

COURT OF APPEALS
DELAWARE COUNTY, OHIO
FIFTH APPELLATE DISTRICT

BRIAN A. JOHNSON	:	JUDGES:
	:	Hon. Patricia A. Delaney, P.J.
Plaintiff-Appellant	:	Hon. W. Scott Gwin, J.
	:	Hon. Earle E. Wise, Jr., J.
-vs-	:	
	:	
WALENDA L. ARCHER	:	Case Nos. 17-CAE-02-0008
	:	17-CAE-02-0010
	:	
Defendant-Appellee	:	<u>OPINION</u>

CHARACTER OF PROCEEDING: Appeal from the Court of Common Pleas, Case Nos. 17 MDI Page161 and 17 MDI Page 162

JUDGMENT: Case No. 17-CAE-02-0008 - Affirmed
Case No. 17-CAE-02-0010 - Reversed and Remanded

DATE OF JUDGMENT: May 22, 2017

APPEARANCES:

For Plaintiff-Appellant

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Wise, Earle, J.

{¶ 1} Plaintiff-Appellant, Brian A. Johnson, appeals the January 18, 2017 judgment entry of the Court of Common Pleas of Delaware County, Ohio, dismissing his criminal complaint against Defendant-Appellee, Walenda Archer (Case No. 17-CAE-02-0008), and the trial court's January 24, 2017 judgment entry dismissing his affidavit calling for her arrest and prosecution (Case No. 17-CAE-02-0010).

FACTS AND PROCEDURAL HISTORY

{¶ 2} On January 18, 2017, appellant filed a criminal complaint against appellee, attempting to charge her with seven counts of perjury in violation of R.C. 2921.11 and fourteen counts of tampering with evidence in violation of R.C. 2921.12 (Case No. 17 MDI Page 161). Appellee had testified in appellant's criminal trial.

{¶ 3} By judgment entry filed January 18, 2017, the trial court dismissed the complaint, finding appellant did not have standing to bring criminal charges against an individual, as that is the function of the Prosecuting Attorney's Office. The trial court explained under R.C. 2935.09, a private citizen can only file an affidavit with a reviewing official for the purpose of review to determine if a criminal complaint should be filed by the prosecuting attorney.

{¶ 4} On January 24, 2017, appellant filed an affidavit calling for the arrest and prosecution of appellee (Case No. 17 MDI Page 162). By judgment entry filed same date, the trial court dismissed the affidavit for the reasons set forth in the January 18, 2017 judgment entry.

{¶ 5} Appellant filed an appeal on each judgment entry and this matter is now before this court for consideration. The assignment of error in each case is identical and is as follows:

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{¶ 6} "THE PLAINTIFF-APPELLANT'S FUNDAMENTAL AND SUBSTANTIAL RIGHT TO REDRESS THE COURT FOR GRIEVANCES AND INJURY DONE TO HIM IN HIS PERSON AND REPUTATION, GUARANTEED BY THE 1ST AMENDMENT TO THE UNITED STATES CONSTITUTION; ARTICLE I, SECTION 16 OF THE OHIO CONSTITUTION, UNDER THE DUE PROCESS AND EQUAL PROTECTION CLAUSE OF THE 14TH AMENDMENT TO THE UNITED STATES CONSTITUTION, ARTICLE I, SECTION 2 & 16 OF THE OHIO CONSTITUTION, AND AS A VICTIM OF CRIME PURSUANT TO ARTICLE I, SECTION 10a OF THE OHIO CONSTITUTION, WAS VIOLATED; WHEN THE COMMON PLEAS COURT FAILED TO COMPLY WITH STATUTORY & OHIO SUPREME COURT PRECEDENTED CASE LAW BASED ON THE PREMISES CONTAINED WITHIN SECTIONS 2935.09 & 2935.10, CRIM. R. 3 OF THE OHIO REVISED CODE; THEREBY, COMMITTING PREJUDICIAL REVERSIBLE ERROR, RESULTING IN THE DISMISSAL OF THE PLAINTIFF-APPELLANT'S COMPLAINT/AFFIDAVIT WITHOUT LEGAL JURISDICTION, RENDERING THE JUDGMENT OF THE COURT VOID AB INITIO."

