

[Cite as *State ex rel. Kennedy v. State*, 2009-Ohio-5572.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 93718

**STATE OF OHIO, EX REL.,
HAROLD KENNEDY**

RELATOR

vs.

STATE OF OHIO

RESPONDENT

**JUDGMENT:
WRIT DENIED**

WRIT OF MANDAMUS
MOTION NO. 425740
ORDER NO. 426583

RELEASED: October 21, 2009

FOR RELATOR:

Harold Kennedy, pro se
Inmate No. 452-396
2001 East Central Avenue
Toledo, Ohio 43608

ATTORNEYS FOR RESPONDENT:

William D. Mason
Cuyahoga County Prosecutor

BY: Diane Smilanick
Assistant County Prosecutor
8th Floor Justice Center
1200 Ontario Street
Cleveland, Ohio 44113

KENNETH A. ROCCO, P.J.,

{¶ 1} Relator, Harold Kennedy, requests that this court compel respondent judge to issue findings of fact and conclusions of law with respect to the petition for postconviction relief ("petition to vacate or set aside judgment of conviction or sentence") filed by relator in *State v. Kennedy*, Cuyahoga County Court of Common Pleas Case No. CR-437427 on November 12, 2008. Judge Shirley Strickland Saffold was assigned to hear the case and will be treated as the respondent in this action.

{¶ 2} Respondent denied the petition on January 22, 2009, but she did not file findings of fact and conclusions of law. On May 6, 2009, Kennedy filed his

“motion to annex finding of facts/ conclusions of law to the record,” which remains pending.

{¶ 3} Respondent has filed a motion for summary judgment attached to which is a copy of the findings of fact and conclusions of law issued by respondent and received for filing by the clerk on August 26, 2009. (Kennedy filed this action on August 4, 2009.) Relator has not opposed the motion. This action in mandamus is, therefore, moot.

{¶ 4} Kennedy’s complaint and supporting documentation also are defective in ways that would require dismissal. He has not included the addresses of the parties in the caption as required by Civ.R. 10(A). *State ex rel. Hall v. Calabrese* (Aug. 16, 2001), Cuyahoga App. No. 79810, at 2. Also, he has failed to include a certified copy of the prison cashier’s statement of the balance in his inmate account as required by R.C. 2969.25(C). *State ex rel. Bristow v. Sidoti* (Dec. 1, 2000), Cuyahoga App. No. 78708, at 3-4. Likewise, in this action, we deny relator’s claim of indigency. Additionally, “[t]he failure to comply with R.C. 2969.25 warrants dismissal of the complaint for a writ of mandamus. *State ex rel. Zanders v. Ohio Parole Board* (1998), 82 Ohio St.3d 421, 696 N.E.2d 594 and *State ex rel. Alford v. Winters* (1997), 80 Ohio St.3d 285, 685 N.E.2d 1242.” *State ex rel. Hite v. State*, Cuyahoga App. No. 79734, 2002-Ohio-807, at 6.

{¶ 5} Additionally, Loc.App.R. 45(B)(1)(a) requires that complaints in original actions be supported by an affidavit from the plaintiff or relator specifying the details of the claim. Kennedy signed his complaint and adjacent to his signature appears what purports to be a notary's stamp and signature. The complaint does not include an acknowledgment, however. Compare *State ex rel. Ali v. Walker*, Cuyahoga App. No. 92886, 2009-Ohio-3901. (The acknowledgment on the affidavit accompanying the complaint bore the stamp and seal of a notary; only the notary's typewritten name appeared on the signature line.) See R.C. 147.55(A)(1), form of acknowledgment for an individual. Compare *State ex rel. McGrath v. McDonnell*, Cuyahoga App. No. 87368, 2006-Ohio-535. (The affidavit accompanying an action in mandamus was not notarized and, therefore, failed to comply with Loc.App.R. 45(B)(1)(a).) Regardless, Loc.App.R. 45(B)(1)(a) does not authorize merely notarizing the complaint but requires that the complaint *be supported* by an affidavit.

{¶ 6} Accordingly, respondent's motion for summary judgment is granted. XRespondent 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).

Writ denied.

KENNETH A. ROCCO, PRESIDING JUDGE

MELODY J. STEWART, JUDGE
FRANK D. CELEBREZZE, JR., JUDGE