

FILED  
COURT OF APPEALS  
DEC 14 2023  
CATHY PROSSER WILCOX  
CLERK  
HANCOCK COUNTY, OHIO

**IN THE COURT OF APPEALS OF OHIO  
THIRD APPELLATE DISTRICT  
HANCOCK COUNTY**

**THE STATE OF OHIO, EX REL.  
CITY OF FINDLAY, EX REL.,  
GEORGE MARTENS,**

**CASE NO. 5-23-12**

**RELATOR,**

**v.**

**CITY OF FINDLAY MUNICIPAL  
COURT, ET AL.,**

**J U D G M E N T  
E N T R Y**

**RESPONDENTS.**

This matter comes on for determination of the amended complaint filed by Relator for a writ of mandamus, Respondents' motion to dismiss, Relator's response to the motion to dismiss, and Respondents' reply.

*Mandamus Claim*

Relator brings this action as a rental property owner and taxpayer of the City of Findlay. Relator alleges that the procedure utilized by Respondents, who are judges of the Findlay Municipal and Hancock County Common Pleas Courts, to adjudicate municipal tax cases is contrary to state statutory law. Specifically, Relator alleges that

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Respondents failed to obtain jurisdiction under Chapter R.C. 718 prior to hearing these cases.<sup>1</sup>

Relator seeks alternative and/or peremptory writs of mandamus compelling Respondents to “conform their practices to ORC 718 as codified,” “to dismiss sua sponte all cases where the requirements of under 718 [sic] are not first met to obtain jurisdiction,” or “to show cause why they should not be compelled to establish jurisdiction as required under the statutory scheme of ORC 718 to allow or initiate proceedings pursuant to said ORC 718.” (First Amend. Compl. at p.21-22). Relator, who filed this action pro se, also seeks attorney fees and “other relief.”

Respondents filed a motion to dismiss the action pursuant to Civ.R. 12(B)(6) asserting that Relator lacks standing to bring this extraordinary writ and that, even if standing could be established, Relator is not entitled to a writ of mandamus because he has no clear legal right to the relief requested. Respondents further contend that dismissal of the complaint is warranted because Relator has an adequate remedy at law through appeal, and to the extent that Relator seeks damages, his claims are barred by judicial immunity.

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<sup>1</sup>Although not clearly articulated in the complaint, it appears that Relator takes issue with the City of Findlay’s municipal ordinances found in Chapters 193 et seq. and 194 et seq., which set forth procedures for municipal tax code enforcement. Relator seems to argue that these municipal code sections are at odds with the provisions of Ohio Revised Code Chapter 718. Notably, Respondents maintain that the City of Findlay adopted Chapter 194 (eff. 1/1/2016) to comply with the revisions to R.C. Chapter 718, as amended by House Bill 5.

*Legal Standard*

To be entitled to a writ of mandamus, Relator must establish (1) a clear legal right to the requested relief, (2) a clear legal duty on Respondents' part to provide it, and (3) the lack of an adequate remedy in the ordinary course of the law. *See State ex rel. Waters v. Spaeth*, 131 Ohio St.3d 55, 2012-Ohio-69, ¶ 6. The burden is on Relator to establish all three elements by clear and convincing evidence. *State ex rel. Mars Urban Solutions, L.L.C v. Cuyahoga Cty. Fiscal Officer*, 155 Ohio St.3d 316, 2018-Ohio-4668, ¶ 6.

Dismissal pursuant to Civ.R. 12(B)(6) is appropriate if it appears beyond doubt from the complaint, after taking all factual allegations as true, that Relator can prove no set of facts entitling him to a writ of mandamus. *Stevens v. Hill*, 168 Ohio St.3d 427, 2022-Ohio-2479, ¶ 5.

*Amended Complaint Warrants Dismissal*

According to the amended complaint, at the time Relator filed this action, there is (and was) no pending tax collection claim by the City of Findlay against Relator over which Respondents are (or were) presiding. "To have standing in a mandamus case, a relator must be 'beneficially interested' in the case." *State ex rel. Ames v. Portage Cnty. Bd. of Revision*, 166 Ohio St. 3d 225, 226, 2021-Ohio-4486, ¶ 10, quoting *State ex rel. Hills & Dales v. Plain Local School Dist. Bd. of Edn.*, 158 Ohio St.3d 303, 2019-Ohio-5160, ¶ 9; R.C. 2731.02. "[T]he applicable test is whether [a]

relator[ ] would be directly benefited or injured by a judgment in the case.” *State ex rel. Sinay v. Sadders*, 80 Ohio St.3d 224, 226 (1997).

Relator claims he has standing by virtue of being a taxpayer. However, Relator fails to make allegations in his amended complaint establishing this status. *See State ex rel. Masterson v. Ohio State Racing Comm.*, 162 Ohio St. 366 (1954) (“Taxpayer standing applies when “public officers attempt to make an illegal expenditure of public money, or to create an illegal debt, which [a taxpayer], in common with other property holders of the taxing district, may otherwise be compelled to pay.”).

