

[Cite as *Barksdale v. Saffold*, 2009-Ohio-2573.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 93302

CHRISTOPHER S. BARKSDALE, ET AL.

RELATOR

VS.

**JUDGE SHIRLEY STRICKLAND
SAFFOLD, ET AL.**

RESPONDENTS

**JUDGMENT:
WRIT DISMISSED**

WRIT OF MANDAMUS
MOTION NO. 422208
ORDER NO. 422322

RELEASE DATE: June 3, 2009

FOR RELATOR:

Christopher S. Barksdale, pro se
3451 East 149th Street
Cleveland, Ohio 44120

ATTORNEY FOR RESPONDENT:

William D. Mason
Cuyahoga County Prosecutor
8th Floor Justice Center
1200 Ontario Street
Cleveland, Ohio 44113

MELODY J. STEWART, J.:

{¶ 1} On May 14, 2009, Christopher Barksdale, filed what he styled as an “Original action in mandamus” against Judge Shirley Strickland Saffold. However, he styled his pleading as “Relator’s motion for expedited consideration and memorandum in support thereof.” In this pleading he moved this court to compel the judge to rule on a motion for relief from judgment, which he filed on May 13, 2009, in the underlying case, *Christopher Barksdale v. TSE Properties, et al.*, Cuyahoga County Common Pleas Court Case No. CV-685190.¹ Barksdale filed an

¹ Apparently, TSE Properties bought Barksdale’s mother’s home in foreclosure, and Barksdale brought the underlying case as a quiet title action on the theory that the foreclosure sale and case were void for lack of service, improper parties, and other irregularities. The docket in the underlying case shows that the respondent judge granted TSE Properties’ motion for summary judgment on May 11, 2009.

amended motion for expedited consideration on May 18, 2009. For the following reasons, this court, sua sponte, dismisses this “writ” action.

{¶ 2} First, the petition is defective because it is improperly captioned. Barksdale styled his petition as “Christopher Barksdale v. State of Ohio, et al., Shirley Strickland Saffold.” Moreover, he styled his pleading as “Relators’ Motion for expedited consideration.” R.C. 2731.04 requires that an application for a writ of mandamus “must be by petition, in the name of the state on the relation of the person applying.” This failure to properly caption a mandamus action is sufficient grounds for denying the writ and dismissing the petition. *Maloney v. Court of Common Pleas of Allen County* (1962), 173 Ohio St. 226, 181 N.E.2d 270. This court has held that this deficiency alone also warrants dismissal. *State ex rel. Larry Calloway v. Court of Common Pleas of Cuyahoga County* (Feb. 27, 1997), Cuyahoga App. No. 71699; *State ex rel. Samuels v. Municipal Court* (Nov. 22, 1994), Cuyahoga App. No. 67762; and *State ex rel. White v. Villanueva* (Oct. 6, 1993), Cuyahoga App. No. 66009. The complaint also fails to include the addresses of the parties as required by Civil Rule 10(A). Mandamus may not be commenced by motion. *Myles v. Wyatt* (1991), 62 Ohio St.3d 191, 580 N.E.2d 1080.

{¶ 3} Additionally, the relator 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.

{¶ 4} Moreover, only one day passed from the time of the filing of the subject motion to the filing of this mandamus motion. Thus, an inordinate amount of time has not elapsed to warrant mandamus to compel a ruling. *State ex rel. Rodgers v. Cuyahoga County Court of Common Pleas* (1992), 83 Ohio App.3d 684, 615 N.E.2d 689.

{¶ 5} Finally, a review of the docket in the underlying case shows that the respondent judge denied the subject motion for relief from judgment on May 18, 2009. Thus, this case is moot. Furthermore, appeal is an adequate remedy at law which precludes a writ action. *State ex rel. Ney v. Niehaus* (1987), 33 Ohio St.3d 118, 515 N.E.2d 914. Mandamus is not a substitute for appeal. *State ex rel. Keenan v. Calabrese* (1994), 69 Ohio St.3d 176, 631 N.E.2d 119; *State ex rel. Daggett v. Gessaman* (1973), 34 Ohio St.2d 55, 295 N.E.2d 659; and *State ex rel. Pressley v. Indus. Comm. of Ohio* (1967), 11 Ohio St.2d 141, 228 N.E.2d 631.

{¶ 6} Accordingly, this court dismisses this writ action. 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).

MELODY J. STEWART, JUDGE

MARY EILEEN KILBANE, P.J., and
JAMES J. SWEENEY, J., CONCUR