

COURT OF APPEALS  
RICHLAND COUNTY, OHIO  
FIFTH APPELLATE DISTRICT

MARSHALL SLOAN,	:	JUDGES:
	:	Hon. Patricia A. Delaney, P.J.
Plaintiff - Appellant	:	Hon. William B. Hoffman, J.
	:	Hon. Craig R. Baldwin, J.
-vs-	:	
	:	
OHIO DEPARTMENT OF	:	Case No. 2024 CA 0024
REHABILITATION AND	:	
CORRECTION, et al.,	:	
	:	
Defendant - Appellees	:	<u>OPINION</u>

CHARACTER OF PROCEEDING: Appeal from the Richland County Court of Common Pleas, Case No. 24-CV-20N

JUDGMENT: Affirmed

DATE OF JUDGMENT: October 11, 2024

APPEARANCES:

For Plaintiff-Appellant

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*Baldwin, J.*

{¶1} The appellant appeals the trial court's May 2, 2024, Judgment Entry Denying Writ of Mandamus. Appellees are the Ohio Department of Rehabilitation and Correction, Ohio Parole Board/Adult Parole Authority, and Mrs. E. Shepherd of the Bureau of Classification (hereinafter "appellees.")

### **STATEMENT OF THE FACTS AND THE CASE**

{¶2} The appellant, who was incarcerated in 2014 and is currently in the custody of the Ohio Department of Rehabilitation and Correction ("ODRC") and housed at the Richland Correctional Institution, filed a complaint for writ of mandamus on January 16, 2024, against the appellees. The appellant alleges that the appellees owe him a duty to be transferred to another prison and enrolled in a welding program, and sought an order from the trial court compelling them to do so. While the appellant submitted an affidavit with his complaint regarding his inmate account, he failed to file an affidavit verifying his petition for writ of mandamus.

{¶3} The relief sought by the appellant can be summarized as follows: (1) that the trial court issue an order that he be placed in the vocational welding education program; (2) that appellee ODRC submit a written re-entry plan for the appellant; (3) that appellee Ohio Parole Board submit an Ohio Risk Assessment Tool to determine his rehabilitative needs; (4) that appellee ODRC provide the appellant with access to all required programming; and, (5) that all prison programs be made available to sex offenders. The appellees were served with a copy of the appellant's complaint, and the trial court set the matter for a non-oral hearing on April 15, 2024. Hearing notices were sent to all parties.

{¶4} The appellees did not file an answer, and the appellant filed a motion for default judgment on March 25, 2024. However, he failed to serve the appellees with a copy of the motion. On April 25, 2024, the appellees filed a motion for leave to file a response instanter, to which they attached a proposed motion to dismiss in which they argued that, while the appellant did provide six months of detailed account activity in the cashier's statements as required under RC. § 2969.25, he failed to provide account information for the correct six-month period.

{¶5} On May 2, 2024, the trial court issued a Judgment Entry in which it rejected this argument. It did, however, find that the appellant's financial statement lacked the requisite certification by the institutional cashier. The trial court further found that the appellant's failure to file an affidavit verifying his petition for writ of mandamus, in and of itself, provides the basis for dismissal of his complaint.

{¶6} However, the trial court further analyzed the appellant's complaint, sua sponte, to determine whether it stated a claim upon which the requested relief could be granted. The court considered the allegations in the appellant's complaint on their face, and held that the request for a writ of mandamus must be denied because the appellant was not entitled to the relief requested; that is, none of the statutes cited by the appellant created a duty on the part of the appellees to provide the requested relief, and as such the appellant had no clear legal right to the relief sought in the complaint for writ of mandamus. The trial court held that the appellant had failed to state a claim upon which relief could be granted and dismissed his complaint accordingly.

{¶7} The appellant filed a timely appeal in which he sets forth the following four assignments of error:

{¶8} “I. THE COURT ERRED AS A MATTER OF LAW WHEN IT RULED THAT PLAINTIFF-APPELLANT FAILED TO STATE A CLAIM WHICH WOULD ENTITLE PLAINTIFF-APPELLANT TO THE RELIEF REQUESTED. JUDGEMENT ENTRY PG. 4,5,6,7.”

