

IN THE SUPREME COURT OF OHIO

STATE ex rel. ROSANNA L. MILLER : CASE NO: 15-0087
 :
 Relator, :
 :
vs. :
 :
ANN E. BECK, JUDGE, et al., :
 :
 Respondents :

RESPONDENT JUDGE BECK’S MEMORANDUM IN OPPOSITION TO RELATOR’S
“WRIT OF ERROR GRANT BY RIGHT OR DEFAULT JUDGMENT”

Respondent, Judge Ann E. Beck, opposes Relator’s “Writ of Error Grant by Right or Default Judgment” filed on March 2, 2015. The grounds for this opposition are set forth in the attached memorandum.

Respectfully submitted,

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MEMORANDUM

I. INTRODUCTION

This action is essentially a duplicate filing to a writ of mandamus/prohibition already litigated in the Third Appellate District in *State ex rel. Miller v. Ann E. Beck*, Third Appellate District Case No. 8-14-11. Relator filed a “complaint for writ of error” on January 16, 2015, and then filed an “amended complaint for writ of error” on January 29, 2015. Both filings refer to and attach the Relator’s writ filed with the Third Appellate District, which was denied on its merits.

The Respondents filed motions to dismiss Relator’s filings, with Judge Beck filing her motion on February 9, 2015, and the Ohio Plan Risk Management filing its motion on February 17, 2015. Relator has now filed a “Writ of Error Grant by Right or Default Judgment,” which does not appear to refer to either of the motions to dismiss. If Relator’s March 2, 2015 filing is a response to the motions to dismiss, the response is untimely. S.Ct.Prac.R. 12.04(B)(2).

It is not immediately apparent what the March 2, 2015 filing really is, as the filing refers to an “amendment to the list of violations by Respondents,”¹ and also states “the people request the Ohio Supreme Court to take judicial notice” of a number of allegations² which are not a proper subject for judicial notice. Ultimately, the filing includes a prayer for relief that seeks “a Writ of Prohibition to Respondents prohibiting all illegal practices in the Bellefontaine Municipal Court, the conditions in the Counterclaims for damages from injuries shall be ordered

¹ March 2, 2015 filing, at p. 1.

² *Id.* at p. 2.

and paid within 30 days, and the return of Relator's father, Clair R. Miller, to Relator immediately."³

Given the absurdity of the March 2, 2015 filing, and a plain review of Relator's previous filings in this action, sanctions pursuant to Supreme Court Practice Rule 4.03 may well be appropriate to curb what appears to be frivolous and vexatious litigation practices by Relator. In any event, the relief requested in the March 2, 2015 filing should be denied, and this action should be dismissed for the reasons set forth in Respondents' motions to dismiss filed last month.

II. LAW AND ARGUMENT

No matter what the Court views Relator's March 2, 2015 filing to be, no relief should be granted to Relator as a result of the March 2, 2015 filing. Respondent asks this Court to deny the March 2, 2015 filing.

A. If the March 2, 2015 is a response to the motion to dismiss, it should be stricken as untimely.

Relator had 10 days after the filing of Respondent's motion to dismiss to file a response. S.Ct.Prac.R. 12.04(B)(2). Relator filed her March 2, 2015 filing twenty days after Respondent filed her motion to dismiss this action. As such, the filing is untimely and should be stricken.

B. If the March 2, 2015 filing is a motion to amend the complaint, it should be denied as noncompliant with the Rules.

Supreme Court Practice Rule 12.04(A)(2) governs the amendment of complaints in original actions, and that rule requires that amendments be made pursuant to Supreme Court Practice Rule 3.13 and Rule of Civil Procedure 15(A).

³ *Id.* at p. 3.

Supreme Court Practice Rule 3.13(B)(1) states that the revised document shall be filed “within the time permitted by these rules for filing the original document.” No revised document has been filed by Relator. Rule 3.13(B)(1) also directs that corrections or additions to a previously filed document “shall not be made to a motion if a memorandum opposing the motion has already been filed.” Motions to dismiss the Relator’s complaints were already pending at the time of the March 2, 2015 filing. While a motion to dismiss is not a “responsive pleading as contemplated by Civil Rule 15(A),” *State ex rel. Hanson v. Guernsey Cty. Bd. of Commrs.*, 65 Ohio St.3d 545, 549 (1992); *Tatman v. Fairfield Cty. Bd. of Elections*, 102 Ohio St.3d 425 (2004), those cases do not address Practice Rule 3.13(B)(1). As such, any proposed addition to the complaint should be denied for failing to comply with this Court’s Practice Rules, to the extent that Practice Rule 3.13(B)(1) applies to amendments to complaints.⁴

As to Rule of Civil Procedure 15(A), Relator can amend her complaint once as a matter of course, and then must obtain consent of the opposing parties, or leave of Court, before filing any amendment to her complaint. Relator already used her one amendment as a matter of course, and now must obtain leave of Court, or consent of the opposing parties, before further amendments can be allowed. There has been no motion for leave to amend the complaint.

If the Court considers the March 2, 2015 filing to ask for leave to amend the complaint, then Respondent submits that leave should be denied. This Court has held that Rule 15(A) applies to original actions filed in this Court. *State ex rel. Vindicator Printing Co. v. Wolff*, 132 Ohio St. 3d 481, 487 (2012). "Leave of court shall be freely given when justice so requires."

