

COURT OF APPEALS  
ELEVENTH APPELLATE DISTRICT  
LAKE COUNTY, OHIO

STATE OF OHIO EX REL.,  
LINDA JUSTICE

Relator

-vs-

KRISTY MCBRIDE, CLERK

Respondent

JUDGES:

Hon. W. Scott Gwin, P.J.

Hon. William B. Hoffman, J.

Hon. John W. Wise, J.

Sitting by Assignment of the Supreme  
Court of Ohio

Case No. 2022-L-066

OPINION

CHARACTER OF PROCEEDING:

Writ of Mandamus

JUDGMENT:

Dismissed

DATE OF JUDGMENT ENTRY:

August 21, 2023

APPEARANCES:

For: Relator

For: Respondent

LINDA JUSTICE  
2048 Short Road  
Thompson, OH 44086

JAMES M. LYONS  
240 East Main Street  
Painsville, OH 44077

*Gwin, P.J.*

{¶1} Relator, Linda Justice, has filed a petition for writ of mandamus requesting a writ issue requiring Respondent, the clerk of the Painesville Municipal Court, to accept and file Relator's "Citizen's Complaint"<sup>1</sup> and to assign a case number to the complaint.

{¶2} Relator alleges in her petition she "went to the office of the Respondent Clerk of Courts seeking to submit a document for filing, said document consisting of a Citizen's Complaint created to and in accordance with Ohio revised Code §§ 2935.09 & 10," and Respondent refused to file the document.

{¶3} Respondent has filed a motion to dismiss for failure to state a claim upon which relief may be granted. Respondent argues Relator has failed to state a claim in her petition because Relator has not attached a copy of the "Citizen's Complaint" she attempted to file with Respondent's office. Respondent also argues the "Citizen's Complaint" presented by Relator did not comply with R.C. 2935.09 and 2935.10, therefore, Respondent was not required to accept the complaint. Finally, Respondent argues her only duty under R.C. 2935.09 and 2935.10 is to forward a complaint to a reviewing official. She argues there is no duty under the statute to file the complaint.

### **12(B)(6) AND MANDAMUS STANDARDS**

{¶4} Dismissal of a complaint is warranted "if, after presuming all factual allegations in the complaint to be true and drawing all reasonable inferences in the Relator's favor, it appears beyond doubt that he can prove no set of facts entitling him to a writ of mandamus." *Id.* To be entitled to a writ of mandamus, Casey must establish a

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<sup>1</sup> The document Relator has attached to this petition which purports to be the document presented to the clerk is actually captioned as an "Affidavit/Complaint (O.R.C. § 2935.09)" rather than "Citizen's Complaint."

clear legal right to the requested relief, a clear legal duty on the part of one or more of the officials to provide it, and the lack of an adequate legal remedy in the ordinary course of the law. *Id.* at ¶ 9. *State ex rel. Casey v. Brown*, 2023-Ohio-2264 citing *State ex rel. A.N. v. Cuyahoga Cty. Prosecutor's Office*, 165 Ohio St.3d 71, 2021-Ohio-2071, 175 N.E.3d 539, ¶ 8.

### **CLERK'S DUTY UNDER R.C. 2935.09**

{¶5} Revised Code 2935.09 provides,

{¶6} (A) As used in this section, "reviewing official" means a judge of a court of record, the prosecuting attorney or attorney charged by law with the prosecution of offenses in a court or before a magistrate, or a magistrate.

{¶7} (B) In all cases not provided by sections 2935.02 to 2935.08 of the Revised Code, in order to cause the arrest or prosecution of a person charged with committing an offense in this state, a peace officer or a private citizen having knowledge of the facts shall comply with this section.

{¶8} (C) A peace officer who seeks to cause an arrest or prosecution under this section may file with a reviewing official or the clerk of a court of record an affidavit charging the offense committed.

{¶9} (D) A private citizen having knowledge of the facts who seeks to cause an arrest or prosecution under this section may file an affidavit charging the offense committed with a reviewing official for the purpose of review to determine if a complaint should be filed by the prosecuting attorney or attorney charged by law with the prosecution of offenses in the court or before the magistrate. A private citizen may file an affidavit charging the offense committed with the clerk of a court of record before or after

the normal business hours of the reviewing officials if the clerk's office is open at those times. A clerk who receives an affidavit before or after the normal business hours of the reviewing officials shall forward it to a reviewing official when the reviewing official's normal business hours resume.

{¶10} The statute allows a private citizen who seeks to cause an arrest or prosecution to file an affidavit charging an offense with a reviewing official. If the affidavit is presented outside of the reviewing official's normal business hours, then the private citizen may deliver the affidavit to the clerk if the clerk's office is open. When the clerk receives the affidavit, the clerk's only duty is to forward it to the reviewing official once the reviewing official's normal business hours resume.

{¶11} The Tenth District has likewise held, "The plain language of R.C. 2935.09(D) only contemplates clerk involvement if the affidavit is filed before or after the normal business hours of a reviewing official." *State ex rel. Blachere v. Tyack*, 10th Dist. No. 22AP-478, 2023-Ohio-781, 210 N.E.3d 960, ¶ 22

{¶12} Nowhere in the petition does Relator aver she attempted to present an affidavit to the clerk outside of the reviewing official's normal business hours. Because the clerk's only duty under the statute arises if the clerk's office is open outside of the reviewing official's normal business hours and because Relator has not alleged in her complaint that the charging affidavit was presented to the clerk outside of the reviewing officials' normal business hours, the complaint fails to state a claim upon which relief may be granted. Presuming all of the factual allegations are true in the complaint, Relator cannot establish the clerk has a clear legal duty to accept the charging affidavit as described in the complaint.

{¶13} Therefore, the motion to dismiss is granted due to Relator's failure to state a claim upon which relief may be granted. The clerk of courts is hereby directed to serve upon all parties not in default notice of this judgment and its date of entry upon the journal. See Civ. R. 58(B).

By Gwin, P.J.,  
Hoffman, J., and  
Wise, J., concur

Sitting by Assignment of the Supreme  
Court of Ohio

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HON. W. SCOTT GWIN

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HON. WILLIAM B. HOFFMAN

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HON. JOHN W. WISE