

[Cite as *State ex rel. Nash v. Donnelly*, 2010-Ohio-4370.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 95497

**STATE OF OHIO, EX REL.
TIMOTHY M. NASH**

RELATOR

VS.

MICHAEL P. DONNELLY, JUDGE

RESPONDENT

**JUDGMENT:
WRIT DENIED**

Writ of Mandamus
Motion No. 436880
Order No. 437264

RELEASE DATE: September 15, 2010

FOR RELATOR

Timothy M. Nash, pro se
Inmate No. 100716
P.O. Box 5600
Cuyahoga County Jail
Cleveland, Ohio 44101

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

FRANK D. CELEBREZZE, JR. J.:

{¶ 1} Relator, Timothy Nash, is the defendant in *State v. Nash*, Cuyahoga County Court of Common Pleas Case No. CR-493755, which has been assigned to respondent judge. Respondent issued an entry received for filing on July 20, 2007, and stating: "Case dismissed at prosecutor's request. Final." Nash requests that this court issue a writ of mandamus compelling respondent to issue findings of fact and conclusions of law with respect to the various motions filed by Nash after the state dismissed Case No. CR-493755.

{¶ 2} Respondent has filed a motion for summary judgment attached to which is a copy of the July 20, 2007 dismissal of Case No. CR-493755. Respondent argues that he does not have a duty to rule on the motions because the state dismissed Case No. CR-493755. Nash, however, contends that Case No. CR-493755 was “a sham legal process,” and that respondent does have a duty to rule on his motions. Brief in Opposition to Motion for Summary Judgment, at 2.

{¶ 3} We need not reach the parties’ arguments, however, because the complaint and supporting materials have several defects requiring that we enter judgment for respondent.

{¶ 4} Nash’s complaint and supporting documentation are defective in ways that require dismissal. He has not attached an affidavit describing each civil action or appeal filed within the previous five years in any state or federal court. In fact, he states that he “can not remember all the civil actions that have been taken * * *.” Complaint, at 3-4. His failure to comply with R.C. 2969.25 requires the dismissal of his complaint for a writ of mandamus. *State ex rel. Zanders v. Ohio Parole Bd.*, 82 Ohio St.3d 421, 1998-Ohio-218, 696 N.E.2d 594; *Alford v. Winters*, 80 Ohio St.3d 285, 1997-Ohio-117, 685 N.E.2d 1242. Additionally, Loc.App.R. 45(B)(1)(a) requires that the relator in an original action support the complaint with an affidavit specifying the details of the claim. The affidavit must also be notarized. *State ex rel. McGrath v. McDonnell*, Cuyahoga

App. No. 87368, 2006-Ohio-535. Nash’s “Affidavit of Verity” is not notarized and, therefore, fails to comply with Loc.App.R. 45(B)(1)(a). We also note that the affidavit of indigency accompanying the complaint was notarized in May 2010, although the complaint was filed in August 2010.

{¶ 5} Nash asserts, however, that this court should not require an affidavit because notary services are not available to him in the Cuyahoga County Jail. He has not, however, provided this court with any controlling authority which exempts him from the requirement that he provide notarized affidavits.

{¶ 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).

Writ denied.

FRANK D. CELEBREZZE, JR. JUDGE

PATRICIA A. BLACKMON, P.J., and
JAMES J. SWEENEY, J., CONCUR