

[Cite as *Kneeves v. McFaul*, 2003-Ohio-882.]

COURT OF APPEALS OF OHIO, EIGHTH DISTRICT

COUNTY OF CUYAHOGA

NO. 81745

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| S/O EX REL., RONALD P. KNEEVES : | : | PETITION FOR WRIT OF |
| Relator : | : | |
| | : | |
| vs. : | : | MANDAMUS |
| | : | |
| GERALD T. MCFAUL, SHERIFF : | : | |
| | : | |
| Respondent : | : | |

DATE OF JOURNALIZATION: FEBRUARY 27, 2003

JUDGMENT: Writ Dismissed.
Motion No. 343157

APPEARANCES:

For relator: RONALD P. KNEEVES, Pro Se
Inmate No. 236-866
Cuyahoga County Jail
P. O. Box 5600
Cleveland, Ohio 44101

For Respondent: WILLIAM D. MASON
Cuyahoga County Prosecutor
MICHAEL K. LYONS
Assistant County Prosecutor
8th Floor Justice Center
1200 Ontario Street

Cleveland, Ohio 44113

PATRICIA ANN BLACKMON, J.:

{¶1} On September 10, 2002, the relator, Ronald Kneeves, commenced this mandamus action against the respondent, Sheriff Gerald McFaul, to compel the sheriff to provide access to the courts and/or to provide adequate legal research materials and aid to allow detainees to file meaningful legal papers and to stop the sheriff from interfering with mail to the detainees. Specifically, Kneeves complains that on several occasions he requested the United States District Court to mail him a Title 42 United States Code Section 1983 packet and the sheriff's office returned the packets to the federal court. On November 8, 2002, the sheriff filed a motion to dismiss, which this court converted to a motion for summary judgment. Despite being granted an extension until December 30, 2002, to file a brief in opposition, Kneeves never filed a reply. For the following reasons this court grants the respondent's motion for summary judgment and denies the application for an extraordinary writ.

{¶2} First, as argued in the motion for summary judgment, Kneeves' complaint is fatally defective. He failed to support his complaint with an affidavit "specifying the details of the claim" as required by Local Rule 45(B)(1)(a). *State ex rel. Wilson v. Calabrese* (Jan. 18, 1996), Cuyahoga App. No. 70077, and *State ex rel. Smith v. McMonagle* (July 17, 1996), Cuyahoga App. No. 70899. He also failed to comply with R.C. 2969.25, which requires an affidavit that describes each civil action or appeal filed by the relator within the previous five years in any state or federal court. The relator's failure to comply with these requirement warrants dismissal of the complaint. *State ex rel. Zanders v. Ohio Parole Board*, 82 Ohio St.3d 421,

1998-Ohio-218, 696 N.E.2d 594 and *State ex rel. Alford v. Winters*, 80 Ohio St.3d 285, 1997-Ohio-117, 685 N.E.2d 1242.

{¶3} Additionally, in mandamus a relator must plead specific facts in order to withstand a motion to dismiss. *State ex rel. Iacovone v. Kaminiski* (1998), 81 Ohio St.3d 189, 690 N.E.2d 4; *State ex rel. Clark v. Lile* (1997), 80 Ohio St.3d 220, 685 N.E.2d 535; *State ex rel. Dehler v. Sutula* (1995), 74 Ohio St.3d 33, 656 N.E.2d 332; *State ex rel. Fain v. Summit County Adult Probation Department* (1995), 71 Ohio St.3d 658, 646 N.E.2d 1113; and *State ex rel. Hickman v. Capots* (1989), 45 Ohio St.3d 324, 544 N.E.2d 639 and *State ex rel. Strothers v. Murphy* (1999), 132 Ohio App.3d 645, 725 N.E.2d 1185. Kneeves has not done this for his first claim, that the sheriff deprived him of his right to access to the courts because the library facilities are not adequate. Without specification of how the library facilities are deficient, this court cannot determine whether the relator has a clear, legal right to better, adequate or necessary resources and assistance, nor can this court determine whether the sheriff has a clear, legal duty to provide better or adequate or necessary library resources.¹

¹ The requisites for mandamus are well established: (1) the relator must have a clear legal right to the requested relief, (2) the respondent must have a clear legal duty to perform the requested relief and (3) there must be no adequate remedy at law. Moreover, mandamus is an extraordinary remedy which is to be exercised with caution and only when the right is clear. It should not issue in doubtful cases. *State ex rel. Taylor v. Glasser* (1977), 50 Ohio St.2d 165, 364 N.E.2d 1; *State ex rel. Shafer v. Ohio Turnpike Commission* (1953), 159 Ohio St. 581, 113 N.E.2d 14; *State ex rel. Connole v. Cleveland Board of Education* (1993), 87 Ohio App.3d 43, 621 N.E.2d 850; and *State ex rel. Dayton-Oakwood Press v. Dissinger* (1940), 32 Ohio Law Abs. 308.

