

**THE COURT OF APPEALS  
ELEVENTH APPELLATE DISTRICT  
ASHTABULA COUNTY, OHIO**

GLORIA BLACKWELL,	:	<b>PER CURIAM OPINION</b>
Relator,	:	
- vs -	:	<b>CASE NO. 2003-A-0061</b>
BOARD OF TOWNSHIP TRUSTEES, ASHTABULA TOWNSHIP,	:	
Respondent.	:	

Original Action for a Writ of Mandamus.

Judgment: Writ denied.

*Michael J. Drain*, 636 St. Clair Avenue, P.O. Box 6041, Cleveland, OH 44114 (For Relator).

*Abraham Cantor*, Johnnycake Commons, 9930 Johnnycake Ridge Road, #4-F, Concord, OH 44060 (For Respondent).

PER CURIAM.

{¶1} The instant action in mandamus is presently before this court for our consideration of the motion for summary judgment of respondent, the Board of Trustees for Ashtabula Township, Ohio. As the primary basis for its motion, respondent argues that it is entitled to prevail in this matter because relator, Gloria

Blackwell, is seeking relief which we lack the authority to grant. For the following reasons, this court concludes that respondent's motion has merit.

{¶2} At the time of the commencement of this action, relator was the duly-elected Clerk for Ashtabula Township. In her original petition, relator alleged that, after her election to the position in November 2001, respondents have consistently taken steps to intimidate her and interfere with her performance of her official duties. Specifically, she asserted that respondent had relocated her office to a building which made it very difficult for her to complete her legal obligations. She further asserted that respondent had sought to harass her by maliciously causing certain criminal charges to be brought against her. For her ultimate relief in her original petition, relator requested this court to issue an order under which respondent would be required to "cease and desist" from taking any steps to stop her from performing her official duties.

{¶3} In now moving for summary judgment in regard to relator's entire mandamus claim, respondent essentially submits that relator's allegations are insufficient to state a viable basis for a writ because the true nature of the relief sought in her petition is injunctive in nature. Respondent contends that, instead of seeking the performance of an affirmative legal duty on its part, relator wants to stop it from engaging in the alleged harassing and intimidating behavior. Based upon this, respondent states that this matter should not go forward because this court lacks the power to grant injunctive relief in an original action.

{¶4} As an initial matter, this court would indicate that respondent's basic argument, i.e., that relator has failed to state a viable claim for a writ of mandamus, should usually be raised in a motion to dismiss under Civ.R. 12(B)(6). However, we

have previously held that a sufficiency argument can be made in the context of a summary judgment exercise because Civ.R. 56(C) expressly provides that the parties' pleadings can be considered in deciding whether a factual dispute exists. *Collier v. Gansheimer*, 11th Dist. No. 2001-A-0087, 2002-Ohio-1054. Accordingly, if relator's own allegations establish that a writ of mandamus is not the correct remedy under the facts of this case, summary judgment can be granted.

{¶5} As this court has previously indicated, there is a significant distinction between the purpose of a mandamus claim and the purpose of an injunction claim: "Mandamus lies to compel the performance of a clear legal duty, and is not available to restrain or forbid the performance of a specified act, which is the province of the action for injunction." *State ex rel. Eagle Properties v. Lake Cty. Bd. of Elections* (Sept. 30, 1993), 11th Dist. No. 93-L-132, 1993 Ohio App. LEXIS 4775. The foregoing distinction is critical when a relator decides to initiate her case before an Ohio appellate court or the Supreme Court because the original jurisdiction of those courts does not extend to an injunction action. *Id.*; *State ex rel. Walker v. Bowling Green* (1994), 69 Ohio St.3d 391

{¶6} In determining whether a relator has actually stated a proper mandamus claim, an appellate court must examine the petition to see if the relator seeks to compel a public official to act in a specific manner, instead of only preventing a specific act. *State ex rel. Stamps v. Automatic Data Processing Bd. of Montgomery Cty.* (1989), 42 Ohio St.3d 164, 166. When the substance of the petition's allegations show that the relator's real objective is to prohibit certain behavior, the appellate court must dismiss the action for lack of jurisdiction. *Walker*.

