

ORIGINAL

IN THE SUPREME COURT OF OHIO

VERLEAN E. MACON,	:	
	:	
Plaintiff,	:	Case No. 2014-1492
v.	:	
	:	
TOLEDO MUNICIPAL COURT, et al.,	:	
	:	Original Action In Mandamus
Respondents.	:	

RESPONDENTS PROGRESSIVE INSURANCE COMPANY AND JAMES KEISSER'S MOTION TO DISMISS

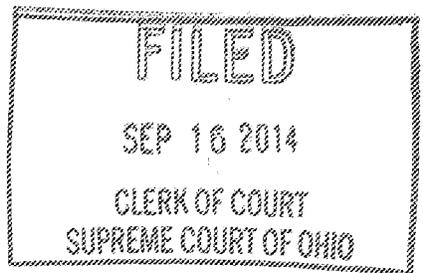
Respectfully submitted,



MICHAEL R. HENRY (0030386)
 CRABBE, BROWN & JAMES LLP
 500 South Front Street, Suite 1200
 Columbus, OH 43215
 Telephone: (614) 229-4544
 Facsimile: (614) 229-4559
mhenry@cbjlawyers.com
*Attorney for Respondents, Progressive Insurance Co.
 and James Keisser*

VERLEAN E. MACON
 2801 Midwood Ave.
 Toledo, OH 43606
Plaintiff, Pro Se

ADAM W. LOUKX (0062158)
 One Govt. Center, Suite 2250
 Toledo, OH 43604
 Telephone: (419) 245-1020
Attorney for Respondent, Toledo Municipal Court



**RESPONDENTS PROGRESSIVE INSURANCE COMPANY AND JAMES KEISSER'S
MOTION TO DISMISS**

Now comes Respondents Progressive Insurance Company (“Progressive”) and James Keisser, by and through counsel, and respectfully move this Honorable Court, pursuant to Supreme Court Practice Rule 12.04, to dismiss Plaintiff’s action for the reasons set forth in the attached Memorandum in Support, which is incorporated herein by reference.

MEMORANDUM IN SUPPORT

I. Introduction

Ms. Macon attempts to invoke the original jurisdiction of this Court by styling what is actually an appeal from the Sixth District as an original action in mandamus. Because Ms. Macon’s complaint against Respondents is for money damages, it is not a mandamus action and thus cannot invoke the original jurisdiction of this Court. Therefore, Ms. Macon’s claims against Attorney should be dismissed with prejudice.

II. Background

Proceeding pro se, Ms. Macon filed a complaint with this Court on August 26, 2014. In it, she alleges “intentional negligence,” race discrimination, breach of contract, fraud, and a wide-sweeping conspiracy between multiple insurance companies and the Toledo Municipal Court. This Complaint is the most recent in a string of filings germinating from Ms. Macon’s first claim in the Toledo Municipal Court.

Ms. Macon first filed in small-claims court alleging much of the same: “intentional

negligence,” race discrimination, and conspiracy. The small-claims Magistrate recommended her case be dismissed on January 9, 2014. On January 16, Ms. Macon filed an “Objection to Court Case Recommendation,” in which she essentially appealed the decision of the small-claims Magistrate. On March 7, 2014, the Toledo Municipal Court adopted the small-claims Magistrate’s Decision granting judgment in favor of all Respondents. On April 14, 2014, Ms. Macon filed an appeal from this judgment in the Sixth District Court of Appeals. On June 3, 2014, the Sixth District dismissed her appeal *sua sponte*. Undeterred, Ms. Macon filed an “Objection to Decision and Judgment” with the Sixth District Court of Appeals on June 9. Construing Ms. Macon’s filing as a Motion for Reconsideration, the Sixth District denied the Motion in an order journalized on June 24, 2014. Because the Sixth District dismissed Ms. Macon’s appeal for lack of a final, appealable order, Ms. Macon then filed with the Toledo Municipal Court a “Motion for Final, Appealable Order.” She received confirmation that the Court had adopted the small-claims Magistrate’s findings and its order was final and appealable.

Now, rather than appeal the decision of the Sixth District, Ms. Macon has re-styled her claims as an original action in mandamus in an attempt to invoke the original jurisdiction of this Court.

III. Argument

Ms. Macon’s action for money damages is not a request for mandamus relief and thus this Court does not have original jurisdiction over her claims. Further, the Complaint does not follow the procedural requirements for an original action in this Court. Therefore, the Complaint should be dismissed pursuant to Supreme Court Practice Rule 12.04(A)(1).

