

COURT OF APPEALS OF OHIO
EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

IN RE WRIT OF MANDAMUS :
(JEFFERY F. TURNER, SR., RELATOR) :
 :
 : No. 112760
 :

JOURNAL ENTRY AND OPINION

JUDGMENT: COMPLAINT DISMISSED
DATED: June 12, 2023

Writ of Mandamus
Order No. 564903

Appearances:

Jeffery F. Turner, Sr., *pro se*.

SEAN C. GALLAGHER, J.:

{¶ 1} Relator, Jeffery F. Turner, Sr., seeks a writ of mandamus against an unidentified respondent. The complaint is fatally defective and is, therefore, sua sponte dismissed.

{¶ 2} On May 22, 2023, relator filed a complaint styled “Writ of Mandamus.” The complaint lacked a case caption that set forth the names of the parties, and no addresses of the parties were included in the caption. The complaint alleged that relator is a litigant in a case described only as “Turner v. Turner also

identified as DR-388-761.” Complaint at page 1. He claimed that some ambiguity exists in an October 11, 2022 court proceeding. He states:

[T]his notice concerns the ambiguity of October 11, 2022 as a claimed court proceeding to which I had “no” advanced notification prior to the adjournment of the January 30, 2023 hearing[.] * * * [T]he inscriptions identified on the memos suggest the October 11, 2022 date was authentic, but if that is to be believed then that would invalidate the October 7, 2022 proceeding to which I was part of its case. Moreover, a second validation so eloquently declared on a barrage of notices by the honorable Clerk of Court’s officiator, Nailah K. Byrd’s decrying a provision which state under Civil Rule 58(B) specifies that there is a three days limit and presenting deadline of any and judgment entries.

Complaint at page 1.

{¶ 3} Relator asks for the following relief in his complaint:

The appellate court shall instruct the lower court to vacate any forward proceeding while the new case of CV23977298 filed on March 29, 2023 is matriculating through the Cuyahoga County Court System, based on a lawsuit filed in regards to the “Fraudulent court hearing” of October 11, 2022 by the defendant, Jeffery F. Turner, Sr.

The appellate court is also ask[ed] to vacate all decision related to the false proceeding of October 11, 2023.

The [relator] also wants an investigation of the false proceedings as there is no case study that supports such misappropriation to exist or persist. Finally

[Relator] want[s] the judge to be investigated for the decision rendered in the false proceeding.

(Emphasis deleted.) Complaint at page 1-2.

{¶ 4} The case is before the court on a review of relator’s complaint. A court may sua sponte dismiss a complaint without notice when it “is frivolous or the claimant obviously cannot prevail on the facts alleged in the complaint.” *State ex*

rel. Bunting v. Styer, 147 Ohio St.3d 462, 2016-Ohio-5781, 67 N.E.3d 755, ¶ 12, quoting *State ex rel. Cincinnati Enquirer v. Ronan*, 124 Ohio St.3d 17, 2009-Ohio-5947, 918 N.E.2d 515, ¶ 3, quoting *State ex rel. Scott v. Cleveland*, 112 Ohio St.3d 324, 2006-Ohio-6573, 859 N.E.2d 923, ¶ 14, and citing *State ex rel. Duran v. Kelsey*, 106 Ohio St.3d 58, 2005-Ohio-3674, 831 N.E.2d 430, ¶ 7. The procedural defects evident on the face of the complaint require dismissal in this case.

{¶ 5} A complaint filed in a court has specific requirements that are not simply a matter of format. Civ.R. 10(A) requires a complaint to have certain information including the full names of every party to the action and addresses where the complaint may be served. This requirement exists, in part, so that a clerk of courts has clear direction to whom and where service of process must be directed and where to ensure parties to the action are properly notified of the existence of the case. *See* Civ.R. 4(A). This is necessary so a court can properly exercise personal jurisdiction over the parties. Relator’s complaint lacks a caption that includes the names and addresses of the parties to the action. Relator’s complaint fails to name a respondent at all. “[T]he Clerk has no duty to speculate about the identity or addresses of ‘interested parties’ to be served or furnished with process.” *Carter v. Carter*, 3d Dist. Paulding No. 11-88-13, 1989 Ohio App. LEXIS 3659, 4 (Sept. 19, 1989).

