

COURT OF APPEALS OF OHIO

**EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA**

CLIFTON B. MAYS, :
 :
 Relator, :
 : No. 112754
 v. :
 :
 STATE OF OHIO, :
 :
 Respondent. :

JOURNAL ENTRY AND OPINION

JUDGMENT: COMPLAINT DENIED

DATED: June 26, 2023

Writ of Mandamus
Motion No. 564675
Order No. 565375

Appearances:

Clifton B. Mays, *pro se*.

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

ANITA LASTER MAYS, A.J.:

{¶ 1} Relator, Clifton B. Mays, seeks a writ of mandamus to have this court conduct an investigation of his underlying criminal case and grant various other forms of relief. Respondent, named only as the state of Ohio in the caption of the complaint, moved for summary judgment based on numerous procedural defects.

Because of those defects, respondent's motion for summary judgment is granted and relator's request for writ of mandamus in the initial complaint and potential amended complaint are denied.

I. Background

{¶ 2} On May 22, 2023, Mays filed a complaint for writ of mandamus. The caption of the complaint included "Clifton B. Mays" and "State of Ohio." The caption did not provide any addresses for service required by Civ.R. 10(A).

{¶ 3} The complaint alleged that some type of fraud was committed during relator's criminal trial. He requested that this court order the following records to be obtained from nonparties identified as "1) University Hospitals, 2) Red Roof Inn, 3) Grey Hound Bus Lines, and 4) F.B.I. in Detroit, Steven D'Antonio, 5) U.S. Marshal, Barbara Boyd, and 6) U.S. Dept. of Justice, Merrick Garland." Relator further requested that an honest and open evidentiary hearing be conducted, that the judge who presided over relator's criminal case be removed from that case because the judge allegedly withheld evidence and accepted knowingly fraudulent evidence, and alleged some type of conspiracy occurred and requested that each party who participated in the conspiracy be charged with unspecified crimes. Relator also sought an arrest warrant for people who are alleged to have provided false testimony in his criminal trial. Relator also requested a copy of Judge Brendan Sheehan's oath of office.

{¶ 4} On May 26, 2023, respondent filed a motion for summary judgment arguing that relator's complaint was procedurally defective and that respondent was entitled to judgment as a matter of law on the merits.

{¶ 5} On June 13, 2023, relator filed an untitled document. The filing could be interpreted as an amended complaint because it contained a case caption that identified Mays as the relator, included different respondents, and included addresses for all the parties.

{¶ 6} The filing also had an attached typed document titled, "Judicial Misconduct Complaint: Affidavit" with a handwritten notation next to this title, which read, "stating all lawsuits filed in the last 5 years." This "Judicial Misconduct Complaint: Affidavit," among other things, listed two federal lawsuits, one filed in 2018 and another in 2020. The description of these suits in the document is vague and intermingled with arguments going to the merits of the present claim for mandamus but appears to allege that relator filed suit against various public officials and other individuals. The document goes on to detail various proceedings and asks this court to conduct a full and honest investigation into his case. Relator also asserted that he is seeking "a straight release from prison since the state of Ohio has failed to truthfully state a counter claim against me in any state or federal court of law." Finally, relator stated that he is seeking "the arrest and prosecution of [a witness who testified at relator's criminal trial] and other state actors."

II. Law and Analysis

A. Requests for Evidentiary Hearing and Appointment of Counsel

{¶ 7} The caption of relator’s initial complaint included a request for an evidentiary hearing and appointment of counsel. The resolution of the present matter does not require an evidentiary hearing because the complaint must be dismissed on procedural grounds evident on the face of the record as it exists for this court. That request is therefore denied.

{¶ 8} Relator has not established a right to appointed counsel in this original action or cited any legal authority in support of his request. Further, “[t]here is no generalized right of counsel in civil litigation.” *State ex rel. Russell v. Dept. of Rehab. & Corr.*, 153 Ohio St.3d 274, 2018-Ohio-2693, 104 N.E.3d 767, ¶ 7, quoting *State ex rel. Jenkins v. Stern*, 33 Ohio St.3d 108, 110, 515 N.E.2d 928 (1987). Therefore, we deny the request for appointed counsel.

