

COURT OF APPEALS OF OHIO
EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

STATE OF OHIO,	:	
	:	
Respondent,	:	No. 110527
	:	
v.	:	
	:	
DWAYNE WILSON,	:	
	:	
Relator.	:	

JOURNAL ENTRY AND OPINION

JUDGMENT: WRIT DENIED
DATED: August 6, 2021

Writ of Mandamus
Motion No. 547357
Order No. 547209

Appearances:

Dwayne Wilson, *pro se*.

Michael C. O'Malley, Cuyahoga County Prosecuting Attorney, and James E. Moss, Assistant Prosecuting Attorney, *for respondent*.

LISA B. FORBES, J.:

{¶ 1} Relator, Dwayne Wilson (“Wilson”), seeks a writ directing a respondent, identified in the body of the complaint as the “Cuyahoga County Common Pleas Court Trial Court,” to issue findings of fact and conclusions of law relating to a petition for postconviction relief Wilson filed in 2015. Findings of fact

and conclusions of law have now been issued, rendering Wilson's claim for relief in mandamus moot. Wilson's complaint is also fatally defective. For these reasons, the requested writ is denied.

I. Factual and Procedural History

{¶ 2} According to Wilson's complaint filed in this action on May 25, 2021, Wilson was charged with numerous crimes related to the rapes of three women in 2014 in Cuyahoga C.P. No. CR-14-590113-A. A jury found Wilson guilty, and on April 1, 2015, Wilson was sentenced to 110 years to life. Wilson appealed his convictions and sentences, which were affirmed. *State v. Wilson* 8th Dist. Cuyahoga No. 102921, 2016-Ohio-2718.

{¶ 3} In his complaint in this action, Wilson claims that on August 20, 2015, he timely filed a postconviction-relief petition styled, "petition to set aside judgment or vacate conviction or sentence." He further alleges that the trial court denied the petition on September 1, 2015, in a journal entry that stated, "defendant's motion to vacate or set aside judgment of conviction or sentence filed on 8/20/2015 is denied." In 2017, Wilson filed a second postconviction relief petition, and a motion seeking findings of fact and conclusions of law for the denial of his 2015 petition. Both were denied.

{¶ 4} On May 25, 2021, Wilson filed the instant complaint for writ of mandamus. He seeks an order requiring the Cuyahoga County Common Pleas Court to issue findings of fact and conclusions of law related to his 2015 postconviction relief petition pursuant to R.C. 2953.21(H). On June 21, 2021, respondent,

Cuyahoga County Common Pleas Court Judge Nancy McDonnell filed a motion for summary judgment. There, she asserted that the complaint was moot because she issued findings of fact and conclusions of law denying Wilson’s 2015 postconviction relief petition on June 17, 2021. A certified copy of this journal entry was attached to the motion for summary judgment. She further alleged that Wilson’s complaint was fatally defective. Wilson filed an untimely opposition on July 20, 2021, styled “relator’s traverse,” which is accepted for review. There, he did not refute respondent’s argument that the action was moot.¹

II. Law and Analysis

A. Applicable Standards

{¶ 5} Relief in mandamus is appropriate when relators establish by clear and convincing evidence that they have (1) a clear legal right to the requested relief, (2) a clear legal duty on the part of the respondent to provide it, and (3) the lack of an adequate remedy in the ordinary course of law. *State ex rel. Neal v. Mandros*, 162 Ohio St.3d 154, 2020-Ohio-4866, 164 N.E.3d 418, ¶ 9, citing *State ex rel. Bunting v. Styer*, 147 Ohio St.3d 462, 2016-Ohio-5781, 67 N.E.3d 755, ¶ 10.

{¶ 6} The matter is before this court on summary judgment. Pursuant to Civ.R. 56, judgment is appropriate if “there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” Civ.R.

¹ Wilson attached several documents purporting to be notices of availability sent between 2006 and 2014 that appear to be unrelated to the allegations and request for relief made in his complaint.

56(C). *See also State ex rel. Parker v. Russo*, 158 Ohio St.3d 123, 2019-Ohio-4420, 140 N.E.3d 602, ¶ 5.

B. Procedural Deficiencies

{¶ 7} Respondent has identified significant procedural deficiencies in Wilson’s complaint. First, R.C. 2969.25(A) requires an inmate instituting an action against any government entity or employee in any state or federal court to include an affidavit identifying prior civil actions or appeals of civil actions filed within the past five years. “[T]he affidavit required by R.C. 2969.25(A) must be filed at the time the complaint is filed, and an inmate may not cure the defect by later filings.” *State ex rel. Hall v. Mohr*, 140 Ohio St.3d 297, 2014-Ohio-3735, 17 N.E.3d 581, ¶ 4, citing *Fuqua v. Williams*, 100 Ohio St.3d 211, 2003-Ohio-5533, 797 N.E.2d 982, ¶ 9. The failure to file the required affidavit is sufficient grounds to deny the requested relief. *Id.*, citing *State ex rel. Washington v. Ohio Adult Parole Auth.*, 87 Ohio St.3d 258, 259, 719 N.E.2d 544 (1999), citing *State ex rel. Zanders v. Ohio Parole Bd.*, 82 Ohio St.3d 421, 422, 696 N.E.2d 594 (1998). R.C. 2969.25 requires strict compliance. *State ex rel. Swanson v. Ohio Dept. of Rehab. & Corr.*, 156 Ohio St.3d 408, 2019-Ohio-1271, 128 N.E.3d 193, ¶ 6, citing *State v. Henton*, 146 Ohio St.3d 9, 2016-Ohio-1518, 50 N.E.3d 553, ¶ 4; *State ex rel. Manns v. Henson*, 119 Ohio St.3d 348, 2008-Ohio-4478, 894 N.E.2d 47, ¶ 4.

