

IN THE COURT OF APPEALS OF OHIO  
TENTH APPELLATE DISTRICT

Ramone L. Wright, :  
Relator, : No. 24AP-82  
v. : (REGULAR CALENDAR)  
Judge Kimberly Cocroft, :  
Respondent. :

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D E C I S I O N

Rendered on September 24, 2024

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**On brief:** *Ramone L. Wright*, pro se.

**On brief:** *G. Gary Tyack*, Prosecuting Attorney, and  
*Patrick A. Stevens*, for respondent.

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IN MANDAMUS

LUPER SCHUSTER, J.

{¶ 1} Relator, Ramone L. Wright, initiated this original action seeking a writ of mandamus ordering respondent, Judge Kimberly Cocroft, to reinstate his petition for a writ of mandamus filed in the Franklin County Court of Common Pleas. Respondent has filed a motion to dismiss.

{¶ 2} Pursuant to Civ.R. 53 and Loc.R. 13(M) of the Tenth District Court of Appeals, this court referred the matter to a magistrate. The magistrate issued the appended decision, including findings of fact and conclusions of law. The magistrate determined that, construing all factual allegations in the petition as true and making all reasonable inferences in favor of relator, relator cannot show a clear legal right to have his common pleas court petition reinstated or a clear legal duty on the part of respondent to reinstate his common pleas court petition. Additionally, the magistrate determined relator

failed to comply with R.C. 2731.04 because relator did not bring the instant petition in the name of the state on the relation of relator. Thus, the magistrate recommends this court grant respondent's motion to dismiss.

{¶ 3} No party has filed objections to the magistrate's decision. "If no timely objections are filed, the court may adopt a magistrate's decision, unless it determines that there is an error of law or other defect evident on the face of the magistrate's decision." Civ.R. 53(D)(4)(c). The case is now before this court for review.

{¶ 4} Upon review, we find no error of law or other defect on the face of the magistrate's decision. Therefore, we adopt the magistrate's decision as our own, including findings of fact and conclusions of law, and we grant respondent's motion to dismiss relator's petition for a writ of mandamus.

*Motion to dismiss granted;  
case dismissed.*

EDELSTEIN and LELAND, JJ., concur.

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**APPENDIX**

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Ramone L. Wright,	:	
	:	
Relator,	:	
	:	
v.	:	No. 24AP-82
	:	
Judge Kimberly Cocroft,	:	(REGULAR CALENDAR)
	:	
Respondent.	:	

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MAGISTRATE’S DECISION

Rendered on June 21, 2024

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*Ramone L. Wright, pro se.*

*G. Gary Tyack, Prosecuting Attorney, and Patrick A. Stevens, for respondent.*

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IN MANDAMUS  
ON RESPONDENT’S MOTION TO DISMISS

{¶ 5} Relator, Ramone L. Wright, has filed this original action seeking a writ of mandamus ordering respondent, Judge Kimberly Cocroft, to reinstate his petition for writ of mandamus filed in the Franklin County Court of Common Pleas because respondent prematurely dismissed the action. Respondent has filed a motion to dismiss relator’s petition.

Findings of Fact:

{¶ 6} 1. At the time he filed his petition, relator was an inmate at the Federal Correctional Institution in Bennettsville, South Carolina.

{¶ 7} 2. Respondent is a judge in the Franklin County Court of Common Pleas in Franklin County, Ohio.

{¶ 8} 3. On February 3, 2023, relator filed a petition for writ of mandamus in Franklin C.P. No. 23CV-762. The petition does not include a standard case caption. Instead, it indicates relator's name and address, a date, a criminal case number, and that it is a petition for extraordinary writ of mandamus. Respondent presided over the case.

{¶ 9} 4. On December 20, 2023, respondent dismissed relator's petition in 23CV-762, based upon relator's failure to bring the action in the name of the state on the relation of relator and to verify the petition by affidavit, in violation of R.C. 2731.04.

{¶ 10} 5. On January 31, 2024, relator filed the present petition for writ of mandamus in this court. The petition does not include a standard case caption. Instead, it indicates "Judge name: Kimberly Cocroft" and "Name of complainant: Ramone L. Wright." The petition requests that his action in 23CV-762 be reinstated because it was prematurely dismissed.

{¶ 11} 6. On March 4, 2024, respondent filed a motion to dismiss pursuant to Civ.R. 12(B)(6).

Conclusions of Law and Discussion:

{¶ 12} The magistrate recommends that this court grant respondent's motion to dismiss.

