

[Cite as *Smith v. Court of Common Pleas*, 2014-Ohio-2070.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 101204

MITCHIRAL SMITH

RELATOR

vs.

**STATE OF OHIO,
COURT OF COMMON PLEAS**

RESPONDENT

**JUDGMENT:
WRIT DENIED**

Writ of Mandamus
Motion No. 474297
Order No. 474457

RELEASE DATE: May 13, 2014

FOR RELATOR

Mitchiral Smith, pro se
Inmate No. 504-628
Ohio State Penitentiary
8788 Coitsville Hubbard Road
Youngstown, Ohio 44505

ATTORNEY FOR RESPONDENT

Timothy J. McGinty
Cuyahoga County Prosecutor
The Justice Center
1200 Ontario Street
Cleveland, Ohio 44113

FRANK D. CELEBREZZE, JR., P.J.:

{¶1} Mitchiral Smith (“Smith”) has filed a petition for writ of mandamus. Smith seeks an order from this court that requires the state of Ohio or the “Court of Common Pleas” to fulfill obligations under the law regarding motions he filed on June 26, 2013, in Cuyahoga C.P. Nos. CR-470361, CR-473965, and CR-468168. Smith does not identify the nature of the motions or specify in any detail what duty respondents have violated. The dockets reflect that he filed a motion on June 26, 2013, in each case requesting to set up a payment plan for court costs. Respondents state of Ohio and Cuyahoga County Court of Common Pleas have filed a motion for summary judgment, which we grant for the reasons that follow.

{¶2} Smith’s petition is defective in several respects that would warrant dismissal of the complaint. Civ.R. 10(A); Loc.App.R. 45; *Jordan v. Cuyahoga Cty. Court of Common Pleas*, 8th Dist. Cuyahoga No. 94578, 2011-Ohio-1813, ¶ 3 (failure to include addresses of the parties and failure to caption the action in accordance with R.C. 2731.04 may be grounds for dismissal). Respondents allege that the state of Ohio is not a proper party. In addition, respondents maintain that the petition is moot based on the certified copies of journal entries that were entered on April 15, 2014, and that were filed in the cases on April 16, 2014, which respondents have submitted in support of the motion for summary judgment.

{¶3} The journal entries establish that the motions have been granted. Accordingly, Smith is not entitled to a writ of mandamus. *State ex rel. Culgan v. Kimbler*, 132 Ohio St.3d 480, 2012-Ohio-3310, 974 N.E.2d 88 (a writ of mandamus will not issue to compel an act already performed); *see also State ex rel. Pettway*, 8th Dist. Cuyahoga No. 99259, 2013-Ohio-1567, ¶ 2.

{¶4} Respondents' motion for summary judgment is granted, and Smith's petition for writ of mandamus is denied. Relator to pay costs. Costs waived. The court directs the clerk of court to serve all parties with notice of this judgment and its date of entry upon the journal as required by Civ.R. 58(B).

{¶5} Writ denied.

FRANK D. CELEBREZZE, JR., PRESIDING JUDGE

KENNETH A. ROCCO, J., and
KATHLEEN ANN KEOUGH, J., CONCUR