ORIGINAL

IN THE SUPREME COURT OF OHIO

THOMAS BRANHAM, SR.,

Relator,

vs. CASE NO. 13-0675

STEVE BUTCHER, et. al.,

Respondents.

RESPONDENT TERESA LISTON'S MOTION TO DISMISS

Now comes the Respondent, Teresa Liston, by and through counsel, and respectfully moves this Court to dismiss this claim pursuant to Civ. R. 12(B)(6). This motion is made upon the grounds that Relator has not stated a claim upon which relief can be granted.

Respectfully Submitted,

CAROLINE J. CLIPPINGER (#0089268)
Assistant Director of Law
City of Newark
40 West Main Street
Newark, Ohio 43055
(740) 670-7880

Attorney for Respondent, Teresa Liston

FILED
MAY 16 2013
CLERK OF COURT
SUPREME COURT OF OHIO

MEMORANDUM IN SUPPORT OF RESPONDENTS' MOTION TO DISMISS

I. INTRODUCTION

On May 1, 2013 Relator Thomas Branham, Sr. ("Relator") filed this original action against Respondents Teresa Liston and Steve Butcher. Because Relator fails to state a claim for which this court may grant relief, Respondent Teresa Liston respectfully asks this Court to dismiss Relator's complaint.

II. STATEMENT OF FACTS

On June 12, 2012, a citation was issued to Relator for violating Pataskala City Ordinance 521.12(B). This charge is a minor misdemeanor which prohibits junkyards and collection centers within the city limits. Respondent's Exhibit 1. Relator entered a plea of not guilty to the charge brought against him. On August 21, 2012, the case was heard by Judge Teresa Liston, a visiting judge of the Licking County Municipal Court. Relator was found to be guilty of this charge, and Judge Liston handed down Relator's sentence. Judge Liston ordered Relator to pay a fine of $150 plus court costs. *Id* at 2.

III. ARGUMENT IN SUPPORT

In considering a motion to dismiss for failure to state a claim, the Court must construe all material allegations in the Complaint and all inferences that may be reasonably drawn there from in favor of the nonmoving party. *Fahnbulleh v. Strahan* (1995), 73 Ohio St.3d 666. In order for a court to dismiss a complaint for failure to state a claim upon which relief can be granted, it must appear beyond doubt from the complaint that plaintiff can prove no set of facts warranting relief. *State ex rel. Jennings v. Nurre* (1995), 72 Ohio St.3d 596; *York v. Ohio State Highway Patrol* (1991), 60 Ohio St.3d 143.

Relator's Complaint, with regard to Judge Liston, appears to be requesting a Writ of Mandamus. However, Relator fails to state with specificity that this is the sort of relief he is seeking. Relator further fails to state a claim upon which relief can be granted against Respondent Judge Liston because the law is well-settled that Relator had no right to a jury trial.

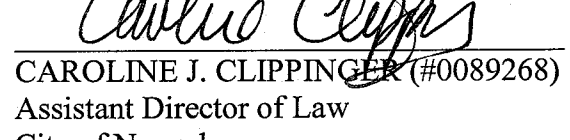
> To be entitled to a writ of mandamus, a relator must establish that he or she has a clear legal right to the relief sought, that the respondent has a clear legal duty to perform the requested act, and that the relator has no plain and adequate remedy in the ordinary course of law. *State ex rel. Maury v. Martin*, 2007 WL 1589482 (Ohio App.7 Dist.), at paragraph 3 (citing *State ex rel. Luna v.Huffman* (1996), 74 Ohio St.3d 486, 487, 659 N.E.2d 1279, 1280).

Furthermore, "If any of these elements is not shown, the petition must be denied." *State ex rel. Felson v. McHenry*, 146 Ohio App.3d 542, 545, 767 N.E.2d 298, 300 (2001). There is no legal right to the relief sought here, because under the Ohio Revised Code, there is no right to a jury trial in a minor misdemeanor case. Ohio Rev. Code § 2945.17. Because there is no clear legal right, Relator has failed to state a claim upon which relief can be granted as to Judge Liston.

IV. CONCLUSION

For all the foregoing reasons, Relator has failed to state a claim upon which relief can be granted. Therefore, Respondent respectfully requests that the action be dismissed.