A. The Complaint Does Not Request Mandamus Relief

“Mandamus” is statutorily defined as a writ, issued in the name of the state to an inferior tribunal, a corporation, board, or person, commanding the performance of an act that the law specially enjoins as a duty resulting from an office, trust, or station. R.C. 2731.01. And “mandamus may not ordinarily be employed as a substitute for an action at law to recover money.” *Maloney v. Sacks*, 173 Ohio St. 237, 238, 181 N.E.2d 268, 269 (1962); see *State ex rel. Ohio AFL-CIO v. Voinovich*, 1994-Ohio-1, 69 Ohio St. 3d 225, 240, 631 N.E.2d 582, 594 *opinion clarified*, 69 Ohio St. 3d 1208, 632 N.E.2d 907 (1994). If a complaint does not state a cause of action within the original jurisdiction of the court, the complaint should be dismissed. *State ex rel. Capers v. Cuyahoga Cnty. Bd. of Elections*, 26 Ohio St. 2d 169, 169, 270 N.E.2d 649, 649 (1971).

Here, Ms. Macon attempts to employ mandamus as a substitute for an appeal at law to recover money damages. Ms. Macon does not request this Court to command any act by Respondents except the payment of \$7 million by Progressive and the payment of \$3000 by Keisser. And since actions for money damages are not within the original jurisdiction of the Court, Ms. Macon’s Complaint should be dismissed.

B. The Complaint Does Not Follow the Procedural Requirements for a Mandamus Action

1. Plaintiff failed to bring the action in the name of the state

Because Plaintiff failed to bring her mandamus action in the name of the state, her claim should be dismissed. Mandamus actions may be brought by private citizens, but must be brought in the name of the state. R.C. 2731.04. Failure to do so is fatal. See *Litigaide, Inc. v. Custodian of*

Records for Lakewood Police Dep't, 1996-Ohio-205, 75 Ohio St. 3d 508, 664 N.E.2d 521, 521 (dismissed for failure to comply with R.C. 2731.04); *see also Maloney v. Sacks*, 173 Ohio St. 237, 238, 181 N.E.2d 268, 269 (1962).

Here, Ms. Macon brought the action on her own behalf and not in the name of the state. She asserts no claim on behalf of the state but instead attempts to mask her individual claims by referring to herself as “relator.” Since Plaintiff has not brought this action in the name of the state, the action should be dismissed.

2. Plaintiff failed to attach a personal-knowledge affidavit

Because Plaintiff has failed to make any meaningful delineation between her complaint and an affidavit, her Complaint should be dismissed. Supreme Court Practice Rule 12.02(B) requires an affidavit made with personal knowledge to accompany any original action in the Supreme Court of Ohio. *Id.* Dismissal is warranted when a complaint is not supported by an affidavit of the relator or counsel specifying the details of the claim. *State ex rel. Citizens for Env'tl. Justice v. Campbell*, 2001-Ohio-1617, 93 Ohio St. 3d 585, 585, 757 N.E.2d 366, 367.

Here, Ms. Macon submitted one seven-page document containing the following headings: (1) ADMINISTRATIVE PROCEEDINGS, (2) JURISDICTION, (3) PARTIES, (4) COMPLAINT. In the first paragraph of the document, Ms. Macon refers to herself as an affiant and refers to an affidavit. However, no affidavit appears in the document. The document is notarized, but only after the entire complaint. Indeed, the first paragraph of the document states, “Now comes Relator, Verlean E. Macon in Pro Se and *for her complaint* against Respondents, states as follows.”

Plaintiff's Complaint at 2. (Emphasis Added). Because the Complaint is not supported by an affidavit specifying the details of the claim, the Complaint should be dismissed.

IV. Conclusion

Ms. Macon's Complaint is not a mandamus action but an attempt to force this Court to hear her appeal of the decision of the Sixth District. It is not an original action, and this Court does not have original jurisdiction over it. Respondents respectfully requests that this Court dismiss Plaintiff's Complaint for lack of subject-matter jurisdiction and, alternatively, failure to state a claim upon which relief can be granted.

Respectfully submitted,



MICHAEL R. HENRY (0030386)

CRABBE, BROWN & JAMES LLP

500 South Front Street, Suite 1200

Columbus, OH 43215

Telephone: (614) 229-4544

Facsimile: (614) 229-4559

mhenry@cbjlawyers.com

*Attorney for Respondents, Progressive Insurance Co.
and James Keisser*

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing has been forwarded by regular U.S. Mail this 16th day of September, 2014, to the following individuals:

VERLEAN E. MACON
2801 Midwood Ave.
Toledo, OH 43606
Plaintiff, Pro Se

ROTARY MAN LTD
Matthew L. Weisenberger
300 Madison Ave., Suite 300
Toledo, OH 43604

ADAM W. LOUKX
One Govt. Center, Suite 2250
Toledo, OH 43604
*Attorney for Respondent, Toledo Municipal
Court*

USAA Insurance
9800 Fredericksburg Rd.
San Antonio, TX 78288



MICHAEL R. HENRY (0030386)
*Attorney for Respondents, Progressive Insurance
Co. and James Keisser*