

**STATE OF WEST VIRGINIA**  
**SUPREME COURT OF APPEALS**

**Jay Folsie,**  
**Petitioner Below, Petitioner**

v.) **No. 22-751** (Ohio County CC-35-2022-C-80)

**Brenda Miller, Circuit Clerk of Ohio County,**  
**Jeffrey Miller, Municipal Court Judge of the**  
**City of Wheeling, and Judy Bickmeyer,**  
**Municipal Court Clerk of the City of Wheeling,**  
**Respondents Below, Respondents**

**MEMORANDUM DECISION**

Petitioner Jay Folsie appeals the order of the Circuit Court of Ohio County entered on July 15, 2022, dismissing his petition for a writ of mandamus and declaratory relief against the respondents in their official capacities, related to an appeal from municipal court.<sup>1</sup> The petitioner argues that the circuit court erred in dismissing his petition sua sponte with regard to Respondent Brenda Miller, circuit court clerk (“Ms. Miller”), and by not ordering her to docket the appeal. He also argues that it was error to find that Respondents Jeffrey Miller, municipal court judge (“Judge Miller”); and Judy Bickmeyer, municipal court clerk (collectively “municipal respondents”), similarly had no duty to docket his appeal from municipal court. Upon our review, we determine that oral argument is unnecessary and that this case satisfies the “limited circumstance” requirement of Rule 21(d) of the West Virginia Rules of Appellate Procedure for reversal in a memorandum decision rather than an opinion.

The petitioner was found guilty of violating two city parking ordinances after a bench trial in municipal court and contends he was fined \$100 as a result. The petitioner sought to appeal the convictions, and there appears to have been significant confusion and back and forth with the respondents over the amount of the appeal bond, both in person and over e-mail; whether a filing fee was required; whether the matter was criminal or civil; and the process for docketing the appeal. Ultimately, the petitioner filed a petition in circuit court seeking a writ of mandamus compelling the respondents to docket and hear the appeal, unspecified costs and fees that appear to be related to the petition seeking mandamus relief, and a declaration that Ms. Miller has a duty to docket municipal court appeals. In his circuit court petition, he alleged that he immediately attempted to appeal the municipal court convictions with both Ms. Miller and the municipal respondents, that he sent numerous e-mails regarding the docketing of the appeal, that he offered to pay an appeal bond in the amount of the fine, and that no appeal bond was ever set by Judge

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<sup>1</sup> The petitioner is self-represented. Respondents Brenda Miller, Jeffrey Miller, and Judy Bickmeyer appear by counsel Rosemary Humway-Warmuth and Donald J. Tennant Jr.

Miller. He also claimed that the respondents required a \$200 filing fee to file the appeal in circuit court and that Ms. Miller asserted she did not have a duty to docket the appeal even if a filing fee were paid. Ms. Miller filed an answer, contending that the petitioner did not appear in her office with all the required documents to properly file an appeal and that there may be a previously filed related federal court case. The municipal respondents filed a motion to dismiss and attached documents that they argued demonstrated that the petitioner refused to comply with the procedure to effectuate his appeal, including e-mails between the petitioner and a representative of the municipal respondents and an appeal bond. They also asserted that they do not have the authority or duty to determine the costs associated with filing an appeal or to docket an appeal. The petitioner filed a response to the motion to dismiss and Ms. Miller's answer.

In an order entered July 15, 2022, the circuit court granted the municipal respondents' motion to dismiss under Rule 12(b)(6) of the West Virginia Rules of Civil Procedure and denied the petition. It found that the relief the petitioner sought in mandamus did not involve tasks that the municipal respondents had the authority or duty to perform. It further found that, based on the e-mails and bond attached as exhibits to their motion, the municipal respondents communicated with the petitioner and provided information regarding the appeal process, that he chose not to follow that process, and that he had a duty to do so. The circuit court further found that the petitioner had not adequately pled his claims and that the law did not allow "for an award of relief requested being for the Municipal Respondents to docket and hear the appeal of the Petitioner." The circuit court made no specific findings related to Ms. Miller but denied the petition as to her as well.

The petitioner now appeals to this Court, asserting that the circuit court erred by (1) dismissing Ms. Miller when she did not file a motion to dismiss; (2) finding the municipal respondents had no duty regarding the appeal; (3) not ordering Ms. Miller to docket the appeal; (4) finding that a filing fee was required to file the appeal; and (5) not awarding him costs and fees associated with his petition.

