

[Cite as *In re Jerdine*, 2008-Ohio-1928.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 91172

IN RE: DARRYL JERDINE

**JUDGMENT:
COMPLAINT DISMISSED**

WRIT OF MANDAMUS
MOTION NO. 407289
ORDER NO. 407712

RELEASE DATE: April 21, 2008

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FOR RELATOR:

Darryl Jerdine
c/o Anthony Lewis-Jerdine
Northeast Ohio Correctional Center
2240 Hubbard Road
Youngstown, Ohio 44505

**ATTORNEYS FOR RESPONDENT,
JUDGE BRIDGET McCAFFERTY:**

William D. Mason
Cuyahoga County Prosecutor
By: Frederick W. Whatley
Assistant County Prosecutor
8th Floor Justice Center
1200 Ontario Street
Cleveland, Ohio 44113

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MARY J. BOYLE, J.:

{¶ 1} On March 19, 2008, Darryl Jerdine purportedly filed a complaint for a “writ of mandamus to compel stay of proceedings/action injunctive relief.” Judge Bridget McCafferty, the respondent, has filed a motion to strike/dismiss the complaint for a writ of mandamus, which we grant for the following reasons.

{¶ 2} Initially, we find that Jerdine’s complaint for a writ of mandamus is defective since it is improperly captioned. A complaint for a writ of mandamus must be brought in the name of the state, on relation of the person applying. *Maloney v. Court of Common Pleas of Allen Cty.* (1962), 173 Ohio St. 226, 181 N.E.2d 270; *Dunning v. Cleary* (Jan. 11, 2001), Cuyahoga App. No. 78763. Jerdine has also failed to name the proper respondent, in the caption of his complaint, and did not include the respondent’s address, so that service could be obtained upon Judge McCafferty. *State ex rel. Sherrills v. State*, 91 Ohio St.3d 133, 2001-Ohio-299, 742 N.E.2d 651.

{¶ 3} Jerdine has failed to comply with Loc.App.R. 45(B)(1)(a), which mandates that the complaint must be supported by an affidavit, which specifies the details of the claim. The failure of Jerdine to comply with the supporting affidavit requirement of Loc.App.R. 45(B)(1)(a) requires the dismissal of the complaint for a writ of mandamus. *State ex rel. Smith v. McMonagle* (July 17, 1996), Cuyahoga App. No. 70899; *State ex rel. Wilson v. Calabrese* (Jan. 18, 1996), Cuyahoga App. No. 70077.

{¶ 4} In addition, we find that the complaint for a writ of mandamus was not filed by Jerdine, pro se, or through the efforts of legal counsel licensed to practice law within the state of Ohio. To the contrary, the complaint for a writ of mandamus was filed by “Anthony Lewis, authorized representative for Darryl Jerdine.” A search of the Attorney Directory, as maintained by the Supreme Court of Ohio, fails to demonstrate that Anthony Lewis is registered as an active attorney permitted to practice law within the state of Ohio.

{¶ 5} The practice of law includes “the preparation of pleadings and other papers incident to action and special proceedings and the management of such actions and proceedings * * * before judges and courts.” *Disciplinary Counsel v. Coleman*, 88 Ohio St.3d 155, 157, 2000-Ohio-288, 724 N.E.2d 402, citing *Land Title Abstract & Trust Co. v. Dworken* (1934), 129 Ohio St. 23, 193 N.E. 650, paragraph one of the syllabus. The preparation and filing of a complaint for a writ of mandamus, which necessarily includes an analysis of the rights and duties which must be established in order for this court to issue a writ of mandamus, constitute the practice of law and the rendering of legal services.

