

[Cite as *Henderson v. Saffold*, 2009-Ohio-4028.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 93449

PAUL S. HENDERSON

RELATOR

VS.

JUDGE SHIRLEY STRICKLAND SAFFOLD

RESPONDENT

**JUDGMENT:
WRIT DENIED**

WRIT OF PROCEDENDO
MOTION NO. 423744
ORDER NO. 424944

RELEASE DATE: August 12, 2009

FOR RELATOR

Paul S. Henderson, pro se
16409 Walden Avenue
Cleveland, Ohio 44128

ATTORNEYS FOR RESPONDENT

William D. Mason
Cuyahoga County Prosecutor

BY: James E. Moss
Assistant County Prosecutor
8th Floor Justice Center
1200 Ontario Street
Cleveland, Ohio 44113

CHRISTINE T. MCMONAGLE, J.:

{¶ 1} Relator requests that this court compel respondent judge to issue a ruling on various motions filed by relator in *State v. Henderson*, Cuyahoga County Court of Common Pleas Case No. CR-520709.

{¶ 2} Respondent has filed a motion for summary judgment attached to which are copies of journal entries disposing of several motions as well as memorializing Henderson's guilty plea and sentence. Both entries were received for filing by the clerk on June 16, 2009. Relator has not opposed the motion for summary judgment. Respondent argues that this action in procedendo is, therefore, moot. We agree. We also agree with respondent

that Henderson filed the complaint prematurely and that the complaint is defective.

{¶ 3} Henderson filed this action on June 11, 2009. He requests that this court compel respondent to rule on motions which were filed on or after April 14, 2009. “This court has consistently held that complaints in procedendo are premature when the time period to rule on motions has not exceeded 120 days as set forth by Sup.R. 40(A). *State ex rel. Mayes v. Ambrose*, Cuyahoga App. No. 88259, 2006-Ohio-3322; *State ex rel. McDoughall v. Corrigan*, Cuyahoga App. No. 80633, 2002-Ohio-327; *State ex rel. Rodgers v. Cuyahoga Cty. Court of Common Pleas* (1992), 83 Ohio App.3d 684, 615 N.E.2d 689.” *State ex rel. Goodwin v. Gaul*, Cuyahoga App. No. 90162, 2007-Ohio-4294, at ¶5. In *Goodwin*, this court granted the motion to dismiss filed by the respondent judge after it found that “an inordinate amount of time has not elapsed.” *Id.*

{¶ 4} Similarly, in this case, less than sixty days elapsed between Henderson’s various filings in the underlying case and the filing of this action. Henderson’s premature filing of this action is a sufficient ground for entering judgment for respondent.

{¶ 5} Additionally, the complaint has several defects. Henderson did not comply with the requirement of R.C. 2969.25 that he file an affidavit

describing the actions he has filed in state and federal court during the last five years. He also failed to file an affidavit specifying the details of the claim as required by Loc.App.R. 45(B)(1)(a). Each of these defects requires dismissal of the complaint. *Morris v. Bur. of Sentence Computation*, Cuyahoga App. No. 89517, 2007-Ohio-1444. Furthermore, Henderson has not included the addresses of the parties in the caption as required by Civ.R. 10(A), which may also be a ground for dismissal. *Clarke v. McFaul*, Cuyahoga App. No. 89447, 2007-Ohio-2520, at ¶5.

{¶ 6} 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).

{¶ 7} Writ denied.

CHRISTINE T. MCMONAGLE, JUDGE

MARY EILEEN KILBANE, P.J., and
MELODY J. STEWART, J., CONCUR