[Cite as *State ex rel. Neilsen v. Scioto Cty. Prosecutors*, 2026-Ohio-4668.]

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
SCIOTO COUNTY

State ex rel. Thomas Neilsen,	:	
	:	
Affiant-Appellant,	:	Case No. 25CA4162
	:	
v.	:	
	:	
Scioto County Prosecutors, et al.,	:	DECISION AND
	:	JUDGMENT ENTRY
Respondents-Appellees.	:	
	:	**RELEASED 11/16/2026**

APPEARANCES:

Thomas Neilsen, Parker, Colorado, pro se.

Shane A. Tieman, Scioto County Prosecuting Attorney, and Danielle M. Parker, Scioto County Assistant Prosecuting Attorney, Portsmouth, Ohio, for appellee.

Hess, J.

{¶1} This is an appeal from a Scioto County Common Pleas Court judgment that dismissed a private citizen affidavit filed by Thomas Neilsen, "affiant" below and appellant herein. Appellant assigns the following errors for review:

> FIRST ASSIGNMENT OF ERROR:
>
> "Civil standing doctrine was improperly applied to a statutory criminal complaint supported by affidavit."
>
> SECOND ASSIGNMENT OF ERROR:
>
> "The reviewing judge did not perform the mandatory R.C. 2935.10(a) determination."

{¶2} On July 6, 2025, appellant submitted a private citizen affidavit to the Scioto County Common Pleas Court judge. Appellant captioned this affidavit, "People of the State of Ohio v. Scioto County Prosecutor, Shane Tieman."

{¶3} Appellant subsequently filed a "motion to set probable cause hearing pursuant to R.C. 2935.10." This motion listed "Scioto County Prosecutors, Shane Tieman [and] Julie Hutchinson," as "Respondent." The clerk of courts docketed this motion and assigned it a civil case number.[1]

{¶4} In his motion, appellant alleged that, on July 6, 2025, he filed "an affidavit of complaint" under R.C. 2935.09(D). Appellant claimed that his affidavit "set forth substantial factual allegations" that the Scioto County Prosecuting Attorney, Shane A. Tieman, and an assistant prosecuting attorney, Julie Hutchinson, appellees herein, "committed serious felony offenses." Appellant asked the court to set a probable cause hearing and to allow him the opportunity to present evidence.

{¶5} Appellees later filed a motion to dismiss appellant's motion and to strike the filing from the record. Appellees asserted that R.C. 2935.10 does not entitle appellant to a probable cause hearing. Appellees thus asked the court to dismiss appellant's motion.

{¶6} On November 12, 2025, the trial court sua sponte dismissed the case because, the court determined, appellant did not have standing to sue. The court concluded that appellant "has not shown that he has suffered 'an injury in fact' concerning the complained of conduct." The court thus dismissed the case. The court additionally found that its dismissal rendered moot appellant's motion for a probable cause hearing

[1] We note that at least one court has observed that a private citizen affidavit "seeks to cause a person's arrest and criminal prosecution," so it "cannot be used to obtain a private remedy," to "enforce a private right of action," or to initiate a civil action. *See State v. Fraley*, 2020-Ohio-3763, ¶ 25 (12th Dist.); *see id*. at ¶ 26 ("in adopting R.C. 2935.09(D) and 2935.10(A) and (B), the General Assembly has created a proto-criminal action, a statutory stage that precedes the potential commencement of a criminal action").

We further recognize that the absence of a specific filing procedure understandably may create cause for confusion. *See State ex rel. Blachere v. Tyack*, 2023-Ohio-781, ¶ 23 (10th Dist.) (questioning the procedure by which a private citizen might file an affidavit with a reviewing official under R.C. 2935.09(A) and expressing "bemusement" with the structure of the statute); *see also State ex rel. Mao Ju v. Mayer*, 2026-Ohio-1481, ¶ 12 (2d Dist.) (R.C. 2935.09(D) does not impose on a reviewing official a duty "to docket or assign a case number to an affidavit filed in accordance with R.C. 2953.09").

and appellees' motion to dismiss. This appeal followed.

I

{¶7} Before we address appellant's assignments of error, we first point out that, on November 24, 2025, appellant filed with the trial court a motion for reconsideration. In his appellate brief, appellant asserts that the trial court did not address his motion. However, "'once an appeal is perfected, the trial court is divested of jurisdiction over matters that are inconsistent with the reviewing court's jurisdiction to reverse, modify, or affirm the judgment.'" *State ex rel. Electronic Classroom of Tomorrow v. Cuyahoga Cty. Court of Common Pleas*, 2011-Ohio-626, ¶ 13, quoting *State ex rel. Rock v. School Emp. Retirement Bd.,* 2002-Ohio-3957, ¶ 8. Stated differently, once a case has been appealed, the trial court loses jurisdiction except to take action in aid of the appeal. *State ex rel. Special Prosecutors v. Judges, Court of Common Pleas*, 55 Ohio St.2d 94, 97 (1978). Thus, the trial court did not have jurisdiction to consider appellant's motion for reconsideration. We further observe that "motions for reconsideration are not allowable either expressly or impliedly in the trial court after a final judgment." *Pitts v. Ohio Dept. of Transp.*, 67 Ohio St.2d 378, 379 (1981).

II

{¶8} Appellant's two assignments of error argue in essence that the trial court erred by dismissing the case. For ease of discussion, we have combined our review of the two assignments of error.

{¶9} In his first assignment of error, appellant asserts that the trial court incorrectly determined that he lacked standing. He asserts that R.C. 2935.09(D) authorized him, as a private citizen, to file "a criminal complaint supported by a sworn affidavit."

