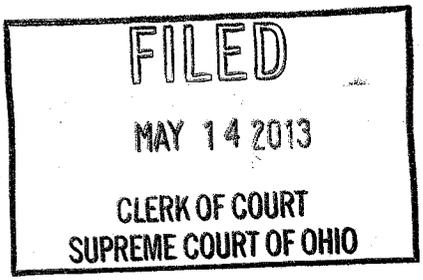


ORIGINAL

IN THE SUPREME COURT OF OHIO

Thomas Branham, Sr.,
Relator,
v.
Steve Butcher, Mayor, City of
Pataskala, et al.
Respondents.

Case No.: 13-0675



Respondent Steve Butcher, Mayor, City of Pataskala's Motion to Dismiss

Now comes Respondent, Steve Butcher, Mayor, City of Pataskala (hereinafter "Respondent"), and moves this Court for an order dismissing the Complaint filed against him by Thomas E. Branham, Sr. (hereinafter "Relator") pursuant to Ohio Rule of Civil Procedure 12(B)(1) and (6) for lack of subject matter jurisdiction and failure to state a claim upon which relief can be granted.

On or about May 1, 2013, the Relator initiated an original action with this Court by filing a Complaint and "Supporting Complaint" which fail to comply with Supreme Court Practice Rule 12.02. The Complaint appears to assert that Respondent Butcher "falsely issued a minor misdemeanor citation" against him however; the Relator seeks no relief against the Respondent in either his Complaint or Supporting Complaint. This Court has original jurisdiction over only those matters set forth in Article 4, Section 2(B)(1)(a)-(g) of the Constitution of the State of Ohio. Here, no such basis for original jurisdiction can be construed from the Complaint or Supporting Complaint. As such, this Court does not have original jurisdiction to hear this Complaint and it must be dismissed as a matter of law.

The reasons for this Motion are more fully set forth in the attached Memorandum in Support.

/s/ 

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Butcher, Mayor, City of Pataskala

Memorandum In Support

I. Introduction

On or about May 1, 2013, Relator Thomas Branham Sr. filed a Complaint and Supporting Complaint against Respondents Steve Butcher, Mayor, City of Pataskala and Teresa Liston. The only allegation specific to Respondent Butcher is that he authorized the issuance of a false minor misdemeanor citation on or about June 12, 2012, against the Relator. Significantly, Plaintiff seeks no relief against the Respondents.

Plaintiff has initiated this lawsuit as an original action in the Supreme Court of Ohio, however, he does not even arguably seek relief which would afford this Court original jurisdiction. Accordingly, Plaintiff's Complaint and Supporting Complaint must be dismissed for lack of subject matter jurisdiction.

Moreover, the Complaint fails to comply with S.Ct.Prac.R. 12.02. Although the Complaint is supported by a document titled "Supporting Complaint," which provides sworn testimony from the Relator, the Supporting Complaint does not demonstrate that this testimony was made with either (1) personal knowledge or (2) by a person competent to testify to such matters as is required by S.Ct.Prac.R. 12.02(B). Further, the Complaint fails to state any relief sought. See, S.Ct.Prac.R. 12.02(B)(3). The Relator has failed to state a claim upon which relief can be granted and his Complaint must be dismissed.

II. Law and Argument

The following defenses may be made by motion: lack of jurisdiction over the subject matter, failure to state a claim upon which relief can be granted. See Civ. R. 12(B). Here, this Court neither has jurisdiction nor has the Relator presented a claim upon which relief can be granted. As such, the Relator's Complaint must be dismissed.

A. The Court Lacks Jurisdiction Over this Matter.

Where this Court has original jurisdiction pursuant to Article 4, Section 2, a Relator may initiate an action in this Court by filing a Complaint which shall include an affidavit, which shall be made upon personal knowledge setting forth facts supporting the Plaintiff's claims and which shall set forth the relief sought. S.Ct.Prac.R. 12.02. The Supreme Court shall have original jurisdiction in the following:

- (a) Quo warranto;
- (b) Mandamus;
- (c) Habeas corpus;
- (d) Prohibition;
- (e) Procedendo;
- (f) In any cause on review as may be necessary to its complete determination;
- (g) Admission to the practice of law, the discipline of persons so admitted, and all other matters relating to the practice of law.