{¶4} Moreover, the sheriff has established that the second claim, the duty to not interfere with the mail so that Kneeves may receive his Section 1983 packet, is moot. The sheriff's evidence shows that Kneeves has received his Section 1983 materials from the federal court. The affidavit of the law librarian of the Cuyahoga County jail states that when Kneeves told her that he had not received his 1983 packet, she was able to provide him with the requested forms by having the federal court send and fax the forms directly to the jail library. The sheriff's motion for summary judgment also attached the requested 1983 forms. Kneeves has not opposed this point.

{¶5} In *Harless v. Willis Day Warehouse Company, Inc.* (1978), 54 Ohio St.2d 64, 375 N.E.2d 46, the Supreme Court of Ohio stated the appropriate standard for granting summary judgment: "Appositeness of rendering a summary judgment hinges upon the tripartite demonstration: (1) that there is no genuine issue as to any material fact; (2) that the moving party is entitled to judgment as a matter of law, and (3) that reasonable minds can come to but one conclusion, and that conclusion is adverse to the party against whom the motion for summary judgment is made, who is entitled to have the evidence construed most strongly in his favor." Moreover, "when a motion for summary judgment is made and supported as provided in Civil Rule 56, the nonmoving party may not rest on the mere allegations of his pleading, but his response, by affidavit or as otherwise provided in Civil Rule 56, must set forth specific facts establishing the existence of a genuine triable issue." *State ex rel. Flagner v. Arko*, 83 Ohio St.3d 176, 177, 1998-Ohio-127, 699 N.E.2d 62; and *Mootispaw v. Eckstein* (1996), 76 Ohio St.3d 383, 385, 667 N.E.2d 1197, 1199.

{¶6} The undisputed evidence before this court is that Kneeves received his requested forms and thus, has received his requested relief. The second claim is moot. This court further notes that “the function of mandamus is to compel the performance of a present existing duty as to which there is a default. It is not granted to take effect prospectively.” *State ex rel. Willis v. Sheboy* (1983), 6 Ohio St.3d 167, 168-169, 451 N.E.2d 1200, citing *State ex rel. Federal homes Properties, Inc. v. Singer* (1967), 9 Ohio St.2d 95, 96. Similarly, mandamus does not lie to compel the observance of laws generally. *State ex rel Tillimon v. Weiher*, 65 Ohio St.3d 468, 1992-Ohio-83, 605 N.E.2d 35; *State ex rel. Kuczak v. Saffold* (1993), 67 Ohio St.3d 123, 616 N.E.2d 35; and *State ex rel. Harris v. Court of Common Pleas of Cuyahoga County* (Nov. 18, 1999), Cuyahoga App. No. 76881. Thus, the complaint’s statement that the sheriff’s “tampering of mail is not limited to legal mail” does not state a claim. Again Kneeves failed to plead and support his claims properly.

{¶7} The court further notes that to the extent that Kneeves’ second claim, to stop tampering with the mail, sounds in injunction rather than mandamus, this court does not have jurisdiction. *State ex rel. Pressley v. Industrial Commission of Ohio* (1967), 11 Ohio St.2d 145, 228 N.E.2d 631 and *State ex rel. Dayton Newspapers v. Wagner* (1998), 129 Ohio App.3d 271, 717 N.E.2d 773.

{¶8} Finally, Kneeves’ failure to oppose the motion for summary judgment further confirms the appropriateness of dismissal. The evidence attached to the motion for summary judgment reveals that Kneeves repeatedly and extensively sought the use of the jail’s library resources and that the sheriff’s office endeavored to aid him to the best of its ability. Kneeves did not dispute this evidence. As noted above, this failure to dispute renders the granting of summary judgment appropriate.

{¶9} Accordingly, this court grants the sheriff's motion for summary judgment and denies the application for a writ of mandamus. Costs assessed against the relator. The clerk is directed to serve upon the parties notice of this judgment and its date of entry upon the journal. Civ.R. 58(B).

TIMOTHY E. McMONAGLE, A.J., and

COLLEEN CONWAY COONEY, J., CONCUR.

PATRICIA ANN BLACKMON
JUDGE