{¶ 8} Wilson’s complaint indicates that he is incarcerated in a state correctional institution, but he has provided no affidavit of prior civil actions. His complaint states at one point that he “was not required to file an Inmate Affidavit as

to prior actions(s) as suggested in [R.C.] 2969.25.” This appears to be in reference to his postconviction relief petition filed in the trial court in 2015, not in reference to the present complaint. To the extent that Wilson may be arguing that he is not required to file an affidavit with the current complaint, he has provided no reason or explanation that would excuse his compliance with R.C. 2969.25.

{¶ 9} As noted above, the affidavit requirement is mandatory. *State ex rel. Sanchez v. Wainwright*, Slip Opinion No. 2021-Ohio-747; *State ex rel. Sands v. Kelly*, Slip Opinion No. 2021-Ohio-769, ¶ 3; *State ex rel. Ware v. Walsh*, 159 Ohio St.3d 120, 2020-Ohio-769, 148 N.E.3d 554, ¶ 2. Recent cases from the Supreme Court of Ohio have not applied the exception to the affidavit requirement addressed in *State ex rel. Wickensimer v. Bartleson*, 123 Ohio St.3d 154, 2009-Ohio-4695, 914 N.E.2d 1045, ¶ 4 (holding that the failure to file the affidavit was not grounds for dismissal when there were no prior civil actions or appeals of civil actions filed within the previous five years.). Even under *Wickensimer*, Wilson would still be required to submit an affidavit of prior civil actions because it appears he filed at least one civil action against a government entity or employee in the past five years. *Wilson v. Coleman*, N.D. Ohio No. 1:17CV02500, 2019 U.S. Dist. LEXIS 76023 (Mar. 26, 2019),² magistrate’s report and recommendation adopted by *Wilson v. Coleman*, N.D. Ohio No. 3:17 CV 2500, 2019 U.S. Dist. LEXIS 76013 (May 6, 2019).

² This report and recommendation indicates that a petition for writ of habeas corpus was filed in 2017, and also notes that Wilson filed a state habeas corpus action in the Lucas County Court of Common Pleas in 2017. *Coleman* at 12.

The failure to provide this affidavit is sufficient grounds to deny the requested writ. *Henton* at ¶ 3-4.

{¶ 10} We also note that Wilson’s complaint is procedurally deficient because it is not properly captioned. Civ.R. 10(A) provides, “Every pleading shall contain a caption * * *. In the complaint the title of the action shall include the names and addresses of all the parties, but in other pleadings it is sufficient to state the name of the first party on each side with an appropriate indication of other parties.” The caption of the complaint does not properly identify a respondent and does not include the addresses of the parties. The caption of Wilson’s complaint only names the state of Ohio as respondent. In her motion for summary judgment, Judge McDonnell stated that she is the proper respondent in this action, but did not waive any objection to Wilson’s failure to properly caption the complaint.

{¶ 11} The failure to properly caption the complaint is grounds for denial of the requested relief. *Kneuss v. Sloan*, 146 Ohio St.3d 248, 2016-Ohio-3310, 54 N.E.3d 1242, ¶ 11; *State ex rel. Sherrills v. State*, 91 Ohio St.3d 133, 742 N.E.2d 651 (2001).

{¶ 12} In his opposition to respondent’s motion for summary judgment, Wilson claims that this court should excuse these deficiencies to address a manifest injustice that has occurred in this case. Wilson does not address the clear direction from the Supreme Court of Ohio that these requirements must be complied with when seeking relief in mandamus.

C. Mootness

{¶ 13} Despite the procedural irregularities identified above, on June 21, 2021, respondent journalized findings of fact and conclusions of law denying Wilson’s 2015 petition for postconviction relief in the underlying criminal case. An action for writ of mandamus becomes moot when, during the pendency of the action, the relator receives the relief requested in the complaint. *State ex rel. Jerningham v. Cuyahoga Cty. Court of Common Pleas*, 74 Ohio St.3d 278, 658 N.E.2d 723 (1996). Relief in mandamus becomes inappropriate because “[a] writ of mandamus will not issue to compel an act already performed.” *State ex rel. Evans v. Mohr*, 155 Ohio St.3d 579, 2018-Ohio-5089, 122 N.E.3d 1240, ¶ 4, quoting *Jerningham* at 279. Respondent has issued findings of fact and conclusions of law in the criminal case Wilson referenced in his complaint. This was the sole claim for

relief in mandamus raised in the complaint. Wilson has received all the relief he is entitled to in this action. Therefore, the action is moot.

{¶ 14} Respondent's motion for summary judgment is granted. Wilson's request for writ of mandamus is denied. Costs to respondent; costs waived. It is further ordered that the clerk of courts serve notice of this judgment upon all parties as required by Civ.R. 58(B).

LISA B. FORBES, JUDGE

MARY J. BOYLE, A.J., and
MARY EILEEN KILBANE, J., CONCUR