{¶ 6} As we previously explained when dismissing three other original actions filed by relator, this causes uncertainty in the identity of the respondent and the relief sought. *E.g., Turner v. Turner*, 8th Dist. Cuyahoga No. 112661, 2023-

Ohio-1574, ¶ 2, citing *State ex rel. Calloway v. Court of Common Pleas of Cuyahoga Cty.*, 8th Dist. Cuyahoga No. 71699, 1997 Ohio App. LEXIS 79452 (Feb. 27, 1997); *Jordan v. Cuyahoga Cty. Court of Common Pleas*, 8th Dist. Cuyahoga No. 96013, 2011-Ohio-1813. Also, as we previously noted, the complaint is not brought in the name of the state on behalf of the relator as is required by R.C. 2731.04. *Id.* These deficiencies warrant the sua sponte dismissal of the complaint.

{¶ 7} Further, relator did not pay the filing fee at the time the complaint was filed and did not file an affidavit of indigency seeking a waiver of the prepayment of the filing fee. Loc.App.R. 45(C) requires the payment of a \$175.00 filing fee when an original action is initiated in the court of appeals. The prepayment of the fee may be waived if the relator files “a sworn affidavit or affirmation of inability to secure costs by payment” or “[i]f the requirement of prepayment is otherwise excused by operation of law.” Relator’s failure to pay the filing fee or file an affidavit or statement required by Loc.App.R. 45(C) is another basis for the dismissal of the action.

{¶ 8} Finally, a writ of mandamus may be issued when a relator establishes by clear and convincing evidence that relator has a right to the requested relief, a respondent has a clear legal duty to provide the requested relief, and the relator has no other adequate remedy in the ordinary course of the law. *State ex rel. Culgan v. Collier*, 135 Ohio St.3d 436, 2013-Ohio-1762, 988 N.E.2d 564, ¶ 7, citing *State ex rel. Taxpayers for Westerville Schools v. Franklin Cty. Bd. of Elections*, 133 Ohio St.3d 153, 2012-Ohio-4267, 976 N.E.2d 890, ¶ 12. Relator has not identified a respondent,

a clear legal duty of any respondent, a right to the requested relief, and that relator does not possess an adequate remedy at law. Therefore, relator obviously cannot prevail on the facts as alleged in the complaint and it must be dismissed.

{¶ 9} This is the fifth original action filed by relator that has been sua sponte dismissed. This court identified a number of procedural irregularities in the previous actions that remain uncorrected in the present filing. This court previously dismissed a complaint for writ of mandamus based on the failure to properly caption the case and clearly specify the claims and relief requested. *Turner*, 8th Dist. Cuyahoga No. 112661, 2023-Ohio-1574. *See also Turner v. Turner*, 8th Dist. Cuyahoga No. 112662, 2023-Ohio-1575 (dismissing complaint for writ of certiorari); *Turner v. Turner*, 8th Dist. Cuyahoga No. 112663, 2023-Ohio-1576 (dismissing complaint for writ of certiorari). These problems continue to exist in the present filing. Relator is warned that future filings in this court that are procedurally defective may result in a declaration that relator is a vexatious litigator pursuant to Loc.App.R. 23(B). This court may impose filing restrictions or other sanctions as provided for in this rule.

{¶ 10} Additionally, the Clerk of Courts for the Eighth District Court of Appeals is directed to not accept future complaints or petitions for original actions filed by Jeffery F. Turner, Sr., without either the prepayment of the filing fee or the filing of an affidavit or statement as required by Loc.App.R. 45(C).

{¶ 11} Relator's complaint is sua sponte dismissed. Relator shall pay the costs of this action. The clerk is directed to serve on the relator notice of this judgment and its date of entry upon the journal. Civ.R. 58(B).

{¶ 12} Complaint dismissed.

SEAN C. GALLAGHER, JUDGE

FRANK DANIEL CELEBREZZE, III, P.J., and
KATHLEEN ANN KEOUGH, J., CONCUR