SLIP OPINION NO. 2023-OHIO-2263

THE STATE EX REL. DODSON, APPELLANT, *v.* OHIO DEPARTMENT OF REHABILITATION AND CORRECTION ET AL., APPELLEES.

[Until this opinion appears in the Ohio Official Reports advance sheets, it may be cited as *State ex rel. Dodson v. Ohio Dept. of Rehab. & Corr.*, Slip Opinion No. 2023-Ohio-2263.]

Prohibition—Mandamus—Inmate waived challenge to court of appeals' holding that Ohio Parole Board did not exercise judicial or quasijudicial authority—Inmate failed to articulate any arguments in support of mandamus claim in this court—Court of appeals' dismissal of complaint under Civ.R. 12(B)(6) affirmed.

(No. 2022-1041—Submitted March 21, 2023—Decided July 6, 2023.)

APPEAL from the Court of Appeals for Franklin County, No. 21AP-448, 2022-Ohio-2552.

Per Curiam.

{¶ 1} Appellant, Ricardo Dodson, appeals the judgment of the Tenth District Court of Appeals dismissing his complaint for writs of prohibition and mandamus against appellees, the Ohio Department of Rehabilitation and Correction ("DRC"), the Ohio Parole Board, and the Franklin County Child Support Enforcement Agency ("FCCSEA") (collectively, "the state"). Also pending are two motions filed by Dodson to strike the state's merit brief in whole or in part. We deny the motions to strike and affirm the Tenth District's judgment.

I. Background

{¶ 2} In September 1990, Dodson and an accomplice abducted a woman and repeatedly sexually assaulted her over the course of 12 hours. A jury found Dodson guilty of kidnapping, rape, and attempted rape. *State v. Dodson*, 10th Dist. Franklin No. 91AP-411, 1991 WL 227806 (Oct. 24, 1991). Dodson was also convicted of the rape of a second victim, B.L.M., that took place in October 1990. *State v. Dodson*, 10th Dist. Franklin No. 91AP-498, 1991 WL 227804 (Oct. 31, 1991). In July 1991, B.L.M. gave birth to a child. Although FCCSEA initiated proceedings to determine the child's father, those proceedings were dismissed and did not result in a paternity determination.

{¶ 3} Dodson has appeared before the parole board eight times and was denied parole each time. In denying parole in 2009 and 2012, the parole board noted that Dodson had impregnated B.L.M. There is no record of any reference by the parole board to B.L.M.'s pregnancy at later parole hearings.

II. Procedural history

{¶ 4} In September 2021, Dodson filed an original action in the Tenth District for writs of prohibition and mandamus. He alleged that at his 2009 parole hearing, B.L.M. and her husband testified that Dodson was the biological father of B.L.M.'s child. According to Dodson, the parole board denied parole based on its determination that he is the child's biological father and that he was responsible for

the child's being placed for adoption. Dodson made similar allegations about parole hearings held in 2012, 2015, and 2018. Dodson averred that the parole board lacked jurisdiction to adjudicate and determine the child's paternity. Accordingly, Dodson demanded a writ of prohibition compelling DRC and the parole board to vacate any determination that he is the biological father of B.L.M.'s child and to prevent them from making any such determination in the future and from denying him parole on that basis. Alternatively, Dodson requested a writ of mandamus compelling the state to order DNA testing to determine paternity and to appoint counsel to represent him in any administrative paternity-adjudication hearing. Finally, he requested a writ of mandamus to compel FCCSEA to produce unredacted records regarding determinations of the child's paternity. After Dodson filed his complaint, FCCSEA notified him that all its records relating to the paternity action had been destroyed pursuant to its records-retention policy.

{¶ 5} The Tenth District dismissed Dodson's complaint under Civ.R. 12(B)(6). Dodson has appealed and has filed two motions to strike the state's merit brief.

III. Analysis

A. The first motion to strike

{¶ 6} In his first motion to strike, Dodson argues that the state made false factual statements in its merit brief relating to the dismissed 1992 paternity action. We need not strike the alleged misstatements from the state's brief, because whether true or false, they have no bearing on whether Dodson has stated claims on which relief in prohibition or mandamus can be granted.

{¶ 7} Next, Dodson argues that the state mischaracterized arguments that he has made in this case. Any disagreement over how to describe a claim or argument is not a basis for striking a brief.

{¶ 8} Finally, Dodson complains that the state failed to provide page citations to the record in its merit brief. It is generally incumbent on the parties to

provide proper citations to the record, *see, e.g.*, S.Ct.Prac.R. 16.02(B)(2), but this case is before us on an appeal from a judgment granting a motion to dismiss. Therefore, the only relevant item in the record is Dodson's complaint, and the state was not required to cite other documents in the record.

