

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

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 90462

TIMOTHY M. NASH

RELATOR

vs.

MICHAEL P. DONNELLY, JUDGE

RESPONDENT

**JUDGMENT:
COMPLAINT DISMISSED**

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