

[Cite as *State ex rel. McGrath v. McDonnell*, 2006-Ohio-535.]

COURT OF APPEALS OF OHIO, EIGHTH DISTRICT

COUNTY OF CUYAHOGA

No. 87368

STATE OF OHIO, EX REL.,	:	ORIGINAL ACTION
JOSEPH JAMES MCGRATH	:	
	:	JOURNAL ENTRY
Relator	:	AND
	:	OPINION
vs.	:	
	:	
JUDGE NANCY R. MCDONNELL	:	
	:	
Respondent	:	

DATE OF JOURNALIZATION: FEBRUARY 6. 2006

CHARACTER OF PROCEEDINGS: WRIT OF MANDAMUS

JUDGMENT: Writ Denied
Motion No. 379713
Order No. 380452

APPEARANCES:

For Relator: JOSEPH J. MCGRATH, pro se
3510 Muriel
Cleveland, Ohio 44109

For Respondent: WILLIAM D. MASON
Cuyahoga County Prosecutor
BY: DIANE SMILANICK
Assistant County Prosecutor
Justice Center - 9th Floor
1200 Ontario Street
Cleveland, Ohio 44113

JUDGE PATRICIA A. BLACKMON:

{¶ 1} Relator, Joseph James McGrath, requests that this court compel respondent judge to issue findings of fact and conclusions of law with respect to the petition for postconviction relief filed by relator in *State v. McGrath*, Cuyahoga County Court of Common Pleas Case No. CR-449129 on December 15, 2004.

{¶ 2} Respondent has filed a motion for summary judgment attached to which is a copy of the findings of fact and conclusions of law issued by respondent and received for filing by the clerk on December 16, 2005. Relator has not opposed the motion. Respondent argues that relief in this action in mandamus is inappropriate because she has discharged her duty. We agree.

{¶ 3} Relator has also failed to comply with Loc.App.R. 45(B)(1)(a) which requires that complaints in original actions be supported by an affidavit from the plaintiff or relator specifying the details of the claim. *State ex rel. Hightower v. Russo*, Cuyahoga App. No. 82321, 2003-Ohio-3679. The "Verification" attached to the complaint is not notarized. See R.C. 2319.01 through 2319.04. Cf. R.C. 2935.19 (form of affidavit). We also note that, although McGrath attaches an "Affidavit of Indigency" to his motion for leave to proceed in forma pauperis, the affidavit is not notarized. As a consequence, we deny his claim of indigency and order him to pay costs.

{¶ 4} Accordingly, respondent's motion for summary judgment is

granted. Relator to pay costs. 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).

Writ denied.

PATRICIA A. BLACKMON
JUDGE

JAMES J. SWEENEY, P.J., CONCURS

ANTHONY O. CALABRESE, JR., J., CONCURS