

ORIGINAL

IN THE SUPREME COURT OF OHIO

State of Ohio *ex rel.*
Woodrow L. Fox, *et al.*,

Relators,

v.

Gary Walters
Clerk of Court for the Court of Common
Pleas, Licking County, Ohio, *et al.*,

Respondents.

Case No. 2013-0364

**RELATOR'S MEMORANDUM IN OPPOSITION TO RESPONDENTS, GARY
WALTERS, LICKING COUNTY CLERK OF COURTS, JUDGE DAVID
BRANSTOOL'S, MOTION TO DISMISS**

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SUPREME COURT OF OHIO

Respondents' motion to dismiss is an exercise of futility. In their Response to Relator's Motion to Consolidate, Respondents admit that case presents the same issues as that in *State ex rel. Sylvester v. Neal, et al.*, case number 2012-1742, that is currently pending before the Court:

Anthony Sylvester, a bail bondman, is seeking a writ of mandamus against Tim Neal, the Wayne County Clerk of Courts, to compel him to accept surety bonds when a 10% cash deposit bond has been ordered under Ohio Crim.R. 46(A)(2).

[R]espondent agrees that both cases contain common issues and parties that would support consolidation...

A ruling on Sylvester will be dispositive to Fox as both cases are litigating essentially identical facts and legal issues.

Bearing further similarity are the *Sylvester* and *Fox* Respondents' Motions to Dismiss. In *Sylvester*, the Court did not grant Respondents' motion. As there is no distinction between the two, the Court should follow suit and overrule the *Fox* motion. Barring that, the only feasible reason to dismiss Relator's complaint would be for insufficient pleading. *State ex rel. Welden v. Ohio State Med. Bd.*, 10th Dist. No. 11AP-139, 2011-Ohio-6560, 968 N.E.2d 1041 (under the standard set forth by Ohio R. Civ. P. 12(B)(6), "a court can dismiss a mandamus action if, after the factual allegations of the complaint are presumed true and all reasonable inferences are made in relator's favor, it appears beyond doubt that relator can prove no set of facts entitling him to the requested relief"). Yet, that is not the case.

Relator's complaint contains the required criteria for a writ of mandamus: (1) a clear legal by the relator to the relief; (2) a clear legal duty by the respondents to perform the acts; and, (3) the relator having no plain and adequate remedy in the

ordinary course of law. See, *Id.*; *State ex rel. Kirtz v. Corrigan*, 61 Ohio St. 3d 435, 575 N.E.2d 186 (1991).

1. Relator has a clear legal right to relief – Complaint ¶¶ 1 and 9.

Relator is a bondsman, and Respondents have prevented him from posting surety bonds on behalf of a criminal defendant when a 10% bond has been issued. It is well settled law in Ohio that a bondsman, such as Relator, has a clear legal right to bring an action in mandamus. See *State ex rel. Jones v. Hendon, et al.*, 66 Ohio St.3d 115, 609 N.E.2d 541 (1993) (“[The bondsmen’s] interest in nullifying the clerk’s existing bond policy and, thereby, being able to continue to write surety bonds...is clearly sufficient for them to maintain this action”); *Smith v. Leis*, 106 Ohio St.3d 309, 835 N.E.2d 5 (2005) (referring to *Hendon* and holding that bail bondsmen were entitled to a writ of mandamus to compel a trial court clerk to accept a surety bond).

2. Respondents have a clear duty to perform acts – Complaint ¶¶ 10, 11, 13, and 19

Without question, Respondents have a clear duty to ensure that Ohio citizens are afforded their rights to a surety bond under Article I, Section 9 of the Ohio Constitution. In this case, the Respondents’ refusal to accept a surety bond when a 10% Bond is issued constitutes unlawful excessive bail and an unlawful detainment in violation of the Ohio Constitution. See *Smith, supra*. Relator has provided specific examples of instances when Relators have prohibited him to post a surety bond in cases where a 10% bond was set.

Further, it bears repeating that Respondents have wrongly interpreted Relator’s complaint. Relator has never alleged that the judicial Respondents have incorrectly set

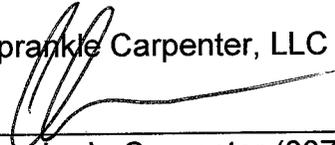
bail. Rather, Relator charges that the Respondents have wrongly denied the posting of a surety bond when a monetary bond has been set.

3. Relator has no plain and adequate remedy in the ordinary course of law – Complaint ¶ 26.

Contrary to Respondents' proposition, the Relator does not have standing to petition the trial court for a bond modification, nor does he have standing to appeal the denial of surety bond that he attempts to post on behalf of a defendant. Only the defendant has such standing. The only remedy available to Relator is to seek a writ of mandamus.

Given the above, along with construing all facts and making all reasonable inferences in favor of Relator, Relator has undoubtedly pled facts sufficient under Ohio R. Civ. P. 12(B)(6) that entitle him to a writ of mandamus. Accordingly, the Court should overrule Respondents' Motion to Dismiss.

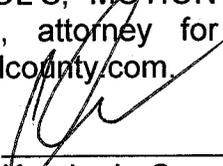
Respectfully submitted,


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CERTIFICATE OF SERVICE

I certify that on April 8, 2013, I sent RELATOR'S MEMORANDUM IN OPPOSITION TO RESPONDENTS, GARY WALTERS, LICKING COUNTY CLERK OF COURTS, JUDGE DAVID BRANSTOOL'S, MOTION TO DISMISS to Amy Brown Thompson and Kenneth W. Oswalt, attorney for Respondents, via email at athompson@lcounty.com and koswalt@lcounty.com.



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