We review an order granting a motion to dismiss de novo. Syl. Pt. 2, *State ex rel. McGraw v. Scott Runyan Pontiac-Buick, Inc.*, 194 W. Va. 770, 461 S.E.2d 516 (1995). We have held that motions to dismiss under Rule 12(b)(6) should be granted if "it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Syl. Pt. 3, in part, *Chapman v. Kane Transfer Co., Inc.*, 160 W. Va. 530, 236 S.E.2d 207 (1977). Regarding a petition for a writ of mandamus, a petitioner "must show (1) a clear right to the relief sought; (2) a legal duty on the part of the respondent to do the thing relator seeks; and (3) the absence of another adequate remedy." Syl. Pt. 3, in part, *Harrison Cnty. Comm'n v. Harrison Cnty. Assessor*, 222 W. Va. 25, 658 S.E.2d 555 (2008) (quoting Syl. Pt. 2, *Myers v. Barte*, 167 W. Va. 194, 279 S.E.2d 406 (1981)). And mandamus will lie "to require the discharge by a public officer of a nondiscretionary duty." *Harrison Cnty. Comm'n*, 222 W. Va. at 26, 658 S.E.2d at 556, Syl. Pt. 2, in part (quoting Syl. Pt. 1, *State ex rel. Williams v. Dep't of Mil. Affs.*, 212 W. Va. 407, 573 S.E.2d 1 (2002)).

In this case, the petitioner's petition alleged that he was convicted in municipal court of violating parking ordinances and that he attempted to appeal his convictions to the circuit court, but that "[n]o specific appeal bond was ever set by Judge Miller of the municipal court." He invoked West Virginia Code § 8-34-1, which, among other things, provides for the right to an

appeal in circuit court from a municipal court conviction and outlines procedures related to pursuing that appeal. The petitioner further alleged that, despite this statutory requirement, Ms. Miller claimed that the appeal must be filed in municipal court and insisted on a filing fee for the criminal appeal. He also alleged that the municipal respondents “typically assume the responsibility of docketing appeals and it is the position of Ms. Miller that the duty to docket an appeal lies with them.” The circuit court was required to construe these allegations “in the light most favorable to plaintiff” and “take [them] as true.” *Lodge Distrib. Co., Inc. v. Texaco, Inc.*, 161 W. Va. 603, 605, 245 S.E.2d 157, 158 (1978). Further, its task was “merely to assess the legal feasibility of the complaint, not to assay the weight of the evidence which might be offered in support thereof.” *Gable v. Gable*, 245 W. Va. 213, 222, 858 S.E.2d 838, 847 (2021) (quoting *Mountaineer Fire & Rescue Equip., LLC v. City Nat’l Bank of W. Va.*, 244 W. Va. 508, 520, 854 S.E.2d 870, 882 (2020)).

In contravention of the aforementioned standards, the circuit court’s findings spoke more to its assessment of the merits of the petitioner’s allegations against the municipal respondents than the sufficiency of the petition. Further, in contravention of our well-settled rules disfavoring the sua sponte dismissal of claims, the circuit court dismissed the petition in its entirety although Ms. Miller did not move for dismissal. See *Hanlon v. Boone Cnty. Cmty. Org., Inc.*, 182 W. Va. 190, 386 S.E.2d 847 (1989). Considering the allegations of the petition under the Rule 12(b)(6) standard, we cannot find that it fails to state a claim for mandamus or declaratory relief against the respondents. In reaching this decision we emphasize that we do not reach the merits of the allegations of the petitioner or the respondents. Our only conclusion is that the circuit court was premature in its dismissal of the petition under Rule 12(b)(6). Here, the parties simply have not had sufficient opportunity to prove their positions. Accordingly, the circuit court’s July 15, 2022, order granting dismissal under Rule 12(b)(6) is reversed and the case is remanded for further proceedings. Furthermore, because we reverse and remand for further proceedings, we need not consider the remainder of the petitioner’s assignments of error.<sup>2</sup>

Reversed and remanded.

**ISSUED:** June 10, 2024

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<sup>2</sup> We note additionally that while the respondents seek to uphold dismissal by a passing reference to a federal court action, they do nothing more than assert generally that the two cases are related to the same parking citations. Without more, including an examination of the elements that must be satisfied before res judicata will apply to bar an action, the respondents have not satisfied this Court of its application here and we decline to consider it as the basis for the sua sponte dismissal of Ms. Miller. See Syl. Pt. 4, *Blake v. Charleston Area Med. Ctr.*, 201 W. Va. 469, 498 S.E.2d 41 (1997) (outlining the elements that must be established before res judicata will bar an action); *State v. LaRock*, 196 W. Va. 294, 302, 470 S.E.2d 613, 621 (1996) (stating that “[a]lthough we liberally construe briefs in determining issues presented for review, issues which are not raised, and those mentioned only in passing but are not supported with pertinent authority, are not considered on appeal.”).

**CONCURRED IN BY:**

Chief Justice Tim Armstead  
Justice Elizabeth D. Walker  
Justice John A. Hutchison  
Justice William R. Wooton  
Justice C. Haley Bunn