

COURT OF APPEALS OF OHIO

**EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA**

NINA L. TURNER, :
Respondent, :
v. : No. 112821
JEFFERY F. TURNER, SR. :
Relator. :

JOURNAL ENTRY AND OPINION

JUDGMENT: WRIT DISMISSED

DATED: June 23, 2023

Writ of Mandamus
Order No. 565023

Appearances:

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

MARY J. BOYLE, J.:

{¶ 1} Relator, Jeffery F. Turner, Sr., seeks a writ of mandamus against a respondent identified as Nina L. Turner in the caption of the complaint. According to the complaint, Nina is the plaintiff and relator is the defendant in a pending divorce action. Due to the procedural defects in the complaint, it is sua sponte dismissed.

I. Background

{¶ 2} Relator filed a complaint for writ of mandamus on June 5, 2023. The caption of the complaint states the parties are “Nina L. Turner, Plaintiff” and “Jeffery F. Turner, Sr., Defendant.” The caption does not include addresses for service and does not name a proper respondent. The complaint goes on to seek this court’s intervention to investigate what relator calls gross neglect, extreme cruelty, and abuse that has occurred in the underlying divorce action, identified only as “Turner v. Turner,” “DR-388-761.” Relator alleges that a visiting judge, Reeves W. Kelsey, dismissed several motions filed by relator and struck them from the record. The visiting judge also refused to hear any oral motions. Relator states that the visiting judge has violated several canons of judicial ethics. He further takes issue with rulings the visiting judge has made in the underlying divorce proceedings. Finally, he alleges some type of conspiracy between various people including judges, magistrates, and others that have permeated the divorce proceedings.

II. Law and Analysis

{¶ 3} A complaint is subject to sua sponte dismissal without notice “where the complaint is frivolous or the claimant obviously cannot possibly prevail on the facts alleged in the complaint.” *Carlson v. Baker & Hostetler, L.L.P.*, 8th Dist. Cuyahoga No. 98722, 2013-Ohio-273, ¶ 11, quoting *State ex rel. Edwards v. Toledo City School Dist. Bd. of Edn.*, 72 Ohio St.3d 106, 108, 647 N.E.2d 799 (1995).

{¶ 4} To be entitled to a writ of mandamus, a relator must prove by clear and convincing evidence “(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 the law.” *State ex rel. Randlett v. Lynch*, 168 Ohio St.3d 568, 2022-Ohio-3260, 200 N.E.3d 236, ¶ 11, citing *State ex rel. Waters v. Spaeth*, 131 Ohio St.3d 55, 2012-Ohio-69, 960 N.E.2d 452, ¶ 6, 13.

A. Procedural Defects

{¶ 5} Here, because of the many procedural defects, relator obviously cannot prevail on the facts as alleged in the complaint. These defects include the lack of a proper caption on the complaint required by Civ.R. 10(A), the failure to name a respondent that has a legal duty enforceable in mandamus, the failure to pay the filing fee or file an affidavit of indigency as required by Loc.App.R. 45, and the failure to sign the complaint.

{¶ 6} Pursuant to Civ.R. 10(A), a complaint must include a caption that lists the name of each party to the action and their respective addresses for service. *Greene v. Turner*, 151 Ohio St.3d 513, 2017-Ohio-8305, 90 N.E.3d 901, ¶ 8. The failure to comply with this provision is grounds for dismissal. *Kneuss v. Sloan*, 146 Ohio St.3d 248, 2016-Ohio-3310, 54 N.E.3d 1242, ¶ 11. Relator’s complaint includes only the names as described above. No addresses were included for service. This alone is cause for dismissal sua sponte.

