

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

STATE EX REL. NIPPERT & NIPPERT	:	APPEAL NO. C-110009
and	:	JUDGMENT ENTRY.
ALFRED K. NIPPERT, JR.,	:	
Relators,	:	
vs.	:	
HON. JUDGE ANDREW WEST,	:	
Respondent.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.¹

Relators Nippert & Nippert and Alfred K. Nippert, Jr., seek a writ of prohibition to prevent respondent Judge Andrew West from exercising jurisdiction in the case *Stephanie Garrison v. Alfred K. Nippert, Jr., et al.*, case number A-0911761. In that case, attorney Robert F. Croskery drafted a complaint on behalf of his client Stephanie Garrison. The complaint was not signed by Croskery, but was signed “Robert F. Croskery (signed by Sandra Martin, secretary per telephone authority).” When relators filed a motion to dismiss, respondent allowed Croskery to file an amended complaint that he had actually signed.

To obtain a writ of prohibition, a relator must establish (1) that the respondent is about to exercise judicial or quasi-judicial power, (2) that the exercise of such power is unauthorized by law, and (3) that a denial of the writ will cause injury for which no other adequate remedy exists.²

¹ See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 11.1.1.

² *State ex rel. White v. Junkin*, 80 Ohio St.3d 335, 336, 1997-Ohio-340, 686 N.E.2d 267.

OHIO FIRST DISTRICT COURT OF APPEALS

R.C. 4705.01 states that “no person shall * * * commence * * * an action or proceeding in which the person is not a party concerned, either by using or subscribing the person’s own name, or the name of another person, unless the person has been admitted to the bar * * *.” Accordingly, the *Garrison v. Nippert* litigation was not properly commenced.

Respondent implicitly acknowledged that the complaint was defective when Croskery was allowed to file an amended complaint that he actually signed. But we agree with the Tenth Appellate District, which held that when a non-attorney files a complaint in violation of R.C. 4705.01, the court should dismiss the complaint without prejudice.³

For these reasons, relators are entitled to their writ. Respondent is ordered to dismiss the case of *Garrison v. Nippert* without prejudice and to otherwise treat the case as if it had never been commenced.

A certified copy of this judgment entry is the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

DINKELACKER, P.J., SUNDERMANN and HENDON, JJ.

To the Clerk:

Enter upon the Journal of the Court on July 27, 2011

per order of the Court _____.

Presiding Judge

³ *Williams v. Global Constr. Co., Ltd.* (1985), 26 Ohio App.3d 119, 121, 498 N.E.2d 500, citing *Leonard v. Walsh* (Ill.App.1966), 220 N.E.2d 57.