahoga App. No. 87368, 2006-Ohio-535 [The affidavit accompanying an action in mandamus was not notarized and, therefore, failed to comply with Loc.App.R. 45(B)(1)(a).].

{¶ 8} Ali “also failed to include the address of the parties in the caption of the complaint as required by Civil Rule 10 (A). This may also be grounds for dismissing the action. *State ex rel. Sherrills v. State* (2001), 91 Ohio St. 3d 133, 742 N.E.2d 651.” *State ex rel. Hall v. Calabrese* (Aug. 16, 2001), Cuyahoga App. No. 79810, at 2. Although Ali included his address in the caption, he failed to include respondent’s address.

{¶ 9} Accordingly, respondent’s motion to dismiss and for summary judgment is granted. Relator to pay costs. 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).

Writ denied.

SEAN C. GALLAGHER, PRESIDING JUDGE

ANN DYKE, J., and
LARRY A. JONES, J., CONCUR