{¶ 7} Preliminarily, we note this case comes to us on the accelerated calendar. App.R. 11.1 governs accelerated calendar cases and states in pertinent part:

(E) Determination and judgment on appeal

The appeal will be determined as provided by App. R. 11.1. It shall be sufficient compliance with App. R. 12(A) for the statement of the reason for the court's decision as to each error to be in brief and conclusory form.

The decision may be by judgment entry in which case it will not be published in any form.

{¶ 8} One of the important purposes of the accelerated calendar is to enable an appellate court to render a brief and conclusory decision more quickly than in a case on the regular calendar where the briefs, facts, and legal issues are more complicated. *Crawford v. Eastland Shopping Mall Association*, 11 Ohio App.3d 158, 463 N.E.2d 655 (10th Dist.1983).

{¶ 9} This appeal shall be considered in accordance with the aforementioned rules.

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{¶ 10} In his sole assignment of error, appellant claims the trial court violated his rights in dismissing his complaint and his subsequent affidavit. We agree in part.

{¶ 11} As explained by the trial court in its January 18, 2017 judgment entry, appellant does not have standing to bring criminal charges against an individual, as that is the function of the Prosecuting Attorney's Office. R.C. 2941.03; R.C. 2941.021; R.C. 2935.09; Crim.R. 2(G); Crim.R. 6.

{¶ 12} Upon review, we find the trial court did not err in dismissing appellant's January 18, 2017 complaint.

{¶ 13} However, R.C. 2935.09(D) states the following:

A private citizen having knowledge of the facts who seeks to cause an arrest or prosecution under this section may file an affidavit charging the offense committed with a reviewing official for the purpose of review to determine if a complaint should be filed by the prosecuting attorney or attorney charged by law with the prosecution of offenses in the court or before the magistrate. A private citizen may file an affidavit charging the offense committed with the clerk of a court of record before or after the normal business hours of the reviewing officials if the clerk's office is open at those times. A clerk who receives an affidavit before or after the normal business hours of the reviewing officials shall forward it to a reviewing official when the reviewing official's normal business hours resume.

{¶ 14} R.C. 2935.10(A) states the following:

Upon the filing of an affidavit or complaint as provided by section 2935.09 of the Revised Code, if it charges the commission of a felony, such judge, clerk, or magistrate, unless he has reason to believe that it was not filed in good faith, or the claim is not meritorious, shall forthwith issue a warrant for the arrest of the person charged in the affidavit, and directed to a peace officer; otherwise he shall forthwith refer the matter to

the prosecuting attorney or other attorney charged by law with prosecution for investigation prior to the issuance of warrant.

{¶ 15} In this case, appellant filed an affidavit on January 24, 2017. A review of the affidavit indicates appellant charges the commission of a felony committed by appellee. Under R.C. 2935.10(A), the trial court, upon reviewing the affidavit, could either issue an arrest warrant or refer the matter to the prosecuting attorney. Dismissing the affidavit is not an option. *Hillman v. Larrison*, 10th Dist. Franklin No. 15AP-730, 2016-Ohio-666, ¶ 14; see *In the Matter regarding Chris Slayman*, 5th Dist. Licking No. 08CA70, 2008-Ohio-6713.

{¶ 16} Upon review, we find the trial court erred in dismissing appellant's January 24, 2017 affidavit.

{¶ 17} The sole assignment of error is denied in Case No. 17-CAE-02-0008.

{¶ 18} The sole assignment of error is granted in Case No. 17-CAE-02-0010.

{¶ 19} The judgment of the Court of Common Pleas of Delaware County, Ohio, in Case No. 17-CAE-02-0008 is hereby affirmed.

{¶ 20} The judgment of the Court of Common Pleas of Delaware County, Ohio, in Case No. 17-CAE-02-0010 is hereby reversed. The matter is remanded to the trial court for compliance with R.C. 2953.10(A).

By Wise, Earle, J.

Delaney, P.J. and

Gwin, J. concur.

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