

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio ex rel.	:	
Donald Moore,	:	
	:	
Relator,	:	No. 13AP-61
	:	
v.	:	(REGULAR CALENDAR)
	:	
[Franklin County Court of Common Pleas],	:	
	:	
Respondent.	:	

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D E C I S I O N

Rendered on June 13, 2013

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*Donald Moore, pro se.*

*Ron O'Brien, Prosecuting Attorney, and Jeffrey C. Rogers,  
for respondent.*

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IN MANDAMUS

BROWN, J.

{¶ 1} Relator, Donald Moore, an inmate at the London Correctional Institution ("LCI"), has filed this original action requesting that this court issue a writ of mandamus against respondent, Franklin County Court of Common Pleas. Respondent has filed a motion to dismiss.

{¶ 2} This matter was referred to a magistrate of this court, pursuant to Civ.R. 53(C) and Loc.R. 13(M) of the Tenth District Court of Appeals. The magistrate issued the attached decision, including findings of fact and conclusions of law, and recommended that we grant respondent's motion to dismiss. No objections have been filed to that decision.

{¶ 3} As there have been no objections filed to the magistrate's decision, and it contains no error of law or other defect on its face, based on an independent review of the file, this court adopts the magistrate's decision. Respondent's motion to dismiss is granted.

*Motion to dismiss granted;  
action dismissed.*

DORRIAN and O'GRADY, JJ., concur.

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**APPENDIX**

**IN THE COURT OF APPEALS OF OHIO**

**TENTH APPELLATE DISTRICT**

State of Ohio ex rel.	:	
Donald Moore,	:	
	:	
Relator,	:	No. 13AP-61
	:	
v.	:	(REGULAR CALENDAR)
	:	
[Franklin County Court of Common Pleas],	:	
	:	
Respondent.	:	

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**MAGISTRATE'S DECISION**

Rendered on March 26, 2013

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*Donald Moore, pro se.*

*Ron O'Brien, Prosecuting Attorney, and Jeffrey C. Rogers,  
for respondent.*

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**IN MANDAMUS  
ON RESPONDENT'S MOTION TO DISMISS**

{¶ 4} In this original action, relator, Donald Moore, an inmate of the London Correctional Institution ("LCI"), requests that a writ of mandamus issue against the Franklin County Court of Common Pleas, the only named respondent in the complaint.

**Findings of Fact:**

{¶ 5} 1. On January 23, 2013, relator, an LCI inmate, filed this original action naming as the sole respondent the Franklin County Court of Common Pleas. Relator

requests that this court issue a writ ordering respondent to rule on his motion for post-conviction relief.

{¶ 6} 2. On February 19, 2013, respondent moved for dismissal of this action.

{¶ 7} 3. On February 20, 2013, the magistrate issued an order that relator shall file his written response or brief in opposition no later than March 8, 2013. Relator has failed to respond to the motion to dismiss.

Conclusions of Law:

{¶ 8} It is the magistrate's decision that this court grant respondent's motion to dismiss for the reasons more fully explained below.

{¶ 9} A court is not sui juris. *Malone v. Court of Common Pleas*, 45 Ohio St.2d 245, 248 (1976). " 'Absent express statutory authority, a court can neither sue or be sued in its own right.' " *Id.*, quoting *State ex rel. Cleveland Mun. Court v. Cleveland City Council*, 34 Ohio St.2d 120, 121 (1973).

{¶ 10} Here, relator brought this action against the Franklin County Court of Common Pleas, the sole named respondent in this action. Because relator failed to name a proper party as respondent, this action must be dismissed. *State ex rel. Conley v. Stark Cty. Court of Common Pleas*, 5th Dist. No. 2007CA00253, 2007-Ohio-5253; *State ex rel. Smith v. Perry Cty. Court of Common Pleas*, 5th Dist. No. 08-CA-6, 2008-Ohio-5676.

{¶ 11} Accordingly, it is the magistrate's decision that this court grant respondent's motion to dismiss filed February 19, 2013.

/S/ MAGISTRATE  
KENNETH W. MACKE

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).