{¶ 13} In order for this court to issue a writ of mandamus, a relator must ordinarily show a clear legal right to the relief sought, a clear legal duty on the part of the respondent to provide such relief, and the lack of an adequate remedy in the ordinary course of the law. *State ex rel. Pressley v. Indus. Comm.*, 11 Ohio St.2d 141 (1967). A relator bears the burden of persuasion to show entitlement to a writ of mandamus by clear and convincing evidence. *Welsh-Huggins v. Jefferson Cty. Prosecutor's Office*, 163 Ohio St.3d 337, 2020-Ohio-5371, ¶ 26. "Clear and convincing evidence" is a measure or degree of proof that is

more than a preponderance of evidence, but it does not extend the degree of certainty beyond a reasonable doubt as required in a criminal case; clear and convincing evidence produces in the trier of fact's mind a firm belief of the fact sought to be established. *State ex rel. Miller v. Ohio State Hwy. Patrol*, 136 Ohio St.3d 350, 2013-Ohio-3720, ¶ 14.

{¶ 14} A motion to dismiss for failure to state a claim is procedural and tests the sufficiency of the complaint itself and any attached documents. *State ex rel. Hanson v. Guernsey Cty. Bd. of Commrs.*, 65 Ohio St.3d 545 (1992), citing *Assn. for Defense of Washington Local School Dist. v. Kiger*, 42 Ohio St.3d 116, 117 (1989). Attachments to the complaint are considered part of the complaint for all purposes. Civ.R. 10(C). Generally, in ruling on a Civ.R. 12(B)(6) motion, a court “ ‘cannot resort to evidence outside the complaint to support dismissal [except] where certain written instruments are attached to the complaint.’ ” *Brisk v. Draf Indus.*, 10th Dist. No. 11AP-233, 2012-Ohio-1311, ¶ 10, quoting *Park v. Acierno*, 160 Ohio App.3d 117, 2005-Ohio-1332, ¶ 29 (7th Dist.). In addition, the trial court must presume all factual allegations contained in the complaint are true and must make all reasonable inferences in favor of the nonmoving party. *Jones v. Greyhound Lines, Inc.*, 10th Dist. No. 11AP-518, 2012-Ohio-4409, ¶ 31, citing *Mitchell v. Lawson Milk Co.*, 40 Ohio St.3d 190, 192 (1988).

{¶ 15} R.C. 2731.04 provides that an “[a]pplication for the writ of mandamus must be \* \* \* in the name of the state on the relation of the person applying.” Although the failure to name the State of Ohio on the relation in a petition is grounds for dismissal, see *Blankenship v. Blackwell*, 103 Ohio St.3d 567, 2004-Ohio-5596, ¶ 35-36, a relator may seek leave to amend the complaint to comply with R.C. 2731.04. *Id.*

{¶ 16} In the present case, relator is seeking a writ of mandamus ordering respondent to reinstate his petition for writ of mandamus that he filed in the Franklin County Court of Common Pleas because respondent prematurely dismissed the petition. Respondent dismissed the petition based upon relator's failure to bring the action in the name of the state on the relation of relator and verify the petition by affidavit, in violation of R.C. 2731.04.

{¶ 17} However, even after presuming all factual allegations contained in relator's petition are true and making all reasonable inferences in favor of relator, relator cannot show a clear legal right to have his petition reinstated or a clear legal duty on the part of

the respondent to reinstate his petition. Relator's complaint filed in 23CV-762 does not comply with the requirement in R.C. 2731.04 that an application for writ of mandamus must be brought in the name of the state on the relation of the person applying. Relator's petition does not contain a case caption but merely indicates his name and address, a date, a criminal case number, and that it is a petition for extraordinary writ of mandamus. The petition was not brought in the name of the state on the relation of relator. Furthermore, relator's petition filed in the common pleas court was not verified by affidavit, in contravention of R.C. 2731.04. Therefore, it was proper for respondent to dismiss the petition, and relator cannot show a clear legal right to have his petition reinstated or a clear legal duty on the part of the respondent to reinstate his petition.

{¶ 18} The magistrate also notes that relator's present petition for writ of mandamus filed in this court contains the same defect that provided the common pleas court grounds for dismissal in 23CV-762; that is, relator has failed to bring his present petition in the name of the state on the relation of relator. Relator has also not sought leave to amend his complaint to name the state on the relation of relator. Therefore, if not on the merits, relator's present petition would also be subject to dismissal on this ground.

{¶ 19} Accordingly, it is the magistrate's decision that this court should grant respondent's motion to dismiss relator's petition for writ of mandamus.

/S/ MAGISTRATE  
THOMAS W. SCHOLL III

### **NOTICE TO THE PARTIES**

Civ.R. 53(D)(3)(a)(iii) provides that a party shall not assign as error on appeal the court's adoption of any factual finding or legal conclusion, whether or not specifically designated as a finding of fact or conclusion of law under Civ.R. 53(D)(3)(a)(ii), unless the party timely and specifically objects to that factual finding or legal conclusion as required by Civ.R. 53(D)(3)(b). A party may file written objections to the magistrate's decision within fourteen days of the filing of the decision.