

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

Michael Nestor, et al.

Court of Appeals No. E-14-092

Petitioner (Relator)

v.

Hon. Tygh Tone

DECISION AND JUDGMENT

Respondent

Decided: July 10, 2014

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Christian M. Bates, for petitioner.

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SINGER, J.

{¶ 1} This matter is before the court upon the complaint of relator, Michael Nestor, for a writ of procedendo to compel the Hon. Tygh Tone to rule on pending motions and set a trial date in a pending action, *Hanko v. Nestor*, Erie County Common Pleas case No. 2001 CV 0304.

{¶ 2} A complaint for a writ of procedendo can be dismissed sua sponte if it is improperly captioned. *Hill v. Kelly*, 11th Dist. Trumbull No. 2011-T-0094, 2011-Ohio-6341, ¶ 5, or fails to include the addresses of the parties. *Simmons v. Saffold*, 8th Dist. Cuyahoga No. 94619, 2010-Ohio-918, ¶ 3.

{¶ 3} An action for a writ of procedendo must be made by petition, in the name of the state on the relation of the person applying. *Kimble v. McKay*, 11th Dist. Trumbull No. 2012-T-0033, 2012-Ohio-2707, ¶ 7. The petition caption must also contain the addresses of all the parties. Civ.R. 10(A). Relator's petition fails to comply with both of these requirements. Therefore, we hereby order the sua sponte dismissal of relator's petition for a writ of procedendo. Relator is ordered to pay the court costs incurred.

{¶ 4} Pursuant to Civ.R. 58(B), the clerk is directed to serve upon all parties, within three days, a copy of this decision in a manner prescribed by Civ.R. 5(B).

Writ denied.

Mark L. Pietrykowski, J.

JUDGE

Arlene Singer, J.

James D. Jensen, J.

JUDGE

CONCUR.

JUDGE

<p>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.</p>
