

[Cite as *Traywick v. Fuerst*, 2011-Ohio-947.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 96357

STATE OF OHIO
IN RE: TAHEIM TRAYWICK

RELATOR

vs.

GERALD E. FUERST,
CLERK OF COURTS

RESPONDENT

JUDGMENT:
DISMISSED

Writ of Mandamus
Motion No. 441824
Order No. 441825

RELEASE DATE: March 2, 2011

FOR RELATOR

Benjamin J. Wherry, Sr., pro se
Reg. No. 35961-060
FMC Devens
P.O. Box 879
Ayer, MA 01432

ATTORNEY FOR RESPONDENT

William D. Mason
Cuyahoga County Prosecutor

By: James E. Moss
Assistant Prosecuting Attorney
Justice Center - 8th Floor
1200 Ontario Street
Cleveland, Ohio 44113

SEAN C. GALLAGHER, J.:

{¶ 1} Relator, Taheim Traywick, is the defendant in *State v. Traywick*, Cuyahoga County Court of Common Pleas Case No. CR-536300. Benjamin J. Wherry, however, signed the complaint. Wherry avers that Traywick is his adult child and that “she’s bipolar and is taking medications. To add, she’s illiterate whereas, she did not finish school.” Complaint at 8. Wherry acknowledges that he is not a licensed attorney-at-law. Nevertheless, he argues that he is entitled to commence this action for Traywick to compel

respondent clerk of court to accept for filing documents that Wherry has signed and purportedly tendered on Traywick's behalf in Case No. CR-536300: a notice of appeal; as well as a motion to dismiss counsel of record and motion to motion for appointment of counsel.

{¶ 2} Wherry's attempt to commence this action on Traywick's behalf constitutes the unauthorized practice of law. Wherry concedes that he is not admitted to practice law and he has not provided any other basis for exemption from the requirements of R.C. Chapter 4705 and Gov.Bar.R XII. As a consequence, we dismiss this action. See *In re Jerdine*, Cuyahoga App. No. 91172, 2008-Ohio-1928, ¶9.

{¶ 3} We also note that the "sworn affirmation" accompanying the complaint is signed by Wherry and is not notarized. Loc.App.R. 45(B)(1)(a) provides, in part: "All complaints must contain the specific statements of fact upon which the claim of illegality is based and must be supported by an affidavit from the plaintiff or relator specifying the details of the claim." We have held that the failure to notarize a Loc.App.R. 45(B)(1)(a) affidavit is a ground for dismissal of an original action. *State ex rel. Jerningham v. Russo*, Cuyahoga App. No. 95573, 2010-Ohio-5377, ¶5.

{¶ 4} Accordingly, we dismiss this action sua sponte. 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).

Complaint dismissed. Relator to pay costs.

SEAN C. GALLAGHER, JUDGE

PATRICIA A. BLACKMON, P.J., and
MELODY J. STEWART, J., CONCUR