B. Amended Complaint

{¶ 9} Relator’s June 13, 2023 filing could be interpreted as an attempt to file an amended complaint. Civ.R. 15(A) governs amendment of pleadings. It allows for the amendment of a pleading within 28 days of service or within 28 days after service of a responsive pleading or motion to dismiss. Otherwise, amendment is permitted only by agreement of the parties or with leave of court. Here, relator is within the period of time where leave is not required to amend a pleading. However, because of uncurable procedural defects in the initial complaint, the document,

which could possibly be an amended complaint, is immaterial to the outcome of this case.

C. Procedural Defects

{¶ 10} In its motion for summary judgment, respondent makes several arguments as to why relator’s request for a writ of mandamus must be denied. These include relator’s failure to include addresses for the parties in the case caption required by Civ.R. 10(A), the failure to name a proper respondent, and the failure to file the action in the name of the state on behalf of the relator as required by R.C. 2731.04. If this court views the document filed by relator on June 13, 2023, as an amended complaint, the document largely complies with Civ.R. 10(A) and potentially names proper respondents.¹ However, even with this document interpreted as an amended complaint, we are still required to deny relief because of another procedural defect raised by respondent: R.C. 2969.25(A).

{¶ 11} An inmate in a state correctional institution who files a civil suit against a public office or employee must comply with R.C. 2969.25(A). *State ex rel. Pointer v. Ohio Adult Parole Auth.*, Slip Opinion No. 2022-Ohio-3261, ¶ 7. This statute requires an inmate commencing such a civil action to file an “affidavit that contains a description of each civil action or appeal of a civil action that the inmate has filed in the previous five years in any state or federal court.” R.C. 2969.25(A). The statute then lists the details that the affidavit must include. This requirement is

¹ The document names the Cuyahoga County prosecutor and state attorney general as respondents.

mandatory and strict compliance is necessary. *Pointer* at ¶ 7, citing *State ex rel. Swanson v. Ohio Dept. of Rehab. & Corr.*, 156 Ohio St.3d 408, 2019-Ohio-1271, 128 N.E.3d 193, ¶ 6. The failure to file this affidavit at the time the complaint is filed is fatal to an inmate's complaint and provides sufficient basis for its dismissal. *Id.*, citing *State ex rel. White v. Bechtel*, 99 Ohio St.3d 11, 2003-Ohio-2262, 788 N.E.2d 634, ¶ 5. Further, this procedural defect cannot be cured by later filing or amendment of the complaint. *State ex rel. Young v. Clipper*, 142 Ohio St.3d 318, 2015-Ohio-1351, 29 N.E.3d 977, ¶ 9, citing *Hazel v. Knab*, 130 Ohio St. 3d 22, 2011-Ohio-4608, 955 N.E.2d 378, ¶ 1; and *Fuqua v. Williams*, 100 Ohio St. 3d 211, 2003-Ohio-5533, 797 N.E.2d 982, ¶ 9.

{¶ 12} Relator did not file an affidavit of prior civil actions with his May 22, 2023 complaint. The June 13, 2023 document did include an attachment that could be construed as an affidavit of prior civil actions. In this document, relator acknowledges that he filed two prior civil actions in federal court within the past five years. Therefore, the record before this court is clear that relator was required to file an affidavit of prior civil actions with his initial complaint and he failed to do so. This fatal defect requires denial of the requested relief in this case. *Pointer* at ¶ 7.

{¶ 13} Therefore, respondent's motion for summary judgment is granted. Relator's request for writ of mandamus in the complaint is denied. To the extent that the June 13, 2023 filing constitutes as amended complaint, the request for writ of mandamus there is denied. Relator to bear the costs of this action. The clerk is

directed to serve on the parties notice of this judgment and its date of entry upon the journal. Civ.R. 58(B).

ANITA LASTER MAYS, ADMINISTRATIVE JUDGE

MARY EILEEN KILBANE, J., and
EMANUELLA D. GROVES, J., CONCUR