{¶10} In his second assignment of error, appellant claims that the court failed to comply with R.C. 2935.10(A). Appellant argues that R.C. 2935.10(A) does not allow a trial court to dismiss an affidavit filed under R.C. 2935.09(D).

A

{¶11} We initially note that, although appellees suggest that the trial court dismissed appellant's motion for a probable cause hearing, the trial court stated that it found appellant's motion, and appellees' motion to dismiss, moot based upon its determination that appellant lacked standing. Thus, contrary to appellees' assertion, the court did not dismiss appellant's motion for a probable cause hearing. Rather, the court stated that it dismissed the "matter" "on the Court's own motion." The court defined the "matter" before it as appellant's motion for a probable cause hearing and his R.C. 2935.09(D) affidavit. If the court found appellant's motion for a probable cause hearing moot, then the remaining matter available for the court to dismiss would have been appellant's R.C. 2935.09(D) affidavit. Accordingly, we construe the trial court's decision to be one that dismissed appellant's R.C. 2935.09(D) affidavit.[2]

B

{¶12} R.C. 2935.09(D) allows a private citizen "who seeks to cause an arrest or prosecution" to

> 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.

{¶13} If the affidavit charges the commission of a felony, a judge "shall forthwith

[2] We observe that Ohio courts do not seem to question a private citizen's ability "to appeal errors in the R.C. 2935.10 process because they, as the impetus behind the process, have an interest in ensuring reviewing officials properly apply the statute," *see State v. L.F.*, 2020-Ohio-968, ¶ 15 (12th Dist.).

issue a warrant for the arrest of the person charged in the affidavit," "unless the judge . . . has reason to believe that it was not filed in good faith, or the claim is not meritorious." R.C. 2935.10(A). If the judge does not issue an arrest warrant, then the judge "shall forthwith refer the matter to the prosecuting attorney or other attorney charged by law with prosecution for investigation prior to the issuance of warrant." R.C. 2935.10(A); *see also State ex rel. Rankin v. State*, 2025-Ohio-4483, ¶ 16; *State ex rel. Brown v. Nusbaum*, 2017-Ohio-9141, ¶ 12.

{¶14} In the case sub judice, appellant filed an affidavit under R.C. 2935.09(D). The judge did not, however, comply with R.C. 2935.10(A). Instead, the judge dismissed the matter outright. R.C. 2935.10(A) does not allow a judge to summarily dismiss an R.C. 2935.09(D) affidavit, however. *See State ex rel. Brown v. Jeffries*, 2012-Ohio-1522, ¶ 10 (4th Dist.) ("R.C. 2935.10 does not provide the trial court with the third option of summarily dismissing the matter"); *accord State v. Burns,* 2019-Ohio-1141, ¶ 22 (2d Dist.) ("the trial court did not have the option of summarily dismissing" a private citizen's affidavit). Because the trial court did not select one of the two options listed in R.C. 2935.10(A)—but instead selected an option that is not provided for in the statute—we must agree with appellant that the trial court erred by failing to follow the statutory procedure. *See, e.g., In re Pitts*, 2024-Ohio-1618, ¶ 19 (6th Dist.) ("[b]ecause the trial court summarily dismissed Pitts's affidavit, we must remand the matter to the trial court to follow the procedures set forth in R.C. 2935.09 and 2935.10"); *Brown*, 2012-Ohio-1522, ¶ 10 (4th Dist.) (reversing and remanding the matter to the trial court when the trial court summarily dismissed an R.C. 2935.09(D) affidavit).

{¶15} Furthermore, to the extent that the trial court concluded that appellant lacked

standing to file an R.C. 2935.09(D) affidavit, the statute states that "[a] private citizen having knowledge of the facts" may file the affidavit. The statute does not appear to impose any additional requirement that a private citizen must sustain an injury in fact or otherwise meet traditional standing requirements in order to file an R.C. 2935.09(D) affidavit. *See generally Voss v. Quicken Loans, L.L.C.*, 2026-Ohio-531, ¶ 13 ("the legislature may confer standing by statute"). We believe that any other questions posed by the standing doctrine are outside the scope of the arguments presented on appeal. *See, e.g., Voss*, 2026-Ohio-531, at ¶ 13 (stating that the legislature's authority to confer standing "is not unlimited"). Moreover, although appellant suggests that he filed a "criminal complaint," we observe that "'[t]he plain language of [R.C. 2935.09(D)] does not permit the filing of a complaint by a private citizen,'" *State ex rel. Dominguez v. State*, 2011-Ohio-3091, ¶ 2, quoting *State ex rel. Muff v. Wollenberg,* 2008-Ohio-4699, ¶ 12 (5th Dist.); *accord State v. Hanson*, 2019-Ohio-3688, ¶ 20 (2d Dist.) ("there is no statutory authority for a private citizen to file a criminal 'complaint' in court).

{¶16} Accordingly, based upon the foregoing reasons, we sustain appellant's two assignments of error, reverse the trial court's judgment, and remand this matter to the trial court in order to comply with R.C. 2935.10(A).[3]

JUDGMENT REVERSED AND CAUSE REMANDED FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION.

[3] We hasten to add that our decision should not be construed as an opinion on the merits of the allegations contained in appellant's R.C. 2935.09(D) affidavit, but simply the procedural process the statute requires.

JUDGMENT ENTRY

It is ordered that the JUDGMENT BE REVERSED and this cause remanded for further proceedings consistent with this opinion. Appellant shall recover of appellees the costs herein taxed.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Scioto County Common Pleas Court to carry this judgment into execution.

A certified copy of this entry shall constitute that mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

Smith, P.J. & Wilkin, J.: Concur in Judgment and Opinion.

For the Court

BY: _____
Michael D. Hess, Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 22, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.