{¶ 7} Relator’s case caption names only himself and Nina Turner as parties to the present action. Nina Turner is only described as a litigant in a pending divorce proceeding. “As a general proposition, the basic purpose of a writ of mandamus is to compel a public official to perform an act which he has a legal duty to complete.” *State ex rel. Lemon v. Campbell*, 11th Dist. Trumbull No. 2010-T-0064, 2010-Ohio-

5301, ¶ 6, quoting *State ex rel. Donlin v. Hubbard Twp.*, 11th Dist. Trumbull No. 2003-T-0035, 2004-Ohio-1708. Nina Turner is not described as a public official who has a legal duty that she may be compelled to perform through mandamus. The complaint does include allegations and claims for relief against the judge presiding over the divorce case and others, but those parties are not named as respondents in this action. Therefore, the complaint is procedurally defective and subject to sua sponte dismissal.

{¶ 8} Additionally, Civ.R. 11 requires every pleading filed by a self-represented individual to be signed by hand or electronic signature. If a document is not signed, “it may be stricken as sham and false and the action may proceed as though the document had not been served.” Civ.R. 11. The complaint relator filed includes the space for a signature above a printed name, but no written signature appears there. Further, relator’s type-written name does not constitute an electronic signature because it is not in the form required by Loc.App.R. 13.1(E). This rule requires an electronic signature to be in the form of “/s/ [name].”

{¶ 9} Finally, relator has failed to pay the filing fee or submit an affidavit of indigency to waive the prepayment of the fee at the time he filed his complaint. Loc.App.R. 45(C) requires one or the other. Here, relator did neither. This is grounds for dismissal. *Grundstein v. Russo*, 8th Dist. Cuyahoga No. 110719, 2021-Ohio-3465, ¶ 16, citing *State ex rel. Mickey v. McFaul*, 8th Dist. Cuyahoga Nos. 77320 and 77321, motion No. 12565, 1999 Ohio App. LEXIS 6256, 3 (Dec. 23, 1999).

B. Relator Obviously Cannot Prevail

{¶ 10} Even if these myriad fatal procedural defects could be ignored, the complaint is largely unintelligible. In a section of the complaint, relator lists six actions he wishes this court to take:

1. Instruct the lower court to vacate any forward proceedings while the new case filed on March 29, 2023 I [sic] addition to the three names of judges have yet to be placed A. CV23977296, B. CV23977297, C. CV23977298, D. CV23977299, E. CV23977300.

2. Judge, must know that each case directly affects the outcome and cannot rule out prosecution as it is matriculating through the Cuyahoga County Courts System, based on a lawsuit filed in regard to this “Fraudulent Court Hearing” of October 11, 2022, October 12-October 30, and November 7, 2022 by the defendant, Jeffery F. Turner, Sr.

3. The appellate court is also asking [sic] to vacate all decision related to the false proceeding of October 11, 2023, both November 1, 2022, and November 7, 2022 rulings.

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

5. The defendant wants the judge to be investigated for the decision rendered in the false proceeding as well as the numerous violation identified.

6. The defendant wants the court to review the details of the forgery.

{¶ 11} In summarizing his request for relief, relator states,

Based on the foregoing, the Court should hereby find that the relator, Nina Turner, Counselor Magistrate, [sic] Wiltshire, Judge Kelsey, Judge Celebrezze has established the required elements for the writ to issue: The writ of mandamus shall issue: Immediately upon service of this order as the respondent data can be accurately maintained and proved by the courts [sic] own record which cannot be disputed nor denied.

These individuals, with the exception of Nina Turner, are not named as parties in the complaint. A writ of mandamus is an order to perform an act “which the law specifically enjoins as a duty resulting from an office, trust or station.” R.C. 2731.01. *See also State ex rel. Hodges v. Taft*, 64 Ohio St.3d 1, 3, 591 N.E.2d 1186 (1992). Relator has failed to identify any legal duty imposed on Nina Turner, described only as a litigant in a divorce proceeding, the compulsion of which may be accomplished through mandamus. Relator is not entitled to any relief in mandamus on the facts alleged in the complaint.

{¶ 12} Relator’s complaint for mandamus is sua sponte dismissed. Relator shall pay costs. 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).

MARY J. BOYLE, JUDGE

LISA B. FORBES, P.J., and
EILEEN T. GALLAGHER, J., CONCUR