

[Cite as *Allen v. Fleegle*, 2011-Ohio-5585.]

IN THE COURT OF APPEALS FOR MUSKINGUM COUNTY, OHIO
FIFTH APPELLATE DISTRICT

JOHN DALE ALLEN,

Petitioner,

v.

MARK C. FLEEGLE,

Respondent.

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JUDGES:

Hon. John W. Wise, P.J.

Hon. Sheila G. Farmer, J.

Hon. Patricia A. Delaney, J.

CASE NO. CT11-0035

OPINION

CHARACTER OF PROCEEDING:

Petition for Writ of Quo Warranto

JUDGMENT:

WRIT DISMISSED

DATE OF JUDGMENT ENTRY:

October 18, 2011

APPEARANCES:

For Petitioner – Pro se:

For Respondent:

JOHN DALE ALLEN
c/o 28 N. 4th St, - SB4
Zanesville, OH 43701

The Honorable Mark C. Fleegle
401 Main Street
Zanesville, OH 43701

Muskingum County, Case No. CT11-0035

Delaney, J.,

{¶ 1} Petitioner, John Dale Allen, has filed a Petition for Writ of Quo Warranto against Respondent Judge Mark Fleegle requesting a writ be granted ousting Respondent from his position as a judge in the Muskingum County Court of Common Pleas. Petitioner claims Respondent violated his oath of office by setting an excessive bail.

{¶ 2} For a writ of quo warranto to issue, “a relator must establish (1) that the office is being unlawfully held and exercised by respondent, and (2) that relator is entitled to the office.” *State ex rel. Paluf v. Feneli* (1994), 69 Ohio St.3d 138, 141, 630 N.E.2d 708.

{¶ 3} The Ohio Supreme Court has held, “[A]n action in quo warranto may be brought by an individual as a private citizen only when he personally is claiming title to a public office.” “ *State ex rel. Coyne v. Todia* (1989), 45 Ohio St.3d 232, 238, 543 N.E.2d 1271, quoting *State ex rel. Annable v. Stokes* (1970), 24 Ohio St.2d 32, 32-33, 53 O.O.2d 18, 262 N.E.2d 863.

{¶ 4} “*Sua sponte* dismissal of a complaint for failure to state a claim upon which relief can be granted is appropriate if the complaint is frivolous or the claimant obviously cannot prevail on the facts alleged in the complaint. *State ex rel. Bruggeman v. Ingraham* (1999), 87 Ohio St.3d 230, 231, 718 N.E.2d 1285, 1287.” *State ex rel. Kreps v. Christiansen* (2000), 88 Ohio St.3d 313, 316, 725 N.E.2d 663, 667.

Muskingum County, Case No. CT11-0035

Delaney, J.,

{¶ 5} Petitioner does not aver in his Petition that he is entitled to the office held by Respondent, therefore, he, as a private citizen, cannot maintain an action in quo warranto. For this reason, we find the Petition lacks merit on its face and dismiss the Petition for failure to state a claim upon which relief may be granted.

{¶ 6} For this reason, Petitioner's request for Writ of Quo Warranto is denied.

{¶ 7} PETITION FOR WRIT DISMISSED.

{¶ 8} COSTS TO PETITIONER.

By: Delaney, .J.

Farmer, .J. and Wise, P.J. concur.

HON. PATRICIA A. DELANEY

HON. SHEILA G. FARMER

HON. JOHN W. WISE