Article 4, Section 2(B)(1) of the Constitution of the State of Ohio.

This Complaint with Supporting Complaint does not relate to any of the seven enumerated basis for original jurisdiction. Even construing Plaintiff's Complaint and Supporting Complaint most favorably to Plaintiff, the Court must conclude that it does not have original jurisdiction. First, this case does not arise out of the practice of law. Second, this is not a cause on review. Next, the Complaint cannot be construed, by the very nature and definition of such writs, as an action for a writ of procedendo or habeas corpus.

Plaintiff does not seek any specific relief from Respondent, rather his Complaint reads more as an airing of grievances. No writ, order or request is sought, nor is there even the slightest suggestion that this Court should prohibit, prevent or force action on the part of the Respondent. Accordingly, the Relator has not asserted a cause of action for mandamus or prohibition.

Finally, the Relator has not raised an action in quo warranto. The Relator has not set

forth a petition asserting the usurpation of an office. Though the Relator may be dissatisfied with Mayor Butcher, his Complaint cannot reasonably be construed as adequately bringing an action in quo warranto pursuant to Ohio Revised Code Chapter 2733 as he has made no claim that Respondent Butcher unlawfully claimed to hold a public office he was not entitled to nor has Respondent sought an order regarding the same. See, R.C. § 2733.06.

B. The Relator Has Not Stated A Claim Upon Which Relief Can be Granted.

Supreme Court Practice Rule 12.02 requires that a Complaint brought as an original action in this Court include a supporting affidavit *and* state all relief sought. The Relator is bound by this Rule just as the Respondents are. “[A] pro se litigant is presumed to have knowledge of the law and correct legal procedures so that he remains subject to the same rules and procedures to which represented litigants are bound. He is not given greater rights than represented parties, and must bear the consequences of his mistakes.” *Pascual v. Pascual*, 9th Dist. No. 12CA0036-M, 2012 Ohio 5819, ¶ 5, see also, *Hart v. Ridge Tool Co.*, 2013 Ohio 1487, ¶ 5.

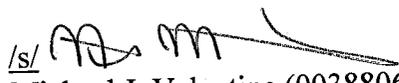
Here, the Relator has failed to properly raise a claim against the Respondent. His Supporting Complaint does not satisfy the requirements of S.Ct.Prac.R. 12.02(B) because it does not affirmatively state that the affiant (Thomas Branham, Sr.) was competent to testify to the matters contained therein. Further, nowhere in the Complaint or Supporting Complaint does the Relator seek any relief from the Respondent. No relief can be given where no relief is sought. Accordingly, the Complaint must be dismissed for failure to state a claim.

III. Conclusion

For the reasons set forth above, the Complaint and Supporting Complaint must be dismissed as this Court does not have jurisdiction to hear those claims. Additionally, the

Complaint and Supporting Complaint fail as a matter of law as they fail to seek any relief from the Respondent. Even construed in a light most favorable to the Relator, neither his Complaint nor his Supporting Complaint assert a viable cause of action against the Respondent as these pleadings fail to seek any relief from the Respondent. Accordingly, the Complaint and Supporting Complaint must be dismissed.

Respectfully submitted,

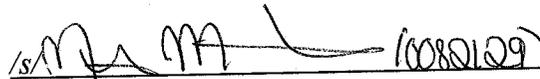

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*Counsel for Defendants Steve Butcher,
Mayor, City of Pataskala*

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing was served upon the following by regular U.S. mail, postage prepaid, this 14 day of May 2013:

Thomas Branham, Sr.
605 Keltonhurst Dr.
Pataskala, Ohio 43062
Pro Se Relator

Teresa Liston
40 West Main St.
Newark, Ohio 43055
Respondent



Michael J. Valentine (0038806)