⁴ Respondent recognizes that Practice Rule 3.13(B)(1) uses the word “motion” instead of “complaint.” However, Practice Rule 12.04(A)(2) specifically states that both Practice Rule 3.13 and Rule of Civil Procedure 15(A) apply to amendments to complaints.

Civ.R. 15(A). "[T]he language of Civ.R. 15(A) favors a liberal amendment policy and a motion for leave to amend should be granted absent a finding of bad faith, undue delay or undue prejudice to the opposing party." *Hoover v. Sumlin*, 12 Ohio St.3d 1, 6, 12 Ohio B. 1, 465 N.E.2d 377 (1984). Relator's proposed addition to her complaint is an allegation that Bellefontaine's city prosecutor somehow committed perjury and obtained "falsified perjured convictions to boost arrest warrants for court costs." There can be no good faith basis to base such outrageous allegations upon, and as such, leave should not be granted to amend the complaint with this allegation.

Ultimately, the Court need not address the possible inconsistency between Practice Rule 3.13 and Practice Rule 12.04(A)(2) as to amendments to complaints, because Relator has failed to comply with Civil Rule 15(A). Relator does not move for leave to amend her complaint, and does not offer any grounds to support permitting such an amendment. The scandalous allegations against Bellefontaine's city prosecutor are made in bad faith, and should not be permitted, even if leave to amend the complaint was considered by the Court.

C. No judicial notice should be taken of the allegations in the March 2, 2015 filing.

Evidence Rule 201 governs judicial notice of adjudicative facts, and Rule 201(B) directs that a "judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned."

None of the six points stated in Relator's March 2, 2015 filing satisfy the requirements of Evidence Rule 201. All of the items Relator wishes the Court to take judicial notice of are nothing more than Relator's own personal opinions and extrapolations, along with her own legal

conclusions that are unsupported by any legal authority. These items consist of Relator's notions of fault and liability of individuals and parties, and even her opinions that counsel for Respondent should not be involved with this case for conflicts of interest, or worse. Relator actually asks this Court—based upon no evidence or authority—to take judicial notice that Attorney Traul “was instrumental in aiding James Miller to remain with Relator’s father who abused and exploited him.”⁵

Relator alleges no facts of which judicial notice can be taken. To the extent that this Court would entertain such a request, Respondent requests an opportunity to be heard on the request pursuant to Evidence Rule 201(E). To refute each and every point set forth in Relator’s March 2, 2015 filing is a waste of judicial resources, as well as time and expenses of the Respondents, and is unnecessary when the Relator’s request is so clearly improper and impermissible under Evidence Rule 201. Respondent reserves the right to be heard under Rule 201(E) if a response is deemed necessary by the Court.

D. There can be no default judgment when Respondent has filed a motion to dismiss.

Respondents are not in default because timely motions to dismiss were filed in this matter. Accordingly, there are no grounds for Relator to move for a default judgment. The motions to dismiss are Respondents’ response to Relator’s complaint.

If Relator intends her March 2, 2015 filing to somehow be a motion for judgment on the pleadings, it is premature as the pleadings are not yet closed, pending resolution of the motions to dismiss. Relator makes reference to her “affidavit” attached to her complaints not being rebutted, and cites to a United States Supreme Court case, a California case, and various

⁵ March 2, 2015 filing, at page 2.

scripture to support her notion that she has presented a “prima facie case.”⁶ Supreme Court Practice Rules 12.02(B)(2) and 12.06 both require that affidavits “shall be made on personal knowledge, setting forth facts admissible in evidence, and showing affirmatively that the affiant is competent to testify in all matters stated in the affidavit.” The affidavit attached to Relator’s complaint fails to satisfy these requirements, as it is rife with unsupported legal conclusions,⁷ hearsay,⁸ and “facts” of which Relator cannot possibly have personal knowledge.⁹ The “facts” of which Relator requests the Court to take judicial notice are just as bad, and none of Relator’s unsupported opinions and legal conclusions should be considered by the Court in any attempt at a dispositive motion by Relator.

III. CONCLUSION

No matter what the Court construes Relator’s March 2, 2015 filing to be, no relief should be granted to Relator. Respondent continues to maintain that this action should be dismissed, whether it is a duplicative original action, or an appeal of the Third District’s denial of Relator’s Writ there, because the appeal is frivolous.

Respectfully submitted,

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⁶ March 2, 2015 filing, at p. 2.

⁷ “Verified Declaration in the Nature of an Affidavit of Facts” attached to Relator’s January 28, 2015 Writ, at ¶¶2, 4, 5, 10, 11, 12, 13, and 14.

⁸ *Id.* at ¶¶5, 7, 9, 11, 12.

⁹ *Id.* at ¶¶2, 3, 5, 7, 9, 10, 11, and 13.

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CERTIFICATE OF SERVICE

I hereby certify that on the 12th day of March, 2015, I served the foregoing, via regular U.S. Mail, postage pre-paid, upon the following:

Rosanna L. Miller
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/s Lynnette Dinkler
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