Respectfully Submitted,



CAROLINE J. CLIPPINGER (#0089268)
Assistant Director of Law
City of Newark
40 West Main Street
Newark, Ohio 43055
(740) 670-7880

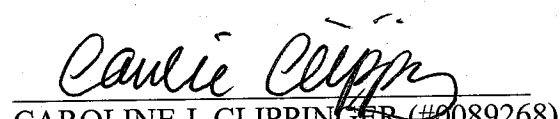
Attorney for Respondent, Teresa Liston

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing Answer of Respondent Teresa Liston was sent to the following persons by regular U.S. Mail, postage prepaid, this 16th day of May, 2013:

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

Nicole Koppitch
Reminger Co., LPA
65 E. State St. – 4th Floor
Columbus, OH 43215
Attorney for Steve Butcher



CAROLINE J. CLIPPINGER (#0089268)
Assistant Director of Law

White: to Court Yellow: to Officer Pink: to Defendant

City of Pataskala Mayor's Court
621 West Broad Street
Pataskala, Ohio 43062
(740) 927-3361

City of Pataskala
vs.

MINOR MISDEMEANOR CITATION

Thomas E. Branham
NAME
8982 Mink St. SW
ADDRESS
Pataskala, OH 43062

SSN / DOB

~~12ZON00005~~
CASE NUMBER
12CRB01411

TO DEFENDANT:

On June 1, 2012, at

State Offense

You continued to accumulate discarded debris and materials to an excessive degree without concealment behind a fence in violation of 521.12 (b) and or indoors 1251.05 G

Defendant eighteen years and older, you are ordered to appear at Pataskala Mayor's Court, 621 West Broad Street, Pataskala, Ohio 43062, on June 28, 2012 at 2:00 am/pm.

MUST APPEAR YES ✓ NO

If you wish to contest the matter, you must appear at the above time and place. If your citation is payable you may pay the sum of on or before the court date in lieu of a court appearance. Any payment must accompany the defendant's copy with the guilty waiver signed on the back. Checks and money orders should be made payable to Pataskala Mayor's Court.

If you fail to appear at the time and place stated above, or make proper payment in lieu of your court appearance, you may be arrested.

This citation was served personally on the defendant on this 12th day of June, 2012.

Dianne Harris, Director Planning
Signature of Issuing Law Enforcement Officer

Being duly sworn the issuing officer states that the citation has been read and is true.

Issuing Officer

PPD
Agency

Sworn before me and subscribed in my presence, this day of , 20

Clerk / Deputy Clerk / Notary Public

Commission Expiration

Signature of Offender

FILED
LICKING COUNTY
MUNICIPAL COURT
2012 JUL 11 PM 4:32
NEWARK, OHIO
MARCIA J. PHELPS
CLERK

LICKING COUNTY MUNICIPAL COURT
Newark, Ohio
I hereby certify that this document is a true and accurate copy of the original on file with this Court.
MARCIA J. PHELPS, CLERK
By K. Nathan
Deputy Clerk
Date 5/15/13

EXHIBIT
1
RESPONDENT'S

IN THE LICKING COUNTY MUNICIPAL COURT

State of Ohio
Plaintiff,

FILED
LICKING COUNTY
MUNICIPAL COURT
2012 AUG 22 P 3: 50
NEWARK, OHIO
MARCIA J. PHELPS
CLERK

-vs-

Case No. 12 CRB 01411

Judge Michael F. Higgins

Thomas Branham
Defendant.

SENTENCING ENTRY

CHARGE: Zoning / Trash Violation (MM) Pataskala Ord. 521.12 (b)

☑ SENTENCE OF COURT
The Defendant having been found guilty of the offense charged in the complaint following:

☑ Trial
☐ Plea of No Contest
☐ Plea of Guilty

IS SENTENCED AS FOLLOWS:

FINE: $150 + costs FINE SUSPENDED: _____

COURT COSTS: _____ ☐ NO PROBATION FEE

JAIL: _____ days/months in the county jail.

JAIL SUSPENDED: _____ days/months.

PROBATION TIME: _____ year(s)

PROBATION TERMS: _____ as directed by Probation Officer.

OTHER: _____

Judge Teresa L. Liston, ret.
By assignment pursuant to Sup. R. 17(A)

Date AUG 21 2012

Teresa L Liston
JUDGE MICHAEL F. HIGGINS

After hearing, the Court finds the Defendant ☑ has ☐ has not the ability to pay fines and court costs.

Judgment is hereby rendered this Court for the amount of the fine and costs imposed, and upon failure of the Defendant to pay same, he may be given a reasonable time in which to make payment. But if the same is not paid within the time given, the Clerk shall then proceed to collect the costs according to appropriate civil procedure.

Judge Teresa L. Liston, ret.
By assignment pursuant to Sup. R. 17(A)

Date: AUG 21 2012

Teresa L Liston
JUDGE MICHAEL F. HIGGINS