

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

Juan Rivera

Court of Appeals No. L-13-1008

Relator

v.

Judge Dean Mandros

DECISION AND JUDGMENT

Respondent

Decided: March 6, 2013

* * * * *

Juan Rivera, pro se.

Julia R. Bates, Lucas County Prosecuting Attorney, and
John A. Borell, Assistant Prosecuting Attorney, for respondent.

* * * * *

OSOWIK, J.

{¶ 1} On January 22, 2013, relator, Juan Rivera, filed a petition for a writ of mandamus and/or procedendo against respondent, Judge Dean Mandros of the Lucas County Court of Common Pleas, in which relator asked this court to issue a writ ordering respondent to rule on a “Motion to Correct the Record” filed by relator, pro se, in

criminal case No. CR-05-2482, on February 29, 2012. A memorandum in opposition was filed by the Lucas County prosecutor on March 5, 2012. On February 8, 2013, this court issued an alternative writ, in which we ordered respondent to either “do the act requested by relator in the petition or show cause why he is not required to do so by filing an answer to relator’s petition pursuant to Civ.R. 8(B), or a motion to dismiss relator’s petition pursuant to Civ.R. 12.”

{¶ 2} On February 22, 2013, respondent filed a motion to dismiss in which he asks this court to dismiss relator’s petition because: (1) relator did not properly caption his mandamus petition, (2) relator did not comply with the mandatory requirements of R.C. 2969.25, and (3) respondent does not have jurisdiction to rule on relator’s motion because the issue raised therein is the subject of an appeal which is currently pending before this court. We will address each of respondent’s arguments separately.

{¶ 3} First, 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.” If a petition is not brought in the name of the state, the respondent may seek to have the petition dismissed on that basis. *Rust v. Lucas Co. Bd. of Elections*, 108 Ohio St.3d 139, 142, 2005-Ohio-5795, 841 N.E.2d 766. In this case, relator did not bring his mandamus action in the name of the state of Ohio. Accordingly, the mandamus action is subject to dismissal on that basis.

{¶ 4} Second, if the relator in an action in mandamus or procedendo is acting pro se and is also incarcerated, he or she must follow the requirements of R.C. 2969.25, which states:

A) At the time that an inmate commences a civil action or appeal against a government entity or employee, the inmate shall file with the court an affidavit that contains a description of each civil action or appeal of a civil action that the inmate has filed in the previous five years in any state or federal court. The affidavit shall include all of the following for each of those civil actions or appeals:

- (1) A brief description of the nature of the civil action or appeal;
- (2) The case name, case number, and the court in which the civil action or appeal was brought;
- (3) The name of each party to the civil action or appeal;
- (4) The outcome of the civil action or appeal, including whether the court dismissed the civil action or appeal as frivolous or malicious under state or federal law or rule of court, whether the court made an award against the inmate or the inmate's counsel of record for frivolous conduct under section 2323.51 of the Revised Code, another statute, or a rule of court, and, if the court so dismissed the action or appeal or made an award of that nature, the date of the final order affirming the dismissal or award.

* * *

{¶ 5} A review of the record shows that relator did not file an affidavit in compliance with R.C. 2969.25 along with his petition. Accordingly, relator has failed to comply with the mandatory requirements of R.C. 2969.25, and the petition is subject to dismissal on that basis. *See State ex rel. Zanders v. Ohio Parole Bd.*, 82 Ohio St.3d 421, 696 N.E.2d 594 (1998).

{¶ 6} On consideration of the foregoing, we find that relator has failed to comply with the mandatory requirements of R.C. 2731.04 and 2969.25. We need not address respondent's argument regarding jurisdiction as it is premature at this time.

{¶ 7} Relator's petition for a writ of mandamus and/or procedendo is dismissed. Court costs of these proceedings are assessed to relator.

{¶ 8} To the clerk: Manner of service.

{¶ 9} The clerk of court, whom the court hereby specially authorizes to perfect service in this case, shall serve upon all parties, within three days, a copy of this alternative writ in a manner prescribed by Civ.R. 5(B).

{¶ 10} It is so ordered.

Writ denied.

Mark L. Pietrykowski, J.

JUDGE

Arlene Singer, P.J.

JUDGE

Thomas J. Osowik, J.
CONCUR.

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:
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