

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

IN THE MATTER OF
MARK WOODARD,

Plaintiff.

ORDER

05-C-265-C

Petitioner has filed a pleading styled as a petition for a writ of habeas corpus and has paid a \$5 filing fee. However, the allegations in the body of his petition in no way comport with his characterization of the action. See Gleash v. Yuswak, 308 F.3d 758, 761 (7th Cir. 2002) (courts give effect to substance of document, not its caption). A habeas corpus action is proper when a petitioner is alleging that the state or federal government is holding him or her in illegal custody. 28 U.S.C. § 2254(a). Here, it appears that petitioner is challenging the determination by a City of Beloit housing inspector that petitioner is violating Beloit's zoning code by running a business from his property. Although petitioner fails to request any specific form of relief, it is plain that he is not contending that he is being held in illegal custody.

Generally, federal courts have the power to hear two types of cases: (1) cases in which a plaintiff alleges a violation of his or her constitutional rights or rights established under federal law and (2) cases in which a citizen of one state alleges a violation of his or her rights established under state law by a citizen of another state *and* the amount in controversy exceeds \$75,000. See 28 U.S.C. § 1331-32; see also Wild v. Subscription Plus, Inc., 292

F.3d 526 (7th Cir. 2002) (court has independent obligation to insure jurisdiction exists). Petitioner has failed to allege with any particularity that his constitutional rights are being violated and he does not appear to be suing a citizen of another state. If petitioner is dissatisfied with the action of the Beloit housing inspector, his remedy is to challenge the decision through the proper municipal channels. His petition in this court is improper and must be dismissed pursuant to Fed. R. Civ. P. 12(h)(3) on the court's own motion for lack of jurisdiction.

ORDER

IT IS ORDERED that petitioner's pleading, styled as a petition for a writ of habeas corpus, is DISMISSED for lack of subject matter jurisdiction.

Entered this 5th day of May, 2005.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge