

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

Todd D. Cousino

Court of Appeals No. L-06-1368

Petitioner

v.

State of Ohio

DECISION AND JUDGMENT ENTRY

Respondent

Decided: May 1, 2007

* * * * *

Todd D. Cousino, pro se.

* * * * *

SKOW, J.

{¶ 1} Petitioner, Todd D. Cousino, filed a "Writ of Mandate" requesting that this court "compel the Common Pleas Court, Lucas County, to 'grant' jail time credits owed petitioner." We will construe this filing as a complaint for writ of mandamus.

{¶ 2} The failure to properly caption a complaint for writ of mandamus requires dismissal. *Maloney v. Court of Common Pleas of Allen Cty.* (1962), 173 Ohio St. 226, 227. The civil rules, to the extent that they are applicable, govern mandamus actions.

State ex rel. Cosmos Broadcasting Corp. v. Brown (1984), 14 Ohio App.3d 376, 378; see, also, 6th Dist.Loc.App.R. 6. Civ.R. 10 specifies:

{¶ 3} "(A) Caption; names of parties. Every pleading shall contain a caption setting forth the name of the court, the title of the action, the case number, and a designation as in Rule 7(A). In the complaint the title of the action shall include the names and addresses of all the parties, but in other pleadings it is sufficient to state the name of the first party on each side with an appropriate indication of other parties."

{¶ 4} In addition, a failure to bring a mandamus action in the name of the state on the relation of the person requesting the writ as required by R.C. 2731.04 is sufficient grounds to deny the application for the writ. See *State ex rel. Huntington Ins. Agency v. Duryee* (1995), 73 Ohio St.3d 530, 532-533.

{¶ 5} Moreover, R.C. 2969.25 requires an incarcerated offender to attach to the complaint for a writ of mandamus an affidavit that describes each civil action or appeal filed within the previous five years in any state or federal court. Failure to comply with R.C. 2969.25 also warrants the dismissal of the complaint for a writ of mandamus. See *State ex rel. Zanders v. Ohio Parole Bd.* (1998), 82 Ohio St.3d 421; *State ex rel. Alford v. Winters* (1997), 80 Ohio St.3d 285.

{¶ 6} In this case, the caption on the document filed by petitioner does not comply with R.C. 2731.04 or Civ.R. 10. Although the body of the complaint includes a request for a mandamus order to be issued against the Lucas County Court of Common Pleas, the caption does not list the court or any judge of the court as the respondent to the

petition for a writ of mandamus and fails to designate any addresses for service. The caption also fails to bring the action in the name of the state on relation of the person bringing the action. In addition, Cousino has failed to attach an affidavit as required by R.C. 2969.25. Therefore, petitioner's "Writ of Mandate" is defective on its face.

{¶ 7} Accordingly, the petitioner's "Writ of Mandate" is denied and is dismissed at petitioner's costs.

PETITION DISMISSED.

Peter M. Handwork, J.

Arlene Singer, J.

William J. Skow, J.
CONCUR.

JUDGE

JUDGE

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at: http://www.sconet.state.oh.us/rod/newpdf/?source=6.
