

[Cite as *Henderson v. Houk*, 2010-Ohio-368.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 94426

PAUL S. HENDERSON

RELATOR

VS.

MARC HOUK, WARDEN

RESPONDENT

**JUDGMENT:
PETITION DISMISSED**

Writ of Habeas Corpus
Order No. 430337

RELEASE DATE: February 2, 2010

FOR RELATOR

Paul S. Henderson, pro se
Inmate No. 88969
Cuyahoga County Jail
P.O. Box 5600
Cleveland, Ohio 44101

ATTORNEY FOR RESPONDENT

Marc Houk
Warden, N.C.C.T.F.
2000 South Avon-Belden Road
Grafton, Ohio 44044

CHRISTINE T. MCMONAGLE, J.:

{¶ 1} Petitioner, Paul S. Henderson, has filed what he has captioned as: “Habeas Corpus, Hearing Requested, Action for Declaratory Judgment.” For the reasons stated below, we dismiss this action sua sponte.

{¶ 2} Henderson avers that he is confined to the North Coast Correctional Treatment Facility (“N.C.C.T.F.”) in Grafton Ohio in the custody of respondent, warden of N.C.C.T.F. N.C.C.T.F. is not, however, within Cuyahoga County. As a consequence, because Henderson averred at the time he filed this action that he was not within the territorial jurisdiction of this court, relief in habeas corpus is not appropriate. Additionally, we recently rejected Henderson’s claim for relief in

habeas corpus against the same respondent on the same ground. *Henderson v. Houk*, Cuyahoga App. No. 94254, 2009-Ohio-6475.

{¶ 3} Henderson filed this action on December 22, 2009. On January 8, 2010, he filed *Henderson v. Shaffer*, Cuyahoga App. No. 94485, in which he avers that he is in the custody of the warden of the Cuyahoga County Jail. Of course, Henderson’s being in the custody of the warden of the Cuyahoga County Jail would make his claim in habeas corpus against the warden of N.C.C.T.F. moot.

{¶ 4} Similarly, this court lacks the authority to entertain a declaratory judgment action. “In *State ex rel. McGrath v. Ohio Adult Parole Authority*, 100 Ohio St.3d 72, 2003-Ohio-5062, 796 N.E.2d 526, the Supreme Court of Ohio ruled that when the true objective of a special writ action is a declaratory judgment, then the complaint does not state a cause of action and must be dismissed for want of jurisdiction. The court of appeals does not have original jurisdiction over declaratory judgment actions.” *State ex rel. McGrath v. Gilligan*, Cuyahoga App. No. 83884, 2005-Ohio-619, at ¶4. Obviously, this court lacks the authority to grant Henderson relief in declaratory judgment.

{¶ 5} We also note that the petition and supporting materials have several defects. Henderson had filed no fewer than two original actions in this court prior to commencing this action: Cuyahoga App. No. 94254, 2009-Ohio-6475, *supra*; and *Henderson v. Saffold*, Cuyahoga App. No. 93349, 2009-Ohio-4028. The

petition is not, however, supported with an R.C. 2969.25(A) affidavit describing each civil action or appeal of a civil action which Henderson had filed in the previous five years in any state or federal court. The petition is also not verified as required by R.C. 2725.04 and is not supported with an affidavit specifying the details of the claim as required by Loc.App.R. 45(B)(1)(a). Any one of these grounds would be a sufficient basis for dismissing this action. See, e.g., *Johnson v. McFaul*, Cuyahoga App. No. 86153, 2005-Ohio-1663, at ¶4-7. 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, we dismiss this action sua sponte. Petitioner 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).

Petition dismissed.

CHRISTINE T. MCMONAGLE, JUDGE

MARY EILEEN KILBANE, P.J., and
FRANK D. CELEBREZZE, JR., J., CONCUR