

ORIGINAL

IN THE SUPREME COURT OF OHIO

Verlean E. Macon,)	Case No. 2014-1492
Relator,)	
-vs-)	Original Action In
)	Mandamus
Toledo Municipal Court, et al.)	
Respondents)	
)	

**RESPONDENT TOLEDO MUNICIPAL COURT'S
MOTION TO DISMISS
AND MEMORANDUM IN SUPPORT**

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RELATOR

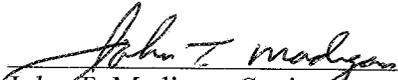
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 SUPREME COURT OF OHIO

MOTION TO DISMISS

Respondent Toledo Municipal Court, pursuant to Civil Rule 12(B)(6) and S.Ct.Prac.R.12.04, and moves the Court for an order dismissing the relator's complaint for failure to state a claim upon which relief can be granted. This motion is supported by the attached memorandum.

Respectfully submitted,

ADAM LOUKX, DIRECTOR OF LAW



John F. Madigan, Senior Attorney
Counsel for Respondent Toledo Municipal
Court

MEMORANDUM IN SUPPORT

I. FACTS

Relator has brought this original action by filing a complaint seeking damages against the Toledo Municipal and others in the amount of seven million dollars for “race and gender bias discrimination”. Relator also prays for damages in the amount of \$3,000.00 against respondents James Keisser and Rotary Man LTD for damages to her vehicle and mental distress.. The facts giving rise to this case are as follows.

On October 10, 2012 Verlean Macon was operating a motor vehicle on Sylvania Ave in Sylvania Township, Ohio when she attempted to merge from the right lane into the center lane of Sylvania Ave. In attempting to make this maneuver, Macon’s vehicle struck a vehicle operated by James Keisser who was already occupying the center lane of travel. The collision was investigated by the Sylvania Township police department. After the investigation was concluded, the officer at the scene declined to issue a citation to either party. Verlean Macon submitted a claim to Mr. Keisser’s insurance carrier which was denied. She then filed suit against James Keisser and Progressive Insurance Company in Toledo Municipal Court, Small Claims Division. On November 19, 2013 the relator’s complaint was heard by a magistrate in Toledo Municipal Court. After listening to the testimony of Ms. Macon in which admitted striking the Keisser vehicle while attempting to merge, the Magistrate found in favor of the defendants. The relator filed a timely objection to the magistrate’s report on January 14, 2014. Two days later, on January 16, 2014, the relator filed additional objections to the report. On March 19, 2014 a municipal court judge denied the initial objections filed by the relator and signed a journal entry affirming the magistrate’s decision. The relator filed a notice of appeal on April 14, 2014. The Court of Appeals on its own motion dismissed the appeal on June 3, 2014 finding that, since the

trial court had not ruled on all of the relator's objections, there was no final appealable order from which to appeal. *Macon v. Keisser, et al.*, 6th Dist App.No. L-14-1080 (June 3, 2014). Eventually, on August 6, 2014, the municipal court judge denied the remaining objections filed by the relator and issued a final appealable order adopting the magistrate's decision. No appeal was subsequently taken from that order.

II. ARGUMENT

A. Motion To Dismiss Standard

Civil Rule 12(B)(6) mandates the entry of a dismissal for failure to state a claim upon which relief can be granted where it appears beyond doubt from the complaint that plaintiff can prove no set of facts warranting relief. *State ex rel. Jennings v. Nurre*, 72 Ohio St.3d 596, 65 N.E.2d 1006 (1995). The determination to dismiss a complaint for failure to state a claim is based upon conclusions of law. *Garofalo v. Chicago Title Ins.Co.*, 104 Ohio App.3d.95, 661 N.E.2d.218 (1995). When ruling on a motion to dismiss under Civ.R.12(B)(6) the court must presume the truth of all factual allegations in the complaint and must make all reasonable inferences in favor of the nonmoving party; however the court need not presume truth of conclusions unsupported by factual allegations. *McGlone v. Grinshaw*, 86 Ohio App.3d.279, 620 N.E.2d 936 (1993).

B. The Toledo Municipal Court is not *sui juris* and cannot sue or be sued.

The relator has named the Toledo Municipal Court as a respondent for alleged discrimination and gender bias she suffered when a magistrate and judge refused to rule in her favor in a small claims action filed in that court.