{¶9} “II. THE COURT ERRED AS A MATTER OF LAW WHEN IT RULED THAT PLAINTIFF-APPELLANT'S FAILURE TO VERIFY BY AFFIDAVIT THE PETITION FOR WRIT OF MANDAMUS WARRANTS DISMISSAL. JUDGEMENT ENTRY PG. 3, 4.”

{¶10} “III. THE COURT ERRED AS A MATTER OF LAW WHEN IT RULED THAT PLAINTIFF-APPELLANT'S INMATE ACCOUNT STATEMENT WAS INSUFFICIENT IN THAT IT LACKED A CERTIFICATION BY THE INSTITUTIONAL CASHIER AND THEREFORE PLAINTIFF-APPELLANT'S PETITION FOR WRIT OF MANDAMUS WAS SUBJECT TO DISMISSAL. JUDGEMENT ENTRY PG. 3.”

{¶11} “IV. THE COURT ERRED AS A MATTER OF LAW WHEN IT OVERRULED PLAINTIFF-APPELLANT'S MOTION FOR DEFAULT JUDGMENT ON THE GROUNDS THAT DEFAULT MOTION WAS NOT PROPERLY FILED AND SERVED ON DEFENDANT-APPELLEE. JUDGEMENT ENTRY PG. 2, 4, 8.”

#### **ASSIGNMENT OF ERROR NUMBER 1**

{¶12} The appellant argues in his first assignment of error that the trial court erred when it found that his complaint for writ of mandamus failed to state a claim upon which relief can be granted. We disagree.

### Standard Of Review

{¶13} The Ohio Supreme Court discussed dismissal of complaints for writ of mandamus pursuant to Civ.R. 12(B)(6), as well as the standard of review for mandamus actions, in *State ex rel. Sands v. Culotta*, 2019-Ohio-3784, stating:

A court can dismiss a mandamus action under Civ.R. 12(B)(6) for failure to state a claim upon which relief can be granted “if, after all factual allegations of the complaint are presumed true and all reasonable inferences are made in the relator's favor, it appears beyond doubt that he can prove no set of facts entitling him to the requested writ of mandamus.” *State ex rel. Russell v. Thornton*, 111 Ohio St.3d 409, 2006-Ohio-5858, 856 N.E.2d 966, ¶ 9. We review dismissals under Civ.R. 12(B)(6) de novo. *State ex rel. McKinney v. Schmenk*, 152 Ohio St.3d 70, 2017-Ohio-9183, 92 N.E.3d 871, ¶ 8.

*Id.* at ¶2. “A de novo review requires an independent review of the trial court's decision without any deference to the trial court's determination....” *Deutsche Bank Natl. Tr. Co. for Ocwen Real Est. Asset Liquidating Tr. 2007-1, Asset Backed Notes, Series 2007-1 v. Mallonn*, 2018-Ohio-1363, ¶ 21 (5<sup>th</sup> Dist.).

### Analysis

{¶14} While the appellees attached a proposed motion to dismiss to their motion for leave to file response instanter, in which they argued that the appellant's complaint for writ of mandamus should be denied based upon his alleged failure to comply with R.C. 2969.25 and attach a certified copy of the institutional cashier's statement setting forth the balance in his inmate account for each for the six months preceding the filing of his

complaint, the trial court denied the motion for leave, and therefore did not rule against the appellant based upon that argument. Instead, the trial court conducted a sua sponte Civ.R. 12(B)(6) review of the allegations contained in the complaint, and determined that the appellant failed to state a claim upon which relief could be granted, which is permissible. As set forth by the Ohio Supreme Court in *State ex rel. Kreps v. Christiansen*, 88 Ohio St.3d 313, 316, 2000-Ohio-335, "... [s]ua sponte dismissal of a complaint for failure to state a claim upon which relief can be granted is appropriate if the complaint is frivolous or the claimant obviously cannot prevail on the facts alleged in the complaint. *State ex rel. Bruggeman v. Ingraham* (1999), 87 Ohio St.3d 230, 231, 718 N.E.2d 1285, 1287."