{¶7} In the instant action, relator’s original petition did not refer to any specific legal duty which respondent had failed to perform in regard to her. Instead, the petition stated that respondent was taking steps to keep her from completing her duties by bringing criminal charges against her and relocating her office to an obscure site. Although the original petition did contain a statement that respondent had not given her the necessary staff and equipment, the overall tenor of relator’s allegations was that respondent was acting in a manner designed to intimidate her and stop her from going forward with her own duties. Finally, in her prayer for relief, relator specifically requested that respondent be ordered to “cease and desist” from interfering in her work as township clerk.

{¶8} After respondent had submitted its motion for summary judgment, relator moved to amend its mandamus petition. In this new pleading, she asserted that respondent was not allowing her to attend all of its meetings. Furthermore, she alleged that respondent was not providing her with a complete and accurate book regarding the township roads. In support of the new allegations, relator referred to four statutes in R.C. Chapter 5 which respondent was not satisfying.

{¶9} As to the four cited statutes, this court would note that none of the provisions place an affirmative duty upon respondent in relation to a township clerk. For example, even though R.C. 507.04 does require a township clerk to keep a proper record of the actions taken by a township board at its meetings, the statute does not set forth an express duty on the board to assist her in performing her legal obligations. While this court certainly would agree that the trustees should not take steps to interfere with the performance of the clerk’s duties, a writ of mandamus is not the

proper remedy to stop such behavior when the Revised Code does not delineate a specific duty on point.

{¶10} In her amended petition, relator again attempts to frame some of her allegations in terms of an alleged failure to perform a legal duty; i.e., respondent has allegedly failed to give her a complete and accurate “township roads” book. However, after reviewing the entire amended petition, it is apparent to this court that relator’s claim for relief still hinges upon the basic allegation that respondent is taking steps to annoy her and make it difficult for her to perform her duties. That is, if respondent was not trying to exclude her from “secret meetings” regarding road work, relator would be able to keep a proper book on the matter.

{¶11} In addition, we would indicate that, in amending her petition, relator merely added two paragraphs of allegations; she did not change any of the allegations contained in her original petition. In this respect, the overall tenor of her claim for relief has not been altered. That is, relator still essentially alleges that respondent is trying to stop her from completing the basic legal requirements of her office. Moreover, in the last paragraph of her amended petition, relator is still asking for the same relief; i.e., she is requesting that respondent be ordered to “cease and desist” from interfering in her work as township clerk. Accordingly, this court concludes that the true objective of relator’s claim is to enjoin respondent from acting in a particular manner.

{¶12} To be entitled to summary judgment, the moving party must demonstrate that: (1) there are no genuine issues of material fact remaining to be litigated; (2) that party is entitled to judgment as a matter of law; and (3) even when the evidential materials are construed in a way most favorable to the nonmoving party, the nature of

those materials are such that a reasonable person could only reach a conclusion which is adverse to the nonmoving party. *Collier, supra*, 2002-Ohio-1054. In light of the foregoing analysis, this court holds that respondent has satisfied all three prongs of the summary judgment standard in regard to relator's entire claim for relief. Specifically, the relevant evidential materials before us, i.e., relator's original and amended petitions, establish that she will never be able to prevail in this case because the true objective of her claim is injunctive relief, not a writ of mandamus. Since we do not have the authority to grant injunctive relief under our original jurisdiction, respondent is entitled to judgment in this matter.

{¶13} Pursuant to the foregoing discussion, respondent's motion for summary judgment is granted. It is the order of this court that the writ is denied, and judgment is hereby entered in favor of respondent as to relator's sole claim for relief.

DONALD R. FORD, P.J., DIANE V. GRENDALL and CYNTHIA WESTCOTT  
RICE, JJ., concur.