

**IN THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
ASHTABULA COUNTY, OHIO**

STATE OF OHIO ex rel. RONALD MAGBY,	:	PER CURIAM OPINION
	:	
Relator,	:	
	:	CASE NO. 2019-A-0002
- vs -	:	
	:	
JUDGE MARIANNE SEZON,	:	
	:	
Respondent.		

Original Action for Writ of Mandamus.

Judgment: Petition dismissed.

Ronald Magby, pro se, PID: A692-721, Lake Erie Correctional Institution, 501 Thompson Road, P.O. Box 800, Conneaut, OH 44030 (Relator).

Nicholas A. Iarocci, Ashtabula County Prosecutor, and *Shelley M. Pratt*, Assistant Prosecutor, Ashtabula County Courthouse, 25 West Jefferson Street, Jefferson, OH 44047 (For Respondent).

PER CURIAM.

{¶1} This action in mandamus is presently before this court for final disposition of the motion to dismiss of respondent, Judge Marianne Sezon of the Ashtabula County Court of Common Pleas. As the sole basis for her motion, respondent asserts that relator, Ronald Magby, has a plain and adequate remedy in the ordinary course of law and is not entitled to a writ of mandamus. For the following reasons, we agree and hold that the dismissal of this matter is warranted under Civ.R. 12(B)(6).

{¶2} On September 19, 2018, Relator filed a complaint for a preliminary injunction/temporary restraining order pursuant to R.C. 3763.04(B)(1) against several individuals from various state institutions: Warden Brigham Sloan, Medical Administrator Ms. L. Witt, Deputy Warden Mr. Pritchard, Advanced Level Provider Ms. Swanson, Medical Director Ms. Reberra, and Chief Medical Officer Ms. Gillespie, all employees from the Lake Erie Correctional Institution; Director Gary C. Mohr and State Medical Director Ms. Cheryl Williams from the Ohio Department of Rehabilitation and Corrections; Warden Kimberly Clipper from the Lorain Correction Institution; and, lastly, Sheriff Jerry Greene from the Mahoning County Justice Center.

{¶3} The defendants filed various motions to dismiss, and on December 3, 2018, Mr. Magby filed a motion requesting the court to move forward with an order to show cause, temporary restraining order and appointment of counsel, “in camera inspection requested.”

{¶4} Mr. Magby filed the instant petition in this court for a writ of mandamus on January 8, 2019.

{¶5} On January 31, 2019, the trial court issued a judgment entry dismissing Mr. Magby’s complaint and granting the defendants’ motions to dismiss. Specifically, the court found Mr. Magby failed to submit an affidavit of merit and failed to state a claim upon which relief could be granted.

{¶6} To be entitled to a writ of mandamus, the relator in such an action must be able to satisfy the following three elements: (1) the relator must have a clear legal right to have the public official perform a particular act, (2) the official must have a clear legal duty to do the act, and (3) the relator does not have another adequate remedy at law. *State ex rel. Brown v. Logan*, 11th Dist. Trumbull No. 2004-T-0088, 2004-Ohio-6951, ¶4,

citing *State ex rel. Greene v. Enright*, 63 Ohio St.3d 729 (1992). “In interpreting the last of the three elements, this court has stated that the relator cannot fulfill this requirement when there exists an alternative remedy through which he can achieve the identical result he hopes to obtain in the mandamus action.” *Id.*, citing *State ex rel. Norris v. Watson*, 11th Dist. Portage No. 2001-P-0089, 2001-Ohio-3932. Furthermore, an “alternative remedy is considered ‘adequate’ for purposes of the third element when it is complete, beneficial, and speedy.” *Id.*, citing *Hamilton v. Collins*, 11th Dist. Lake No. 2003-L-106, 2003-Ohio-5703.

{¶7} In light of the foregoing precedent, this court has expressly held that “a direct appeal from a final judgment of a trial court constitutes an adequate remedy at law which stops the relator from satisfying the third element of a mandamus claim.” *Id.* at ¶5, citing *State ex rel. Carr v. Inderlied*, 137 Ohio App.3d 50 (11th Dist.2000).

{¶8} The issue of Mr. Magby’s writ of mandamus is moot as the underlying action was dismissed by the trial court on January 31, 2019. Mr. Magby may directly appeal the trial court’s failure to hold a hearing on his motion for a preliminary injunction/temporary restraining order by appealing the trial court’s judgment entry granting the defendants’ motions to dismiss his complaint. Thus, Mr. Magby has a plain and adequate remedy in the ordinary course of law and is not entitled to a writ of mandamus. Dismissal of this action is warranted under Civ.R. 12(B)(6).

{¶9} Consequently, respondent’s motion to dismiss is granted. It is the order of this court that relator’s mandamus petition is hereby dismissed.

CYNTHIA WESTCOTT RICE, J., MATT LYNCH, J., MARY JANE TRAPP, J., concur.