

[Cite as *Nash v. Donnelly*, 2008-Ohio-442.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
**No. 90462**

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**TIMOTHY M. NASH**

RELATOR

VS.

**MICHAEL P. DONNELLY, JUDGE**

RESPONDENT

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**JUDGMENT:  
COMPLAINT DISMISSED**

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WRIT OF MANDAMUS  
MOTION NO. 403389 and 403545  
ORDER NO. 405039

**RELEASE DATE:** February 1, 2008

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**FOR RELATOR:**

Timothy M. Nash, pro se  
Inmate No. 532-557  
2000 South Avon Belden Road  
Grafton, Ohio 44044

**ATTORNEYS FOR RESPONDENT:**

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

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MARY EILEEN KILBANE, J.:

{¶ 1} Relator, Timothy M. Nash, requests that this court compel respondent judge to rule on the motion for new trial filed by Nash in *State v. Nash*, Cuyahoga County Court of Common Pleas Case No. CR-490706 on June 12, 2007. Nash refers to his complaint as being in habeas corpus. Yet, Nash is requesting a ruling on a motion not immediate release from custody. The nature of the relief which Nash requests is clearly that which is appropriate for mandamus. We will, therefore, treat this action as one in mandamus. See, e.g., *State ex rel. Mason v. Floyd*, Cuyahoga App. No. 89480, 2007-Ohio-2368, at ¶4.

{¶ 2} Respondent has filed a motion to dismiss attached to which is a copy of a journal entry issued by respondent and received for filing by the clerk on November 29, 2007 in which respondent denied the motion for new trial. Relator has not opposed the motion. Respondent argues that this action in mandamus is, therefore, moot. We agree.

{¶ 3} Nash “also failed to include the address of the parties in the caption of the complaint as required by Civil Rule 10 (A). This may also be grounds for dismissing the action. *State ex rel. Sherrills v. State* (2001), 91 Ohio St.3d 133, 742 N.E.2d 651.” *State ex rel. Hall v. Calabrese* (Aug. 16, 2001), Cuyahoga App. No. 79810, at 2.

{¶ 4} Accordingly, respondent's motion to dismiss 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).

Complaint dismissed.

MARY EILEEN KILBANE, JUDGE

FRANK D. CELEBREZZE, JR., P.J., and  
MELODY J. STEWART, J., CONCUR