

IN THE SUPREME COURT OF OHIO

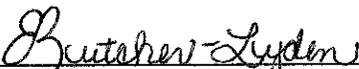
STATE OF OHIO, EX REL. :
SHARON BRISTOW, :
 :
 Relator, : Case No. 2011-1883
 :
 v. : Original Action in Prohibition
 :
 SCIOTO COUNTY COURT OF APPEALS, :
 FOURTH APPELLATE DISTRICT :
 :
 Respondent. :

**MOTION TO DISMISS OF RESPONDENT
THE FOURTH DISTRICT COURT OF APPEALS**

Pursuant to Sup. Ct. Prac. R. 10.5 and Ohio Civ. Rule 12(B)(6), Respondent the Fourth District Court of Appeals hereby moves his Court to dismiss Relator's complaint for a writ of prohibition. A memorandum in support is attached.

Respectfully submitted,

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Ohio Attorney General


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*Counsel for Respondent
The Fourth District Court of Appeals*

MEMORANDUM IN SUPPORT OF RESPONDENT'S MOTION TO DISMISS

I. INTRODUCTION

Relator Sharon Bristow, a pro se litigant, filed this original action in prohibition against Respondent the Fourth District Court of Appeals ("Fourth District"), requesting that the Fourth District be prohibited from investigating or determining whether any person has engaged in the unauthorized practice of law. However, Relator fails to state a claim for which this court may grant her relief. For the following reasons, the Fourth District respectfully asks this Court to dismiss Relator's complaint.

II. STATEMENT OF FACTS

On October 20, 2011, Relator Sharon Bristow filed a Petition for Writ of Mandamus in the Fourth District Court of Appeals regarding a denial of public records access. Compl., ¶ 1. On October 31, 2011, the Court issued a Magistrate's Order expressing concerns that Relator was attempting to assist Lonny Bristow, a vexatious litigator, in subverting Mr. Bristow's R.C. 2323.52 requirement that he must receive leave before proceeding with any actions in the Court of Appeals. Compl. Exh. B, p. 1.¹ In that order, The Fourth District ordered Relator to file a memorandum addressing the issue of whether Mr. Bristow asked her to file the action and who prepared the documents for her. *Id.*

On November 7, 2011, Relator filed a complaint for a writ for prohibition arguing that the Fourth District lacks subject matter jurisdiction to determine whether a person has engaged in

¹ Ohio Civil Rule 12(B)(6) requires that, where a motion to dismiss presents matters outside of the complaint, that the court must treat the motion as a motion for summary judgment under Ohio Civil Rule 56. However, the court may consider documents attached to or incorporated in the complaint in a motion to dismiss. *State ex rel. Crabtree v. Franklin Cty. Bd. of Health* (1997), 77 Ohio St.3d 247, 49. Here, Relator has attached the Fourth District's Magistrate's Order as her Exhibit B.

the unauthorized practice of law or to act as an investigative authority on such matters. Compl., ¶ 8. For the reasons that follow, the Fourth District respectfully asks this Court to dismiss this action.

III. ARGUMENT

A. Standard of Review

A motion to dismiss for failure to state a claim challenges the sufficiency of the complaint itself. *Volbers-Klarich v. Middletown Mgmt, Inc.*, 125 Ohio St. 3d. 494, 2010-Ohio-2057, at ¶ 11. When considering the factual allegations of the complaint, a court must accept incorporated items as true and “[f]urthermore, the plaintiff must be afforded all reasonable inferences possibly derived therefrom.” *Mitchell v. Lawson Milk Co.* (1988), 40 Ohio St. 3d 190, 192. Finally, a court must find that the plaintiff’s complaint appears beyond doubt that it can prove none of the facts it sets out. Civ. R. 12(B); *State ex rel. Natalina Food Co. v. Ohio Civ. Rights Comm.* (1990), 55 Ohio St.3d 98, 99.

B. Relator is not entitled to the extraordinary relief of a writ of prohibition.

Relator’s request does not meet the requirements for a writ of prohibition and this Court must dismiss her complaint. In order for Relator to be entitled to her requested writ of prohibition, she must establish that (1) the Fourth District has or is about to exercise judicial or quasi-judicial power, (2) the exercise of that power is unauthorized by law, *and* (3) denying the writ will result in injury for which no other adequate remedy exists in the ordinary course of law. *State ex rel. Hamilton County Bd. of Comm’n v. Hamilton County Ct. of Common Pleas*, 126 Ohio St.3d 111, 2010-Ohio-2467, 931 N.E.2d 98, at ¶18. Relator does not satisfy the

requirements for a writ of prohibition because the Fourth District is not exercising a power that is unauthorized by law and Relator has an adequate remedy in the ordinary course of the law.

Relator claims that the Fourth District lacks jurisdiction to determine whether any person has engaged in the unauthorized practice of law or to act as an investigative authority on such matter. Compl., ¶ 8. However, the Fourth District's October 31, 2011 Magistrate's Order is devoid of mention of the unauthorized practice of law. Compl. Exh. B. Rather, the Order was issued in an attempt to ascertain whether the Relator is assisting a vexatious litigator in subverting Ohio's vexatious litigator statute, R.C. 2323.52. *Id.* Accordingly, Relator fails to state a claim for which this Court may grant her relief.

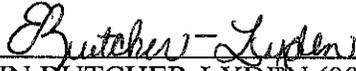
Additionally, Relator seeks an extraordinary writ where she has an adequate remedy at law and will suffer no injury if prohibition is denied. This Court has held that a "writ of mandamus must not be issued when there is a plain and adequate remedy in the ordinary course of the law." *State ex rel. Sibarco Corp. v. Berea* (1966), 7 Ohio St. 2d 85, 90. Further, "[m]andamus cannot be used as a substitute for appeal." *State ex rel. Pressley v. Indus. Comm'n.* (1967), 11 Ohio St. 2d 141, 163. The Relator has the right to appeal any decision entered by the Fourth District to this Court. Additionally, Relator has failed to allege any injury she may sustain if prohibition is denied. Because an adequate remedy of law exists and the Relator has failed to establish that any injury will result if this Court denies her writ of prohibition, this Court must dismiss her complaint.

IV. CONCLUSION

For the foregoing reasons, the Respondent the Fourth District Court of Appeals respectfully asks this Court to dismiss Relator's complaint.

Respectfully submitted,

MICHAEL DeWINE (0009181)
Ohio Attorney General


ERIN BUTCHER-LYDEN (0087278)

*Counsel of Record

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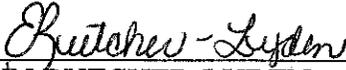
*Counsel for Respondent
The Fourth District Court of Appeals*

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing *Motion to Dismiss of Respondent the Fourth District Court of Appeals* was served by regular U.S. mail, postage prepaid, on November 29, 2011 upon the following:

SHARON BRISTOW
4870 East Lincoln Way, #7
Wooster, Ohio 44691

Relator


ERIN BUTCHER-LYDEN
Assistant Attorney General