{¶15} Appellate review of writs of mandamus was recently discussed by this Court in the case of *State ex rel. Phelps v. Hall*, 2024-Ohio-4546 (5<sup>th</sup> Dist.):

Mandamus is an extraordinary remedy only granted with caution and when the right is clear. *State ex rel. Mobley v. O'Donnell*, 2020-Ohio-251, 2020 WL 430569, ¶ 15 (10th Dist.), quoting *PNP, Inc. v. Ohio Dept. of Job & Family Servs.*, 2013-Ohio-4344, 2013 WL 5451650, ¶ 13, (10th Dist.) citing *State ex rel. Rittner v. Bumb*, 2007-Ohio-5319, 2007 WL 2874331, ¶ 16 (6th Dist.). "A relator seeking a writ of mandamus must establish (1) a clear legal right to the requested relief, (2) a clear legal duty on the part of the respondent official or governmental unit to provide it, and (3) the lack of an adequate remedy in the ordinary course of the law." *Walsh* at ¶ 18, citing *State ex rel. Waters v. Spaeth*, 131 Ohio St.3d 55, 2012-Ohio-69, 960 N.E.2d 452, ¶ 6. "[M]andamus is available to correct an abuse of discretion

by the board in its determination concerning disability-retirement benefits.” *State ex rel. Hulls v. State Teachers Retirement Bd.*, 113 Ohio St.3d 438, 2007-Ohio-2337, 866 N.E.2d 483, ¶ 27, citing *State ex rel. Pipoly v. State Teachers Retirement Sys.*, 95 Ohio St.3d 327, 767 N.E.2d 719, ¶ 14 (2002) (“The determination by the [State Teachers Retirement System] and its retirement board [the State Teachers Retirement Board] of whether a person is entitled to disability retirement benefits is reviewable by mandamus because R.C. § 3307.62 does not provide any appeal from the administrative determination.”).

In a mandamus case, petitioner holds the burden to demonstrate, by clear and convincing evidence, that the writ be granted. *State ex rel. Doner v. Zody*, 130 Ohio St.3d 446, 2011-Ohio-6117, 958 N.E.2d 1235, ¶ 55. Accordingly, the board's decision must be supported by “some evidence.” *State ex rel. Altman-Bates v. Pub. Emps. Retirement Bd.*, 148 Ohio St.3d 21, 2016-Ohio-3100, 68 N.E.3d 747, ¶ 22, citing *State ex rel. Nese v. State Teachers Retirement Bd. of Ohio*, 136 Ohio St.3d 103, 2013-Ohio-1777, 991 N.E.2d 218, ¶ 26-27. “A clear legal right to the requested relief in mandamus exists ‘where the board abuses its discretion by entering an order which is not supported by “some evidence.” ’ ” *State ex rel. Marmaduke v. Ohio Police & Fire Pension Fund*, 2015-Ohio-2491, 2015 WL 3857080, ¶ 8 (10th Dist.), quoting *Kinsey v. Bd. of Trustees of the Police & Firemen's Disability & Pension Fund of Ohio*, 49 Ohio St.3d 224, 225, 551 N.E.2d 989 (1990).

*Id.* at ¶¶ 25-26. The appellant's complaint fails to overcome the first prong of the mandamus analysis, as he is not entitled to the relief sought in his complaint.

{¶16} The appellant argues that R.C. 5120.16 imposes a duty upon appellee ODRC to provide him with training until he is released from custody. This is incorrect. R.C. 5120.16(A) provides for the examination, observation, and classification of inmates, and the assignment and transfer to institutions, and states in pertinent part:

When the examination, observation, and classification of the person have been completed by the facility and a written report of the examination, observation, and classification is filed with the commitment papers, the director or the director's designee, subject to division (B) of this section, shall assign the person to a suitable state institution or place maintained by the state within the director's department or shall designate that the person is to be housed in a county, multicounty, municipal, municipal-county, or multicounty-municipal jail or workhouse, if authorized by section 5120.161 of the Revised Code, there to be confined, cared for, treated, trained, and rehabilitated until paroled, released in accordance with section 2929.20, 2967.26, 2967.28, or 5120.036 of the Revised Code, or otherwise released under the order of the court that imposed the person's sentence. No person committed by a probate court, a trial court pursuant to section 2945.40, 2945.401, or 2945.402 of the Revised Code subsequent to a finding of not guilty by reason of insanity, or a juvenile court shall be assigned to a state correctional institution.



