

**IN THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
TRUMBULL COUNTY, OHIO**

STATE ex rel. DARNELL D. HILL,	:	PER CURIAM OPINION
Relator,	:	
- vs -	:	CASE NO. 2012-T-0046
ANDREW W. LOGAN, JUDGE,	:	
Respondent.	:	

Original Action for Writ of Mandamus.

Judgment: Petition dismissed.

Darnell D. Hill, pro se, PID: A203-099, Trumbull Correctional Institution, P.O. Box 901, Leavittsburg, OH 44430-0901 (Relator).

Dennis Watkins, Trumbull County Prosecutor, and *LuWayne Annos*, Assistant Prosecutor, Fourth Floor, 160 High Street, N.W., Warren, OH 44481-1092 (For Respondent).

PER CURIAM.

{¶1} This matter is before the court pursuant to the “request for a writ of mandamus” filed by relator, State ex rel. Darnell D. Hill, against respondent, Andrew W. Logan, Judge. For the reasons that follow, we sua sponte dismiss relator’s request.

{¶2} In his request, relator alleges that on July 22, 2010, he filed a petition for a writ of habeas corpus in respondent’s court. While relator’s request is far from clear, he appears to be alleging that because he filed a motion for judgment on the pleadings with

respect to his habeas-corpus action in respondent's court on August 30, 2010, respondent was required to rule on his habeas-corpus action by February 28, 2011. Relator alleges that because respondent has not ruled on his petition for a writ of habeas corpus, he is entitled to a writ of mandamus ordering respondent to rule on his habeas-corpus action. Relator's "request" represents his second request for an extraordinary writ filed in this court due to respondent's alleged failure to rule on his petition for a writ of habeas corpus. This court dismissed relator's first such request in *Hill v. Kelly, Warden*, 11th Dist. No. 2011-T-0094, 2011-Ohio-6341 ("*Hill I*"). In the instant action, relator once again requests an extraordinary writ to compel respondent to rule on his habeas-corpus petition.

{¶3} Initially, we note that a court may sua sponte dismiss an application for an extraordinary writ when it is improperly captioned. *Id.* at ¶4, citing *Turner v. State*, 8th Dist. No. 94292, 2010-Ohio-683, ¶2. "Further, sua 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." *Id.*, citing *State ex rel. Thompson v. Spon*, 83 Ohio St.3d 551, 553 (1998).

{¶4} Relator's request for a writ of mandamus must be dismissed because it is improperly captioned. Pursuant to R.C. 2731.04, "[a]pplication for the writ of mandamus must be by petition, in the name of the state on the relation of the person applying, and verified by affidavit."

{¶5} First, a request for a writ must be commenced by petition. *Hill, supra*, at ¶6, citing *Myles v. Wyatt*, 62 Ohio St.3d 191 (1991). A request for a writ that is not made by way of a petition must be dismissed pursuant to Civ.R. 12(B)(6). *Hill, supra*.

Here, because relator presented his application for a writ of mandamus by way of a request rather than by way of a petition, his request must be dismissed. *Id.*

{¶6} Second, pursuant to Civ.R. 10(A), the caption of a complaint must include the addresses of the parties. *Hill, supra*, at ¶8. Here, relator has failed to include the addresses of the parties in the caption of his request. For this additional reason, his application must be dismissed. *Id.*

{¶7} Further, relator's application is procedurally defective because he has failed to comply with the affidavit requirement of R.C. 2969.25. Pursuant to this statute, relator was required to attach to his request for a writ of mandamus an affidavit that describes each civil action or appeal filed by him within the previous five years in any state or federal court. Relator has failed to comply with this requirement since he has not filed such an affidavit. The Supreme Court of Ohio has stated that the requirements of R.C. 2969.25 are mandatory, and failure to comply with them subjects an inmate's action to dismissal. *State ex rel. Manns v. Henson*, 119 Ohio St.3d 348, 2008-Ohio-4478, ¶4. Relator's failure to comply fully with the requirements of R.C. 2969.25 when he filed his request for a writ of mandamus subjects it to dismissal. *Manns, supra*.

{¶8} Accordingly, we sua sponte dismiss relator's request for a writ of mandamus.

DIANE V. GRENDELL, J., CYNTHIA WESTCOTT RICE, J., MARY JANE TRAPP, J.,
concur.