{¶ 9} Accordingly, we deny Dodson's first motion to strike.

B. The second motion to strike

{¶ 10} In his second motion to strike, Dodson asserts that the state's merit brief was not properly served on him. Pursuant to S.Ct.Prac.R. 3.11(E)(2), we may strike a pleading for improper service if the unserved party was "adversely affected." Dodson alleges that he was adversely affected in that by the time he received a copy of the state's brief, he had insufficient time remaining to draft and file a reply brief.

{¶ 11} Dodson's motion does not support a claim of improper service. His only allegation is that he did not receive a copy of the state's brief until 14 days after it was filed. But the alleged delay may have resulted from mail-delivery procedures at the prison and is not necessarily attributable to the state. Moreover, we granted an extension of time for Dodson to file a reply brief, but he failed to do so.

{¶ 12} Dodson has not proved a lack of service or improper service, nor has he shown that he was adversely affected by any delay. Accordingly, we deny Dodson's second motion to strike.

C. Standard of review

{¶ 13} We review the Tenth District's dismissal of Dodson's complaint de novo. *State ex rel. McKinney v. Schmenk*, 152 Ohio St.3d 70, 2017-Ohio-9183, 92 N.E.3d 871, ¶ 8. "A motion to dismiss for failure to state a claim upon which relief can be granted tests the sufficiency of the complaint." *Volbers-Klarich v. Middletown Mgt., Inc.*, 125 Ohio St.3d 494, 2010-Ohio-2057, 929 N.E.2d 434, ¶ 11. "Dismissal of a complaint for failure to state a claim upon which relief can be granted

is appropriate if, after all factual allegations of the complaint are presumed true and all reasonable inferences are made in [the] relator's favor, it appears beyond doubt that [the] relator can prove no set of facts warranting relief." *Clark v. Connor*, 82 Ohio St.3d 309, 311, 695 N.E.2d 751 (1998).

D. Dodson's prohibition claim

{¶ 14} To have stated a claim for a writ of prohibition, Dodson had to allege that the state has exercised or is about to exercise judicial or quasijudicial power, that the state lacks authority to exercise that power, and that he lacks an adequate remedy in the ordinary course of the law. *See State ex rel. Elder v. Camplese*, 144 Ohio St.3d 89, 2015-Ohio-3628, 40 N.E.3d 1138, ¶ 13.

{¶ 15} Dodson argues that the parole board lacked authority to consider certain statements made by B.L.M. and that by considering paternity at the parole hearings, the parole board effectively established paternity without authority to do so. He also argues that it was unlawful for the parole board to conclude that he fathered B.L.M.'s child based on her testimony alone, and he questions whether his paternity status is at all relevant to his eligibility for parole.

{¶ 16} We need not address these arguments, because Dodson has not challenged the Tenth District's holding that the parole board did not exercise judicial or quasijudicial authority. *See* 2022-Ohio-2552, ¶ 7. By failing to address that fundamental element of his prohibition claim in this appeal, Dodson has waived any objection to that aspect of the Tenth District's decision. *See U.S. Bank Natl. Assn. v. Broadnax*, 1st Dist. Hamilton No. C-180650, 2019-Ohio-5212, ¶ 11 ("When a party raises an argument below, but forsakes it on appeal, we treat it as abandoned and should not consider the point"). We therefore affirm the Tenth District's dismissal of Dodson's prohibition claim.

E. Dodson's mandamus claim

{¶ 17} To be entitled to a writ of mandamus, Dodson must establish by clear and convincing evidence a clear legal right to the requested relief, a clear legal duty

on the part of the state to provide it, and the lack of an adequate remedy in the ordinary course of the law. *State ex rel. Love v. O'Donnell*, 150 Ohio St.3d 378, 2017-Ohio-5659, 81 N.E.3d 1250, ¶ 3.

{¶ 18} With respect to the writ of mandamus he requested, Dodson's merit brief states that he sought to compel the state "to order a DNA test to determine paternity, appoint him counsel for any administrative parole hearing, and an order directing FCCSEA to provide complete and unredacted copies of records regarding the determination of parentage in an administrative paternity action filed in 1992." Dodson's brief says nothing more about his mandamus claim. By failing to articulate any arguments in support of his mandamus claim in this court, he has abandoned the claim.

{¶ 19} We affirm the Tenth District's dismissal of the mandamus claim.

IV. Conclusion

{¶ 20} We deny Dodson's motions to strike and affirm the Tenth District's judgment.

Judgment affirmed.

KENNEDY, C.J., and FISCHER, DEWINE, DONNELLY, STEWART, BRUNNER, and DETERS, JJ., concur.

Ricardo Dodson, pro se.

Dave Yost, Attorney General, and D. Chadd McKitrick, Assistant Attorney General, for appellees.
