

[Cite as *State v. Bullitt*, 2016-Ohio-3179.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 103720

STATE OF OHIO

RESPONDENT

vs.

DEAUNTE BULLITT

RELATOR

JUDGMENT:
COMPLAINT DISMISSED

Writ of Mandamus
Motion Nos. 491265 and 494014
Order No. 495928

RELEASE DATE: May 25, 2016

FOR RELATOR

Deaunte Bullitt, pro se
Inmate No. 651113A
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TIM McCORMACK, J.:

{¶1} Deaunte Bullitt, the relator, commenced this “writ of error/mandamus” seeking an order granting the motion that he filed in *State v. Bullitt*, Cuyahoga C.P. No. CR-12-565262-C, for an order to compel/preserve evidence pursuant to R.C. 2933.82. Bullitt requested that the order compel the Cuyahoga County Sheriff’s Office, the Richmond Heights Police Department, and/or any governmental entity having possession of “involved evidence” to preserve it. Bullitt captioned the writ as *State of Ohio v. Deaunte Bullitt*, provided no addresses, and included appellate case number 100885 as well as the trial court case number. A certificate of service is attached to the writ, indicating that a copy was sent to the Cuyahoga County Prosecutor’s Office. The Cuyahoga County Sheriff’s office moved for summary judgment, and the Richmond Heights Police Department filed an answer, alleging, among other defenses, that the complaint failed to state a claim upon which relief could be granted. Bullitt filed a response to the motion for summary judgment and responded to the Richmond Heights Police Department’s answer. The motion for summary judgment is granted, and the writ is dismissed for failure to state a claim upon which relief could be granted.

{¶2} The numerous pleading errors and deficiencies require dismissal. The complaint fails to properly identify any respondents, does not include addresses as required by Civ.R. 10, and does not comply with the requirements of R.C. 2731.04.

Maloney v. Court of Common Pleas of Allen Cty., 173 Ohio St. 226, 181 N.E.2d 270 (1962). The state of Ohio is not a proper respondent in this matter. *E.g.*, *Carley v. State*, 8th Dist. Cuyahoga No. 101807, 2014-Ohio-4483, ¶ 5. Bullitt failed to comply with R.C. 2969.25(C), which requires that an inmate file a certified statement from his prison cashier setting forth the balance in his private account for each of the preceding six months. *State ex rel. Pamer v. Collier*, 108 Ohio St.3d 492, 2006-Ohio-1507, 844 N.E.2d 842. Although Bullitt attempted to correct this omission, this defect cannot be corrected by subsequent filings. *Hazel v. Knab*, 130 Ohio St.3d 22, 2011-Ohio-4608, 955 N.E.2d 378.

{¶3} Bullitt has failed to establish the requirements necessary for issuance of a writ. First, a writ of error is not recognized in Ohio law. *State v. Bullitt*, 8th Dist. Cuyahoga No. 103774, 2016-Ohio-945, ¶ 2, citing *State v. Hayslip*, 90 Ohio St. 199, 107 N.E. 335 (1914); *State v. Perry*, 10 Ohio St.2d 175, 226 N.E.2d 104 (1967); and *State ex rel. Bey v. Stokes*, 8th Dist. Cuyahoga No. 74038, 1998 Ohio App. LEXIS 2604 (June 11, 1998).

{¶4} The requisites for mandamus are well established: (1) the relator must have a clear legal right to the requested relief, (2) the respondent must have a clear legal duty to perform the requested relief, and (3) there must be no adequate remedy at law. Additionally, although mandamus may be used to compel a court to exercise judgment or to discharge a function, it may not control judicial discretion, even if that discretion is grossly abused. *State ex rel. Ney v. Niehaus*, 33 Ohio St.3d 118, 515 N.E.2d 914 (1987).

Mandamus is not a substitute for appeal. *State ex rel. Daggett v. Gessaman*, 34 Ohio St.2d 55, 295 N.E.2d 659 (1973); and *State ex rel. Pressley v. Indus. Comm. of Ohio*, 11 Ohio St.2d 141, 228 N.E.2d 631 (1967), paragraph three of the syllabus. Mandamus does not lie to correct errors and procedural irregularities in the course of a case. *State ex rel. Jerningham v. Gaughan*, 8th Dist. Cuyahoga No. 67787, 1994 Ohio App. LEXIS 6227 (Sept. 26, 1994). If the relator had an adequate remedy, regardless of whether it was used, relief in mandamus is precluded. *State ex rel. Tran v. McGrath*, 78 Ohio St.3d 45, 1997-Ohio-245, 676 N.E.2d 108.

{¶5} Bullitt has not established any of the requirements of mandamus. This court does not have jurisdiction to grant a motion that was filed in the trial court. Further, Bullitt has not presented any evidence that either the county sheriff's office or the Richmond Heights Police Department or any other governmental entity has any duty to perform the requested relief or that he has a clear legal right to the requested relief. He does not claim that there are no other adequate remedies at law. In fact, the trial court denied his motion to preserve/compel evidence on November 10, 2015. Appeal provides an adequate remedy at law to challenge this ruling.

{¶6} The writ is dismissed for all of the foregoing reasons. Relator to pay costs. The court directs the clerk of courts to serve all parties notice of this judgment and its date of entry upon the journal as required by Civ.R. 58(B).

{¶7} Complaint dismissed.

TIM McCORMACK, JUDGE

FRANK D. CELEBREZZE, JR., P.J., and
MARY J. BOYLE, J., CONCUR