

[Cite as *State v. Corrigan*, 2010-Ohio-4364.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 95139

STATE OF OHIO

RELATOR

vs.

HONORABLE PATRICK F. CORRIGAN, ET AL.

RESPONDENTS

**JUDGMENT:
COMPLAINT DISMISSED**

Writ of Mandamus
Motion No. 435058
Order No. 436672

RELEASE DATE: September 14, 2010

ATTORNEYS FOR RELATOR

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JAMES J. SWEENEY, J.:

{¶ 1} The state of Ohio (“State”), the relator, has filed a complaint for a writ of mandamus. The State seeks an order from this court which requires Judge Patrick F. Corrigan, the respondent, to render a ruling with regard to a Civ.R. 60(B) motion for relief from judgment that was filed in *In re: A.B.*, Cuyahoga County Juvenile Court Case No. DL-07107930. Judge Corrigan has filed a motion to dismiss, which we grant for the following reasons.

{¶ 2} Initially, we find that the complaint for a writ of mandamus is improperly captioned. A complaint for a writ of mandamus must be brought in the name of the state of Ohio, on relation of the person applying for the writ. Herein, the State has failed to properly caption its complaint for a writ of mandamus. The failure of the State to properly caption its complaint warrants dismissal. *Rust v. Lucas Cty. Bd. Of Elections*, 108 Ohio St.3d 139, 2005-Ohio-5795, 841 N.E.2d 766; *Maloney v. Court of Common Pleas of Allen Cty.* (1962), 173 Ohio ST. 226, 1818 N.E.2d 270; *Dunning v. Cleary* (Jan. 11, 2001), Cuyahoga App. No. 78763.

{¶ 3} Finally, the complaint for a writ of mandamus fails to state a claim upon which relief can be granted, because the State cannot establish that it possesses a clear legal right to an immediate ruling on the pending Civ. R. 60(B) motion for relief from judgment or that Judge Corrigan possesses a clear legal duty to render an immediate ruling with regard to the pending Civ.R. 60(B) motion for relief from judgment. Herein, the aforesaid Civ.R. 60(B) motion for relief from judgment was filed in *In re: A.B.*, Cuyahoga County Juvenile Court Case No. DL-07107930. The State has filed an appeal, in *In re: A.B.*, Cuyahoga App. No. 95057, which is currently pending before this court. The appeal, as filed by the State, divests Judge Corrigan of the jurisdiction to consider the Civ.R. 60(B) motion for relief from judgment. *Howard v. Catholic Social Serv.*

of Cuyahoga Cty., Inc., 70 Ohio St.3d 141, 1994-Ohio-219, 637 N.E.2d 890. Thus, while the appeal remains pending with this court, there exists no right to a ruling on the Civ.R. 60(B) motion for relief from judgment nor does there exist a duty on the part of Judge Corrigan to render a ruling with regard to the Civ.R. 60(B) motion for relief from judgment. *State ex rel. East Mfg. Corp. v. Ohio Civ. Rights Comm.* (1992), 63 Ohio St.3d 179, 586 N.E.2d 105. See, also, *Majnaric v. Majnaric* (1975), 46 Ohio App.2d 157, 347 N.E.2d 552.

{¶ 4} Accordingly, we grant Judge Corrigan's motion to dismiss. Costs to the State. It is further ordered that the Clerk of the Eighth District Court of Appeals serve notice of this judgment upon all parties as required by Civ.R. 58(B).

Complaint dismissed.

JAMES J. SWEENEY, JUDGE

MARY EILEEN KILBANE, P.J., and
MELODY J. STEWART, J., CONCUR