

In the
Supreme Court of Ohio

STATE EX REL. ALPHONSO MOBLEY JR.,	:
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	:
<i>Relator,</i>	:
	:
	:
	Case No. 2022-1649
v.	:
	:
	Original Action in Mandamus
OHIO ATTORNEY GENERAL	:
DAVE YOST,	:
	:
	:
<i>Respondent.</i>	:

RESPONDENT OHIO ATTORNEY GENERAL'S MOTION TO DISMISS

DAVE YOST
Ohio Attorney General

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5900 Bis Road SW
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Relator, pro se

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Ohio Attorney General

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RESPONDENT OHIO ATTORNEY GENERAL'S MOTION TO DISMISS

Pursuant to S.Ct.Prac.R. 12.02, S.Ct.Prac.R. 12.04, and Civ.R. 12(B)(6), Respondent Ohio Attorney General moves this Court to dismiss Relator's Complaint. A memorandum in support of this motion is attached.

Respectfully submitted,

DAVE YOST
Ohio Attorney General

/s/ Ann Yackshaw

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MEMORANDUM IN SUPPORT

I. INTRODUCTION

Pro se Relator Alphonso Mobley Jr. seeks a writ of mandamus compelling Respondent Ohio Attorney General Dave Yost to provide paper copies of public records and awarding damages under the Ohio Public Records Act. *See generally* Compl. Mobley alleges he sought public records from Yost related to records retention schedules and annual reports described in R.C. 309.15, and Yost denied his request in violation of the public records law. *Id.* at 2.

Mobley's Complaint must be dismissed because it is procedurally defective. Mobley's purported affidavit fails to contain a notarial certificate, and thus has no legal effect. As a result, Mobley's Complaint fails to comply with the mandatory pleading requirements under R.C. 2731.04 and this Court's Rules of Practice. Mobley's purported affidavit is also fatally defective because it is not made on personal knowledge. The Court should dismiss the Complaint for these reasons alone.

II. LAW AND ARGUMENT

A. Standard of Review

A motion to dismiss for failure to state a claim upon which a court can grant relief challenges the sufficiency of the complaint itself, not evidence outside of the complaint. *Volbers-Klarich v. Middletown Mgmt.*, 125 Ohio St.3d 494, 2010-Ohio-2057, 929 N.E.2d 434, ¶ 11. When considering the factual allegations of the complaint, a court must accept incorporated items as true, and the non-moving party must be afforded all reasonable inferences possibly derived therefrom. *Mitchell v. Lawson Milk Co.*, 40 Ohio St.3d 190, 192, 532 N.E.2d 753 (1988). However, a court "need not presume the truth of conclusions unsupported by factual allegations." *Welch v. Finlay Fine Jewelry Corp.*, 10th Dist. Franklin No. 01AP-508, 2002 Ohio App. LEXIS 503, at *5 (Feb.

12, 2002). Moreover, “unsupported legal conclusions are not entitled to any presumption of truth and are not sufficient to survive a motion to dismiss.” *Maternal Grandmother, ADMR v. Hamilton Cty. Dept. of Job & Family Servs.*, 2021-Ohio-4096, ¶ 29. When a relator fails to meet their burden, dismissal under Civ.R. 12(B)(6) is required.

B. Mobley’s Complaint must be dismissed because it is not supported by a valid affidavit.

Mobley’s Complaint is fatally defective for two reasons: his purported affidavit fails to contain a notarial certificate, and his purported affidavit is not made on personal knowledge. The Complaint therefore fails to comply with the mandatory pleading requirements under R.C. 2731.04 and S.Ct.Prac.R. 12.02(B). The Court should dismiss the Complaint for these reasons alone.

The Revised Code requires that an “[a]pplication for the writ of mandamus * * * be by petition * * * and verified by affidavit.” R.C. 2731.04. This Court’s Rules of Practice likewise mandate that a complaint in an original action “shall be supported by an affidavit specifying the details of the claim.” S.Ct.Prac.R. 12.02(B)(1). Failure to comply with the affidavit requirement is grounds for dismissal of a mandamus action. *See, e.g., Blankenship v. Blankenship*, 103 Ohio St.3d 567, 2004-Ohio-5596, 817 N.E.2d 382, ¶ 36; *State ex rel. Evans v. Blackwell*, 111 Ohio St.3d 437, 2006-Ohio-5439, 857 N.E.2d 88, ¶ 31.

