[Cite as *State ex rel. Benson v. Johnson*, 2026-Ohio-4268.]

IN THE OHIO COURT OF APPEALS
FIFTH APPELLATE DISTRICT
GUERNSEY COUNTY, OHIO

STATE OF OHIO, EX REL MARVIN BENSON, Relator -vs- JENNIFER JOHNSON, et al., GUERNSEY COUNTY CLERK OF COURTS and UNKNOWN CLERKS, Respondents	Case No. 26CA000028 Opinion And Judgment Entry Writ of Mandamus Judgment: Dismissed Date of Judgment Entry: October 28, 2026

BEFORE: Craig R. Baldwin; Robert G. Montgomery; Kevin W. Popham, Judges

APPEARANCES: MARVIN BENSON, Pro Se, for Relator; No Appearance, for Respondent.

Baldwin, P.J.

{¶1} Relator presented a document to Respondents for filing titled, "Criminal Complaint and Affidavit Pursuant to R.C. §§ 2935.09 & 2935.10." According to the mandamus complaint before us, Respondents sought instruction from the trial court on how to proceed with the document presented by Relator. After consultation with the trial court, Respondents filed the document and assigned a civil case number: 26CV000175.

{¶2} Relator argues Respondents erroneously assigned a civil case number. He has filed a Complaint for Writ of Mandamus with this Court seeking a writ which would require Respondents to docket and maintain the affidavit and complaint using a criminal case

classification rather than a civil case classification. Relator further requests the previously docketed affidavit be removed as a civil case on the clerk's docket.

{¶3} Respondents have not filed an answer or motion in response to this complaint.

{¶4} To be entitled to the issuance of a writ of mandamus, relator must demonstrate: (1) a clear legal right to the relief prayed for; (2) a clear legal duty on the respondent's part to perform the act; and, (3) that there exists no plain and adequate remedy in the ordinary course of law. *State ex rel. Master v. Cleveland* (1996), 75 Ohio St.3d 23, 26-27, 1996 Ohio 228, 661 N.E.2d 180; State *ex rel. Harris v. Rhodes* (1978), 54 Ohio St. 2d 41, 374 N.E.2d 641, citing *State ex rel. National City Bank v. Bd. of Education* (1977), 52 Ohio St. 2d 81, 369 N.E.2d 1200.

{¶5} "Dismissal of a mandamus action under Civ.R. 12(B)(6) is appropriate 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." *State ex rel. A.N. v. Cuyahoga Cty. Prosecutor's Office*, 165 Ohio St. 3d 71, 2021-Ohio-2071, ¶ 8, 175 N.E.3d 539.

{¶6} We find Relator does not have a clear legal right to the relief prayed for nor does Respondent have a clear legal duty to perform the requested acts.

{¶7} Relator argues R.C. 2935.09 establishes a clear legal right to the relief requested and creates a corresponding clear legal duty to provide that relief on the part of Respondents. We disagree.

{¶8} Revised Code 2935.09 is titled, "Person having knowledge of offense to file affidavit - official review **before** complaint filed." (emphasis added).

{¶9} This revised code section provides,

(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.

(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.

(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.

(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. R.C. 2935.09 Section (D) allows, in limited circumstances, a private citizen to file an affidavit charging an offense with the clerk of courts for the purpose of having a reviewing official determine whether a complaint should

be filed. The act of filing the affidavit with the clerk is only permitted before or after normal business hours if the clerk is open during the non-normal business hours.

{¶10} In the instant case, Relator sought to file a criminal complaint with an affidavit attached to the complaint. The statute distinguishes a complaint from an affidavit. The plain language of this code section does not permit the filing of a complaint by a private citizen. The only document permitted to be filed under this statute is an affidavit. Therefore, Relator has not demonstrated he has a clear legal right to have his complaint filed. Nor has Relator demonstrated Respondent has a clear legal duty to file a complaint prepared by a private citizen under this statute.

{¶11} A clerk's statutory duty under R.C. 2935.09 only arises very narrow situation: when the clerk's office is open outside the normal business hours of a reviewing official. The clerk has no duty under this statute to file a complaint prepared by a private citizen. The only duty a clerk has is to file an affidavit. This duty only arises during the time specified in the statute. If the affidavit is presented during a reviewing official's normal business hours, the clerk has no duty to file it.

{¶12} The Complaint for Writ of Mandamus does not allege Relator presented an affidavit without the complaint. The Complaint also does not allege that an affidavit was presented to the clerk outside the normal business hours of the reviewing official. The Complaint fails to state any fact which would establish that the conditions precedent existed which would give rise to a duty of the clerk.

{¶13} With respect to Relator's argument that Respondents improperly filed the document presented by Relator using a civil case number, Relator has cited no authority

establishing a right to a particular case classification or case number. Nor has Relator cited any authority demonstrating Respondents have a duty to provide any case number much less a criminal case number.

{¶14} We also note Relator raised this exact issue in his direct appeal of the trial court's dismissal of the civil case. Relator had an adequate remedy at law which is he utilized to challenge the class classification. The existence of an adequate remedy at law also precludes the issuance of the requested writ.

CONCLUSION

{¶15} We find the complaint fails to state a claim upon which relief may be granted, therefore, we dismiss the complaint.

{¶16} 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).

{¶17} Costs to Relator.

By: Baldwin, P.J.

Montgomery, J. and

Popham, J. concur.