

COURT OF APPEALS OF OHIO

**EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA**

STATE EX REL., ANTHONY FORD, :

Relator, :

No. 108692

V. :

STATE OF OHIO, :

Respondent. :

JOURNAL ENTRY AND OPINION

JUDGMENT: WRIT DENIED

DATED: August 20, 2019

Writ of Mandamus
Motion No. 529989
Order No. 530909

Appearances:

Anthony Ford, *pro se*.

Michael C. O'Malley, Cuyahoga County Prosecuting Attorney, and James E. Moss, Assistant Prosecuting Attorney, *for respondent*.

KATHLEEN ANN KEOUGH, J.:

{¶ 1} Relator, Anthony Ford, seeks a writ of mandamus requiring respondent, the state of Ohio, Cuyahoga County, to rule on a motion filed in a criminal case, *State v. Ford*, Cuyahoga C.P. No. CR-07-503478-A. The complaint

fails to comply with necessary procedural requirements and is moot. Therefore, respondent's motion for summary judgment is granted and the request for writ is denied.

I. Procedural and Factual History

{¶ 2} On June 18, 2019, Ford filed a complaint for a writ of mandamus. There, Ford alleged that he filed a motion on March 16, 2019, in the underlying criminal action.¹ He further asserts that no ruling on the motion has been entered by the trial court judge. On July 8, 2019, respondent filed a motion for summary judgment. There, it asserted that Ford failed to comply with procedural requirements in R.C. 2969.25 and Civ.R. 10, and that the action was moot because the requested relief had already been obtained. Ford responded to the motion for summary judgment, acknowledging that a ruling on his motion had been issued, but asserting that the ruling was not properly served on him.

II. Law and Analysis

A. Standard for Mandamus

{¶ 3} A writ of mandamus is appropriate where the relator demonstrates a clear legal right to relief, an official has a clear legal duty to provide that relief, and the applicant has no adequate remedy at law. *State ex rel. Taxpayers for Westerville Schools v. Franklin Cty. Bd. of Elections*, 133 Ohio St.3d 153, 2012-Ohio-4267, 976 N.E.2d 890, ¶ 12. A writ of “procedendo and mandamus will lie when a trial court

¹ A review of the docket from this case indicates that the motion was filed on April 16, 2019.

has refused to render, or unduly delayed rendering, a judgment.” *State ex rel. Culgan v. Collier*, 135 Ohio St.3d 436, 2013-Ohio-1762, 988 N.E.2d 564, ¶ 10, quoting *State ex rel. Reynolds v. Basinger*, 99 Ohio St.3d 303, 2003-Ohio-3631, 791 N.E.2d 459, ¶ 5.

{¶ 4} The case is before this court on respondent’s motion for summary judgment. Summary judgment is appropriate, pursuant to Civ.R. 56, when this court determines that there is no genuine issue as to any material fact, and after construing all evidence in favor of the nonmoving party, the moving party is entitled to judgment as a matter of law. Civ.R. 56(C); *Dresher v. Burt*, 75 Ohio St.3d 280, 662 N.E.2d 264 (1996).

B. Procedural Requirements

{¶ 5} Ford filed his complaint without satisfying several procedural requirements. First, R.C. 2969.25(A) requires that any action initiated by an inmate housed in a correctional institution against a government agency or official be accompanied by an affidavit describing all the civil actions or appeals from civil actions filed by the individual within the previous five years. Ford has failed to include such an affidavit. This is sufficient grounds to deny the requested relief. *State ex rel. Dixon v. Bowerman*, 156 Ohio St.3d 317, 2019-Ohio-716, 126 N.E.3d 1086, ¶ 5.

{¶ 6} Next, R.C. 2969.25(C) requires a prison inmate who wishes to waive the costs associated with filing an action to supply an affidavit of indigence along with a statement from the institutional cashier documenting the inmate’s account

for the previous six months. Ford did not file this required affidavit and did not pay the filing fee required. Therefore, this is sufficient grounds to dismiss the complaint and impose costs. *State ex rel. Powe v. Lanzinger*, 156 Ohio St.3d 358, 2019-Ohio-954, 126 N.E.3d 1127, ¶ 5.

{¶ 7} Further, Ford has failed to name a proper respondent. Ford named the state of Ohio and Cuyahoga County as the respondent or respondents in the caption of the complaint. Those entities have no duty to rule on Ford's motion filed in a criminal case. The judge presiding over that case is not a party to this action. Civ.R. 10(A) requires that a complaint include the proper names and addresses of all the parties in the case caption. These procedural irregularities are sufficient grounds to dismiss the action. *Greene v. Turner*, 151 Ohio St.3d 513, 2017-Ohio-8305, 90 N.E.3d 901, ¶ 5, 8.

C. Mootness

{¶ 8} Finally, the complaint in this case is moot. A claim becomes moot in this context when a ruling on the underlying motion has been issued. The action for mandamus becomes moot because a writ "will not issue to compel the performance of a duty that has already been performed." *State ex rel. Bortoli v. Dinkelacker*, 105 Ohio St.3d 133, 2005-Ohio-779, 823 N.E.2d 448, ¶ 3. Respondent attached a certified copy of a journal entry in the underlying case demonstrating that Ford's motion was denied. Therefore, Ford has received the relief he has requested in this action.

{¶ 9} For all these reasons, respondent's motion for summary judgment is granted and Ford's request for writ of mandamus is denied. The clerk is directed to serve on the parties notice of this judgment and its date of entry upon the journal. Civ.R. 58(B). Relator to pay costs. Costs waived.

{¶ 10} Writ denied.

KATHLEEN ANN KEOUGH, JUDGE

SEAN C. GALLAGHER, P.J., and
ANITA LASTER MAYS, J., CONCUR