[Cite as *Mitchell v. Benton*, 2026-Ohio-4623.]

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

ANDREW MITCHELL Plaintiff - Appellant -vs- JEFF BENTON, ET AL. Defendants - Appellees	Case No. 26 CAA 08 0082 Opinion And Judgment Entry Appeal from the Court of Common Pleas, Case No. 26 CR I 08 0464 Judgment: Reversed and Remanded Date of Judgment Entry: November 20, 2026

BEFORE: Andrew J. King; William B. Hoffman; Robert G. Montgomery, Judges

APPEARANCES: ANDREW SMITH, PRO SE, for Plaintiff-Appellant; ARIC I. HOCHSTETTLER, for Defendant-Appellee.

King, P.J.

{¶ 1} Plaintiff-Appellant, Andrew Mitchell, appeals the August 11, 2026 judgment entry of the Delaware County Common Pleas Court dismissing his affidavit of complaint against Defendants-Appellees, Magistrate Sandra Eicher, CSEA Attorney Stephanie Kidd, CSEA Director Joyce Bowen, CSEA Coordinator Ryan Camella, former Delaware County Treasurer Donald Rankey, Jr., Treasurer's Office employee Doug Crew, Deputy County Administrator and General Counsel Aric Hochstettler, Delaware County Commissioners Gary Merrell, Barb Lewis, and Jeff Benton, Delaware County Auditor George Kaitsa, and Municipal Clerk's Office employee Tabitha Perry. We reverse the trial court.

FACTS AND PROCEDURAL HISTORY

{¶ 2} On August 5, 2026, Mitchell filed an "affidavit of complaint" under R.C. 2935.09, requesting appointment of a special prosecutor to investigate alleged criminal conduct by several public officials, appellees herein. Mitchell alleged Medicaid fraud, unlawful license suspension/deprivation of rights, fraud/unauthorized use of property/corrupt practices relating to a tax lien overcharge, falsification/fraud/corrupt practices involving bond transactions, obstruction, and dereliction of duty.

{¶ 3} By judgment entry filed August 11, 2026, the trial court dismissed the affidavit of complaint, finding it was not supported by probable cause to form the basis of a criminal complaint against appellees, was without merit, and was not filed in good faith.

{¶ 4} Mitchell filed an appeal with the following assignments of error:

I

{¶ 5} "THE TRIAL COURT ERRED IN DISMISSING APPELLANT'S AFFIDAVIT AS 'NOT FILED IN GOOD FAITH' WITHOUT ADEQUATELY APPLYING THE STANDARD ESTABLISHED BY R.C.2935.10 OR PROVIDING SUFFICIENT BASIS FOR MEANINGFUL APPELLATE REVIEW."

II

{¶ 6} "THE TRIAL COURT ERRED BY ALLOWING A JUDGE WHO WAS NOT IDENTIFIED IN THE RECORD AS THE ASSIGNED JUDGE TO ENTER THE JUDGMENT DISMISSING APPELLANT'S AFFIDAVIT, WHERE THE RECORD CONTAINS NO ASSIGNMENT, TRANSFER, SUBSTITUTION, OR OTHER AUTHORIZATION FOR THAT JUDGE TO ADJUDICATE THE MATTER."

III

{¶ 7} "THE CIRCUMSTANCES SURROUNDING JUDGE HEMMETER'S PARTICIPATION RAISED A SUBSTANTIAL IMPARTIALITY CONCERN, REQUIRING THAT ANY REMAND BE PROPERLY ASSIGNED AN IMPARTIAL JUDICIAL OFFICER."

I

{¶ 8} In Mitchell's first assignment of error, he claims the trial court erred in dismissing his affidavit of complaint under R.C. 2935.10. We agree.

{¶ 9} Mitchell filed his affidavit of complaint under R.C. 2935.09(D) which states in part:

> 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.

{¶ 10} Subsection (A) identifies a "reviewing official" as "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." Mitchell properly filed his affidavit of complaint with the Delaware County Clerk of Courts.

{¶ 11} R.C. 2935.10(A) mandates the procedure upon the filing of an affidavit or complaint:

> Upon the filing of an affidavit or complaint as provided by section 2935.09 of the Revised Code, if it charges the commission of a felony, such judge, clerk, or magistrate, unless the judge, clerk, or magistrate has reason to believe that it was not filed in good faith, or the claim is not meritorious, shall forthwith issue a warrant for the arrest of the person charged in the affidavit, and directed to a peace officer; otherwise the judge, clerk, or magistrate 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.

{¶ 12} By judgment entry filed August 11, 2026, the trial court found the affidavit of complaint was not supported by probable cause to form the basis of a criminal complaint against appellees, was without merit, and was not filed in good faith, and dismissed the filing.

{¶ 13} Mitchell argues the trial court failed to follow the statutory process. One appellee filed a brief on behalf of himself, Deputy County Administrator and General Counsel Aric Hochstettler, and conceded the argument. Appellee's Brief at 2-3. Because Mitchell's affidavit of complaint alleged various criminal felonies, R.C. 2935.10(A) must be followed. *In re Slayman,* 2008-Ohio-6713, ¶ 12 (5th Dist.), citing *State ex rel. Boylen v. Harmon,* 2006 Ohio 7, ¶ 7.

{¶ 14} Under R.C. 2935.10(A), after reviewing an affidavit of complaint, a trial court has two options: "issue a warrant for the arrest of the person charged in the affidavit" or "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 does not provide the trial court with the third option of summarily dismissing the matter." *State ex rel. Brown v. Jeffries,* 2012-Ohio-1522, ¶ 10 (4th Dist.); *see also Johnson v. Archer,* 2017-Ohio-2964, ¶ 15 (5th Dist.); *Hillman v. Larrison,* 2016-Ohio-666, ¶ 13-14 (10th Dist.).

{¶ 15} Upon review, we find the trial court erred in not following the mandates of R.C. 2935.10(A) and instead dismissing the affidavit of complaint.

{¶ 16} Assignment of Error I is granted; Assignments of Error II and III are moot.

{¶ 17} For the reasons stated in our accompanying Opinion, the judgment of the Delaware County Common Pleas Court is REVERSED and the matter is REMANDED for further proceedings.

{¶ 18} Costs to Appellees.

By: King, P.J.

Hoffman, J. and

Montgomery, J. concur.