Respondent's motion, filed under Civ.R. 12(B)(6), is based on the principle that the "courts are not *sui juris*; that is, they cannot be sued as a matter of law." *Malone v. Cuyahoga*

Cty. Court of Common Pleas, 45 Ohio St.2d 245, 344 N.E.2d 126 (1976). Cases hold that absent express statutory authority, a court cannot be sued in its own right. *Id.* at 248, 344 N.E.2d 126; *State ex rel. Cleveland Municipal Court v. Cleveland City Council* , 34 Ohio St.2d 120, 296 N.E.2d 544(1973). Further, there is no statutory provision that would permit the Toledo Municipal Court to be sued. See *State ex rel. Pruitt v. Cuyahoga Cty. Common Pleas Court*, Cuyahoga App. No. 94155, 2009–Ohio–6657, *Planey v. Mahoning Cty. Court of Common Pleas, et al.*, 154 Ohio Misc.2d 1, 916 N.E.2d 937 (2009). Neither case law nor black-letter law would permit this relator to sue the courts.

Additionally, the courts are political subdivisions of the state pursuant to R.C. 2744.01(F) and, as such, are clothed with immunity. They are “immune from liability if the employee (active judge, visiting judge, chief magistrate, or magistrate) was engaged in the performance of a judicial [or] quasi-judicial * * * function.” R.C. 2744.03(A)(1). Relator seeks a monetary award for the conduct of a governmental function, and such relief is not authorized by law. R.C. 2744.01(C)(2)(f). Finally, courts are immune from liability in the performance of a judicial function.

C. The Relator may not bring an original action for money damages in the Supreme Court

The original subject matter jurisdiction of this court is set forth in Ohio Constitution, Article IV, Section 2(B)(1). This list does not contain claims for money damages. The relator’s complaint goes on for seven pages listing numerous wrongs allegedly inflicted on her by other parties and court personnel. At the end of her complaint she prays only for money damages. This is not a proper subject for an original action in the Ohio Supreme Court.

Even if this could be considered a complaint for a writ of mandamus it is still not properly

before the Supreme Court. This court has held that it lacks jurisdiction to hear even a compulsory counterclaim for money damages in an original action in mandamus. *State ex rel. Intern. Union of Operating Engineers, Local Nos. 18,18A,18B,18C,18RA,AFL-CIO v. Simmons*, 58 Ohio St.3d 247, 569 N.E.2d 886 (1991). Here, the only remedy sought by the relator is monetary relief. A writ of mandamus must not be issued when there is a plain an adequate remedy in the ordinary course of the law. *Sibarco Corp. v. City of Berea*, 7 Ohio St.2d 85, 218 N.E 2d 428,(1966) certiorari denied 87 S.Ct. 1022,386 U.S. 957, 18 L.Ed.2d 104. The relator had two remedies in the ordinary course of the law which she failed to pursue. The relator could have, but, did not take an appeal from the trial court's August 6, 2014 journal entry. Nor did she attempt to appeal the June 3, 2014 Court of Appeal's dismissal of her appellate case. This court has repeatedly held that mandamus cannot be used as a substitute for appeal. *State ex rel. Daggett v. Gessaman*,34 Ohio St.2d 55, 295 N.E.2d 659 (1973), *State ex rel. Sobczak v. Skow*, 49 Ohio St. 3d 13, 550 N.E.2d 455 (1990).

III. CONCLUSION

For the reasons stated above, the Court should grant the Toledo Municipal Court's motion to dismiss and enter an Order dismissing all of relator's claims against the court.

Respectfully submitted,

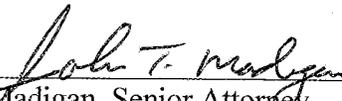
ADAM W. LOUKX, LAW DIRECTOR



John T. Madigan, Senior Attorney
Counsel for Respondent Toledo Municipal Court

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Motion was served by regular U.S. mail to Relator Verlean E. Macon, 2801 Midwood Ave., Toledo, Ohio 43606, and Respondents Rotary Man LTD., c/o Matthew L. Weisenberger, Attorney, 300 Madison Ave., Suite 300, Toledo, Ohio 43604, Progressive Insurance and James Keisser, c/o James A. Spidel, Attorney, 2270 Levis Commons Blvd., Perrysburg, Ohio 43551-7142 and USAA Insurance, 9800 Fredericksburg Rd., San Antonio, Texas 78288 this 11 day of September, 2014.



John T. Madigan, Senior Attorney
Counsel for Respondent Toledo Municipal Court

JTM/Macon-Motion To Dismiss
9/10/14