Instead, Relator seeks an order compelling Respondents to “conform their practices to ORC 718 as codified.” It is well-settled that “a writ of mandamus will not issue to compel the general observance of laws in the future.” *See State ex rel. Am. Civ. Liberties Union of Ohio, Inc. v. Cuyahoga Cty. Bd. of Commers.*, 128 Ohio St. 3d 256, 2011Ohio-625 (2011), ¶ 27, quoting *State ex rel. Kirk v. Burcham*, 82 Ohio St.3d 407, 409 (1998). Mandamus may only be employed to compel the performance of a present existing duty as to which there is a present default. *See State ex rel. Evans v. Tieman*, 2019-Ohio-2411, 157 Ohio St. 3d 99, 102; *State ex rel. Home Care Pharmacy, Inc. v. Creasy*, 67 Ohio St.2d 342, 343-344 (1981) (“Mandamus will not lie to remedy the anticipated nonperformance of a duty.”). Here, Relator fails to identify in the amended complaint a presently existing duty as to which there is a default.

This notwithstanding, the Court's review of the amended complaint indicates that the real object sought is a declaratory judgment, which this court lacks original jurisdiction to grant. *See* Ohio Constitution Article IV, Section 3(B)(1). Specifically, Relator seeks a declaration from the Court that the procedures currently employed by the City of Findlay to enforce municipal tax liability does not confer jurisdiction to Respondents adjudicate these cases. "If the allegations of a mandamus complaint indicate that the real object sought is a declaratory judgment, the complaint does not state a viable claim in mandamus and must be dismissed for lack of jurisdiction." *State ex rel. JobsOhio v. Goodman*, 133 Ohio St. 3d 297, 299, 2012-Ohio-4425, ¶ 14, citing *State ex rel. Miller v. Warren Cty. Bd. of Elections*, 130 Ohio St.3d 24, 2011-Ohio-4623, ¶ 21. Therefore, the Court finds that Relator has an adequate remedy at law by way of a proper declaratory-judgment action.<sup>2</sup>

Finally, the Court finds that this action is the latest iteration of Relator's quest to invalidate the procedure utilized by the City of Findlay to collect unpaid municipal taxes. Notably, this court has already rejected Relator's jurisdictional argument. *See Findlay v. Martens*, 3d Dist. Hancock No. 5-22-05, 2022-Ohio-4146, ¶ 20 fn. 6 ("[T]here is no indication that failure to comply with R.C. 718 or Findlay Ordinance 194.02 would deprive the trial court of jurisdiction over the matter.").

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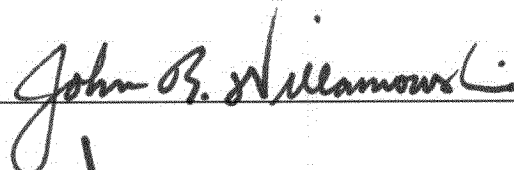
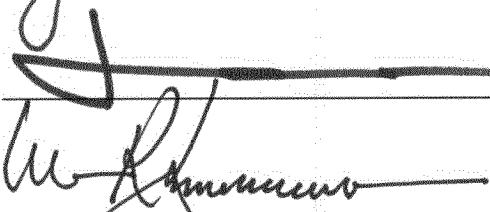
<sup>2</sup> In the amended complaint, Relator suggests that he is indeed pursuing a declaratory judgment action in another court. (First Amend. Compl. p. 3).

In sum, Relator has not establish standing to bring this suit, nor has he identified a clear legal duty that is imposed upon Respondents. Moreover, Relator has an adequate legal remedy at law. For all these reasons, Relator cannot establish that he is entitled to the requested mandamus relief, and the amended complaint warrants dismissal pursuant to Civ.R. 12(B)(6).

*Conclusion*

Accordingly, the amended complaint fails to state a claim upon which relief by writ of mandamus can be granted and the motion to dismiss is well taken. Due to the Court's determination that a writ of mandamus does not lie (and the fact that Relator is pro se), Relator's claim for attorney fees is also denied.

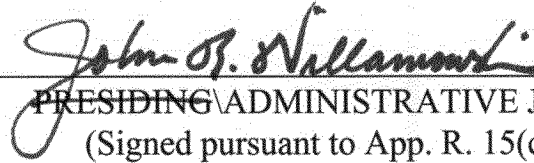
It is therefore **ORDERED, ADJUDGED and DECREED** that the first amended complaint for writ of mandamus be, and hereby is, dismissed at the costs of the Relator for which judgment is hereby rendered.

  
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JUDGES

Case No. 5-23-12

TO THE CLERK:

Within three (3) days of entering this judgment on the journal, you are directed to serve on all parties not in default for failure to appear notice of the judgment and the date of its entry upon the journal, pursuant to Civ.R. 58(B).

  
PRESIDING ADMINISTRATIVE JUDGE  
(Signed pursuant to App. R. 15(c))

DATED: DEC 12 2023  
/hls