

Judgment rendered November 20, 2013.
Application for rehearing may be filed
within the delay allowed by art. 2166,
La. C.C.P.

No. 48,542-CA

COURT OF APPEAL
SECOND CIRCUIT
STATE OF LOUISIANA

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MICHAEL T. RICE

Plaintiff-Appellant

versus

DR. RANDOLPH L. WILLIAMS

Defendant-Appellee

* * * * *

Appealed from the
Eighth Judicial District Court for the
Parish of Winn, Louisiana
Trial Court No. 43,650

Honorable W. Peyton Cunningham, Jr., Judge (*Ad Hoc*)

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MICHAEL T. RICE

Pro se / Appellant

* * * * *

Before DREW, MOORE and GARRETT, JJ.

NOT DESIGNATED FOR
PUBLICATION. Rules 2-16.2 and 2-
16.3, Uniform Rules, Courts of Appeal

GARRETT, J.

The *pro se* plaintiff, Michael T. Rice, complains that the trial court erred in denying his petition for writ of mandamus and in failing to set a hearing in court. For the reasons set forth below, we find that the plaintiff's petition fails to set forth a cause of action under Louisiana law for a claim under the statutes for the extraordinary writ of mandamus, and we order that the plaintiff's suit be dismissed without prejudice.

On March 20, 2013, the plaintiff, who is incarcerated at Angola,¹ filed a pleading styled "Petition for Writ of Mandamus and/or Alternate Writ for Records." He asserted that a Dr. Randolph L. Williams evaluated his mental competency in criminal case No. 34,680 of the Eighth Judicial District. The plaintiff alleged that he wrote to Dr. Williams to request his "medical files" and, after he received no response, sent an agent to the doctor's office with a signed medical release form and funds to pay for copies of the records. However, the petition asserts that this agent was not allowed to obtain the copies. The plaintiff prayed for a writ of mandamus to issue ordering Dr. Williams to provide the records or a cost estimate for the records. He also sought sanctions related to the filing of the writ of mandamus.²

¹The plaintiff is serving a life sentence as a third-felony offender. See *State v. Rice*, 31,871 (La. App. 2d Cir. 3/31/99), 736 So. 2d 956, writ denied, 99-1314 (La. 10/15/99), 748 So. 2d 464.

²Although the plaintiff asserted that he had served a copy of his petition on "respondent" by mail, nothing in this record suggests that Dr. Williams was ever properly served.

On April 5, 2013, the trial court granted the plaintiff's motion to proceed in forma pauperis.³ However, it also denied *ex parte* the petition for writ of mandamus, writing the following on the last page of the petition: "Denied. Petitioner fails to state a valid reason for Dr. Williams' records." The trial court did not set the matter in court or sign the order submitted by the plaintiff requesting that he be transported from Angola to Winn Parish for a hearing. The plaintiff now seeks review of the trial court's action in denying the writ of mandamus.

We acknowledge that patients are entitled to obtain copies of their medical records for a reasonable copying charge pursuant to La. R.S. 40:1299.96. We express no opinion on whether the plaintiff could be considered a patient of Dr. Williams under the facts alleged in the petition.

However, pursuant to La. C.C.P. art. 927, we note on our own motion that the plaintiff's petition seeking a writ of mandamus does not state a cause of action. Mandamus is one of the extraordinary remedies provided by Title III of Book VII of the Louisiana Code of Civil Procedure. La. C.C.P. art. 3861 defines mandamus as "a writ directing a public officer or a corporation or an officer thereof to perform any of the duties set forth in Articles 3863 and 3864." La. C.C.P. art. 3863 provides:

A writ of mandamus may be directed to a public officer to compel the performance of a ministerial duty required by law, or to a former officer or his heirs to compel the delivery of the papers and effects of the office to his successor.

³Retired Judge Peyton Cunningham, Jr., was assigned to serve as judge *ad hoc* for this case due to the recusal of Judge Jacques D. Derr.

La. C.C.P. art. 3864 states:

A writ of mandamus may be directed to a corporation or an officer thereof to compel:

- (1) The holding of an election or the performance of other duties required by the corporate charter or bylaws or prescribed by law; or
- (2) The recognition of the rights of its members or shareholders.

The facts alleged in the plaintiff's *pro se* pleadings clearly do not set forth a cognizable cause of action under the mandamus statutes. Dr.

Williams is neither a public officer nor a corporate officer.

We also note that the cases cited by the plaintiff in a letter written to the court are clearly inapposite to the case *sub judice*. In *Naquin v. Iberia Parish Sch. Bd.*, 157 So. 2d 287 (La. App. 3d Cir. 1963), the defendant was a governmental entity. In *Wolfe v. Atkins*, 2011-1481 (La. App. 4th Cir. 4/18/12), 90 So. 3d 1214, the defendant was the clerk of court. Accordingly, in those cases the plaintiff clearly stated a cause of action under the mandamus statutes and a hearing was required to be set. Such is not the case in the instant matter.

For the reasons assigned, the plaintiff's suit is dismissed without prejudice. Costs of this appeal are assessed against the plaintiff.

DISMISSED WITHOUT PREJUDICE.