If a person is sentenced, committed, or assigned for the commission of a felony to any one of the institutions or places maintained by the department or to a county, multicounty, municipal, municipal-county, or multicounty-municipal jail or workhouse, the department, by order duly recorded and subject to division (B) of this section, may transfer the person to any other institution, or, if authorized by section 5120.161 of the Revised Code, to a county, multicounty, municipal, municipal-county, or multicounty-municipal jail or workhouse.

The Ohio Supreme Court has held that statutes regarding the ODRC and State correctional institutions do not confer clear legal rights to inmates:

Prison regulations . . . are primarily designed to guide correctional officials in prison administration rather than to confer rights on inmates. *Sandin*, 515 U.S. at 481-482, 115 S.Ct. at 2299, 132 L.Ed.2d at 428.

*State ex rel. Larkins v. Wilkinson*, 1997-Ohio-139, 79 Ohio St. 3d 477, 479.

{¶17} Furthermore, as the trial court correctly observed, the statutes cited by the appellant do not impose a legal duty to provide the appellant with the specific training and/or education of his choice. Indeed, the statutes do not require that the appellees provide any specific training. Rather, R.C. 5120.16 states that the director “shall assign the person to a suitable state institution or place maintained by the state within the director’s department . . . to be confined, cared for, treated, trained, and rehabilitated until paroled.” The statute creates a general duty on the part of the ODRC, but it does not confer upon inmates the legal right to require the ODRC to perform this duty, and certainly not in the specific manner desired by an inmate.

**{¶18}** In addition, the appellant's request that the trial court compel the appellees to submit a written reentry plan for him was also properly dismissed. While R.C. 5120.113(A) states that the department shall prepare a re-entry plan for inmates, subsection (D) states that "[i]n the event the department does not prepare a written reentry plan as specified in division (A) of this section, or makes a decision to not prepare a written reentry plan under division (B) of this section or to not collect information under division (C) of this section, that fact does not give rise to a claim for damages against the state, the department, the director of the department, or any employee of the department." Thus, the statute does not provide inmates with any legal right to recovery in the event a reentry plan is not prepared.

**{¶19}** Further, the appellant's argument that R.C. 5120.114 mandates the Ohio Parole Board to utilize the Ohio Risk Assessment Tool to determine his rehabilitative needs was also properly dismissed. The trial court correctly noted that the statute requires the ODRC to select a single validated risk assessment tool for adult offenders, and the ODRC has complied with the statute through its selection of ORAS, an assessment tool created by the University of Cincinnati Center for Criminal Justice Research. See, O.A.C. 5120-13-01(B) ("[t]he department of rehabilitation and correction hereby selects the Ohio risk assessment system (ORAS) created by the university of Cincinnati's [sic] center for criminal justice research as the single validated risk assessment tool to be used for the purposes described in paragraph (A) of this rule. ORAS shall remain the risk assessment tool identified by the department pursuant to section 5120.114 of the Revised Code until such time as the department amends this rule to identify a different tool.") The appellant argues that no assessment had been done, but also alleges that he was not assigned

programming because his ORAS score was low. Clearly an ORAS assessment was conducted in compliance with Ohio law. Accordingly, the appellant's request that the trial court compel the ODRC to utilize the Ohio Risk Assessment Tool to determine his needs fails to state a claim upon which relief can be granted, and the trial court properly dismissed his complaint for writ of mandamus.

{¶20} Finally, the appellant's complaint sought an order compelling the ODRC to provide him access to all the programming that he desires, and to mandate that all programming offered be offered to sex offenders. However, as set forth above, programming and classes offered by the appellees, and the placement of inmates within those programs, is within the sound discretion of the ODRC, and is not controlled by mandamus.

{¶21} The trial court did not err when it determined that the appellant's complaint failed to state a claim upon which his requested writ of mandamus could be granted, and as such properly dismissed the appellant's complaint. The appellant's assignment of error number one is overruled.

#### **ASSIGNMENTS OF ERROR NUMBERS TWO, THREE AND FOUR**

{¶22} Based upon our finding that the trial court correctly dismissed the appellant's complaint for writ of mandamus for failure to state a claim upon which relief can be granted, we find that appellant's assignments of error numbers two through four are moot, and are therefore overruled.

**CONCLUSION**

{¶23} Based upon the foregoing, we find the appellant's assignments of error to be without merit, and hereby affirm the decision of the Richland County Court of Common Pleas.

By: Baldwin, J.

Delaney, P.J. and

Hoffman, J. concur.