An affidavit is “a written declaration under oath.” R.C. 2319.02. This Court’s filing guide further clarifies that an affidavit is “[a] voluntary written statement of facts that is sworn to or affirmed before a notary public” that is “signed by the person making the statement and the notary and contains the notary’s jurat.” The Supreme Court of Ohio, A Guide to Filing in the Supreme Court of Ohio (Jan. 2021) at 55; *see State ex rel. Maras v. LaRose*, 168 Ohio St.3d 430, 2022-Ohio-3295, 199 N.E.3d 532, ¶ 19. “Jurat” means a “notarial act” in which the signer gives an oath or affirmation that the statement in the notarized document is true and correct and signs the

document in the presence of a notary public. R.C. 147.011(C). And all notarial acts, including jurats, require the completion of a notarial certificate. R.C. 147.452(A) (“[a] notary public shall provide a completed notarial certificate for every notarial act the notary public performs.”). A notarial certificate must show all of the following information:

- (1) The state and county venue where the notarization is being performed;
- (2) The wording of the acknowledgment or jurat in question;
- (3) The date on which the notarial act was performed;
- (4) The signature of the notary, exactly as shown on the notary’s commission;
- (5) The notary’s printed name, displayed below the notary’s signature or inked stamp;
- (6) The notary’s notarial seal and commission expiration date; and
- (7) If an electronic document was signed in the physical presence of a notary and notarized pursuant to section 147.591 of the Revised Code, or if an online notarization was performed pursuant to sections 147.60 to 147.66 of the Revised Code, the certificate shall include a statement to that effect.

R.C. 147.542(G).

“An affidavit must appear, on its face, to have been taken before the proper officer and in compliance with all legal requisites.” *In re Pokorny*, 74 Ohio St.3d 1238, 657 N.E.2d 1345, 1345 (1992). Indeed, this Court has held numerous times where an affidavit lacks a jurat, or contains an insufficient jurat, that affidavit has no legal effect. *See In re Pokorny; State ex rel. White v. Franklin Cty. Bd. of Elections*, 160 Ohio St.3d 1, 2020-Ohio-524, 153 N.E.3d 1, ¶ 13; *State ex rel. Baldock v. Ghee*, 92 Ohio St.3d 1424, 749 N.E.2d 308 (2001).

Here, the purported affidavit does not have a proper notarial certificate and therefore lacks a sufficient jurat. The notarial certificate is missing the state and county venue where the notarization was allegedly performed, the notary's printed name below the notary's signature, and the notary's notarial seal. Without a sufficient jurat, Mobley's Complaint is not supported by a valid affidavit as required by the Revised Code and this Court's rules. See R.C. 2731.04; S.Ct.Prac.R. 12.02(B).

Mobley's affidavit is also fatally defective because it is not made on personal knowledge. An original action filed in this Court "shall be supported by an affidavit specifying the details of the claim," and the affidavit "shall be made on personal knowledge." S.Ct.Prac.R. 12.02(B)(1)-(2). Here, Mobley's affidavit states, in full:

I, Alphonso Mobley Jr., Relator in the instant action, do hereby swear under penalty of perjury and falsification that the is true forgoing and correct to the best of my knowledge, and the exhibits attached are true and correct copies of the originals. I am competent to testify to the same.

Compl. at 2. This statement fails to comply with the Court's "personal knowledge" requirement. Mobley's failure to comply with this Court's rules is sufficient grounds for denying the writ and dismissing the Complaint without reaching the merits of the claims. *See, e.g., State ex rel. Walker v. Husted*, 144 Ohio St. 3d 361, 2015-Ohio3749, 43 N.E.3d 419, ¶ 25 (dismissing mandamus action because verification affidavits were made "to the best of my knowledge, information, and belief" in violation of S.Ct.Prac.R. 12.02(B)(2)); *State ex rel. Esarco v. Youngstown City Council*, 116 Ohio St. 3d 131, 2007-Ohio-5699, 876 N.E.2d 953, ¶ 15-16 (dismissing mandamus action because the relator did "not expressly state that the facts set forth in his complaint are based on his personal knowledge").

Mobley fails to comply with the mandatory pleading requirements under R.C. 2731.04 and S.Ct.Prac.R. 12.02(B). For this reason, Mobley's request for a writ of mandamus should be denied and his Complaint dismissed.

III. CONCLUSION

For the foregoing reasons, Ohio Attorney General Dave Yost respectfully requests that this Court dismiss Mobley's Complaint.

Respectfully submitted,

DAVE YOST
Ohio Attorney General

/s/ Ann Yackshaw

ANN YACKSHAW (0090623)*

**Counsel of Record*

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CERTIFICATE OF SERVICE

I certify that on January 30, 2023, the foregoing *Respondent Ohio Attorney General's Motion to Dismiss* was filed electronically and sent by first class mail via the U.S. Postal Service to:

Alphonso Mobley Jr.
5900 Bis Road SW
Lancaster, Ohio 43130

Relator, pro se

/s/ Ann Yackshaw

ANN YACKSHAW (0090623)
Assistant Attorney General