

IN THE SUPREME COURT OF OHIO

STATE OF OHIO, ex rel. STEVEN A. BOZSIK

CASE NO.: 08-0022

Relator

v.

ORIGINAL ACTION
COMPLAINT FOR WRIT
OF MANDAMUS

HONORABLE LYNN SLABY, Judge
And
HONORABLE CLAIR DICKINSON
Ninth District Court of Appeals

Respondents

RESPONDENTS' MOTION TO DISMISS

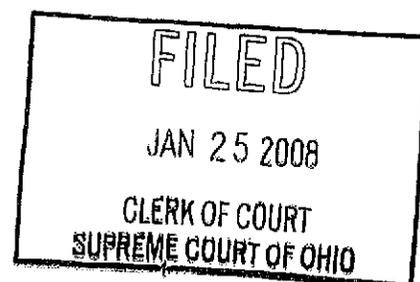
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COUNSEL FOR RESPONDENTS

RELATOR PRO-SE



Now come Respondents, by and through undersigned counsel, and respectfully move this Court for an Order dismissing Relator's "Complaint" for Writ of Mandamus, for reasons set forth in the following Memorandum in support.

MEMORANDUM IN SUPPORT

The instant petition is facially defective. The Relator has failed to comply with R.C. §2969.25, which requires a petitioner to supply an affidavit describing each civil action or appeal filed by the petitioner within the previous five years in any state or federal court. Although the Relator has listed seventeen actions he has instituted in the past five years, he lists only three of the seven original actions he has filed in this Court. The failure to comply with R.C. 2969.25 warrants dismissal of the complaint for a writ. **State ex rel. Zanders v. Ohio Parole Board**, (1998), 82 Ohio St.3d 421; **State ex rel. Alford v. Winters**, (1997), 80 Ohio St.3d 285. Because Relator has failed to comply with R.C. §2969.25, his Complaint should be dismissed.

Moreover, in order to be entitled to a writ of mandamus, the petitioner must have a clear legal right to the relief prayed for, respondent must have a clear legal duty to perform the requested act, and petitioner must not have a plain and adequate remedy at law. **State, ex rel. Westchester Estates, Inc. v. Bacon** (1980), 61 Ohio St.2d 42, paragraph one of the syllabus.

It would appear that the Relator is arguing that he is entitled to relief (the right to file an appeal without leave from the Court of Appeals) based on the fact that the original journal entry which determined him to be a vexatious litigator does not require him to file a motion for leave to proceed in the Court of Appeals. Although Relator is aware of R.C. Section 2323.52(F)(2), he argues that he is not required to seek leave pursuant to said section because "it was not imposed

by the original screening court in Medina County, Ohio.” *Complaint*, p. 7, para. 34. However, Relator is subject to R.C. Section 2323.52(F)(2), which states:

A person who is subject to an order entered pursuant to division (D)(1) of this section and who seeks to institute or continue any legal proceedings in a court of appeals or to make an application, other than an application for leave to proceed under division (F)(2) of this section, in any legal proceedings in a court of appeals shall file an application for leave to proceed in the court of appeals in which the legal proceedings would be instituted or are pending. The court of appeals shall not grant a person found to be a vexatious litigator leave for the institution or continuance of, or the making of an application in, legal proceedings in the court of appeals unless the court of appeals is satisfied that the proceedings or application are not an abuse of process of the court and that there are reasonable grounds for the proceedings or application.

In the instant matter, the Relator did request leave from the Court of Appeals to institute an appeal of Case No. 06-CV-0849 in the Wayne County Common Pleas Court, which was denied with an express finding that reasonable grounds for the appeal did not exist. *Relator’s Ex. A-25 to Complaint*. Clearly, Relator’s did not meet his burden to show the Ninth District Court of Appeals that his appeal was not an abuse of process of the court and that there were reasonable grounds for the appeal. As the Relator has failed to allege any facts that show that he has a clear legal right to the relief requested, his “Complaint” for writ of mandamus must be denied.

Relator also appears to argue that, as the Medina Common Pleas Court granted his motion for leave to proceed in the Wayne County Common Pleas Court on his claim against the City of Rittman Cemetery, the Court of Appeals is bound by that decision and must grant him leave to proceed with an appeal. However, R.C. Section 2323.52(D)(3) states:

A person who is subject to an order entered pursuant to division (D)(1) of this section [finding a person to be vexatious litigator] *may not institute legal proceedings in a court of appeals, **** other than the application for leave to

proceed allowed by division (F)(2) of this section, in any legal proceedings instituted by the vexatious litigator or another person in a court of appeals *without first obtaining leave of the court of appeals to proceed* pursuant to division (F)(2) of this section. (Emphasis added.)

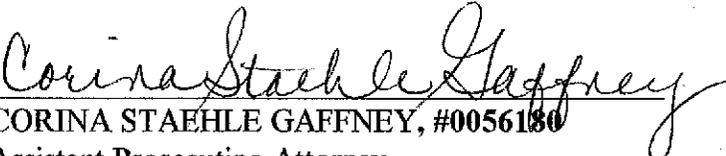
Clearly, only the court of appeals can grant a vexatious litigator leave to institute an appeal. *See also **Humbert v. Borkowski**, 2005 WL 501328 (Ohio App. 6 Dist., Mar. 1, 2005), unreported.*

As Relator has failed to allege facts showing a clear right to the legal relief he is requesting, his Complaint should be dismissed.

WHEREFORE, Respondents respectfully request this case be dismissed for all the above stated reasons, with all costs to the Relator.

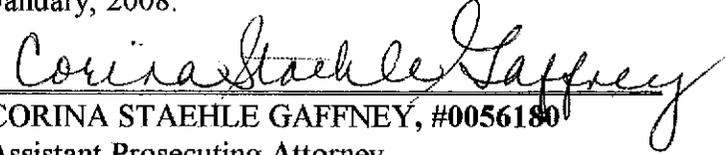
Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was sent by regular U.S. Mail service, to: Steven A. Bozsik, Relator, Inmate No. 389-250, 1001 Olivesburg Rd., P.O. Box 8107, Mansfield, OH 4491-8107, this 24th day of January, 2008.


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