{¶ 6} R.C. 4705.01 provides that:

{¶ 7} “The unauthorized practice of law is the rendering of legal services for another by another by any person not admitted to practice in Ohio under Rule I and not granted active status under Rule VI, or certified under Rule II, Rule IX of the Supreme Court Rules for the Government of the Bar of Ohio,”

{¶ 8} Gov.Bar.R. VII § 4(A) defines the unauthorized practice of law as “the rendering of legal services for another person by any person not admitted to practice in Ohio * * *.” Gov.Bar.R. VII _ (2)(A) provides that no person “shall be permitted to practice as an attorney and counselor at law, or to commence, conduct, or defend any action or proceeding in which the person is not a party concerned, either by using or subscribing the person’s own name, or the name of another person, unless the person has been admitted to the bar by order of the supreme court in compliance with its prescribed and published rules. * * *”

{¶ 9} This court possesses the ethical duty to prevent the unauthorized practice of law. Rule of Professional Conduct 5.5(A), formerly DR 3-101(A). The Supreme Court of Ohio has also established that trial courts, as well as appellate courts, possess the inherent power to regulate the practice of law, which includes the abrogation of the unauthorized practice of law. *Mentor Lagoons, Inc. v. Rubin* (1987), 31 Ohio St.3d 256, 510 N.E.2d 379. Since Anthony Lewis is not registered to practice law within the state of Ohio, his preparation and filing of the complaint for a writ of mandamus constitutes the unauthorized practice of law, which mandates that we strike the complaint for a writ of mandamus and dismiss the action in toto. *State ex rel. Jenkins, Sr. v. McFaul* (Apr. 23, 1998), Cuyahoga App. No. 74047; *State ex rel. Anderson v. Cuyahoga County Court of Common Pleas* (Apr. 15, 1993), Cuyahoga App. No. 65165.

{¶ 10} Notwithstanding the aforesaid procedural defects, we find that Jerdine has failed to establish that he is entitled to a writ of mandamus. The underlying action of *Washington Mutual Bank v. Darryl Jerdine, et al*, Cuyahoga County Court of Common Pleas Case No. CV-05-570626, involves a foreclosure action with regard to the real property located at 28220 Red Raven Road, Pepper Pike, Ohio.

{¶ 11} In order for this court to issue a writ of mandamus, Jerdine must establish that: (1) he possesses a clear legal right to the relief requested; (2) Judge McCafferty possesses a clear legal duty; and (3) there exists no other adequate remedy in the ordinary course of the law. *State ex rel. Middletown Bd. of Edn. v. Butler Cty. Budget Comm.* (1987), 31 Ohio St.3d 251, 510 N.E.2d 383; *State ex rel. Westchester Estates, Inc. v. Bacon* (1980), 61 Ohio St.2d 42, 399 N.E.2d 81. Jerdine, through his complaint for a writ of mandamus, requests a summary dismissal of the underlying foreclosure action. Jerdine, however, has failed to establish that he possesses any right which would require the dismissal of the foreclosure action or that Judge McCafferty possesses any duty to dismiss the foreclosure action. Cf. *State ex rel. Ney v. Niehaus* (1987), 33 Ohio St.3d 118, 515 N.E.2d 914; *State ex rel. Keenan v. Calabrese* (1994), 69 Ohio St.3d 176, 631 N.E.2d 119. In addition, Jerdine possesses an adequate remedy at law vis-a-vis an appeal, once the underlying foreclosure has been concluded. *State ex rel. Ferguson v. Court of Claims of Ohio, Victims of Crime Div.*, 98 Ohio St.3d 399, 2003-Ohio-

1631, 786 N.E.2d 43; *State ex rel. Hastings Mut. Ins. Co. v. Merillat* (1990), 50 Ohio St.3d 152, 553 N.E.2d 646.

{¶ 12} Accordingly, we strike Jerdine’s complaint for a writ of mandamus and further dismiss the action in toto. Costs to Jerdine. It is further ordered that the Clerk of the Eighth District Court of Appeals serve notice of this judgment upon all parties as required by Civ.R. 58(B).

Complaint dismissed.

MARY J. BOYLE, JUDGE

JAMES J. SWEENEY, A.J., and
COLLEEN CONWAY COONEY, J., CONCUR