

[Cite as *State ex rel. Henry v. O'Neill*, 2017-Ohio-5757.]

IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
CLARK COUNTY

STATE OF OHIO EX REL.
ANJUAN HENRY

Petitioner-Relator

v.

JUDGE RICHARD O'NEILL

Respondent

Appellate Case No. 16-CA-0061

[Original Action in Mandamus]

DECISION AND FINAL JUDGMENT ENTRY

June 22, 2017

PER CURIAM:

{¶ 1} On October 12, 2016, Anjuan Henry filed a complaint for a writ of mandamus. He asked this court to compel the Honorable Richard J. O'Neill to "proceed to judgment and issue findings of fact and conclusions of law regarding Relator's petition for post-conviction relief," filed in Clark County Common Pleas Court Case No. 99-CR-594 on April 5, 2016.

Judge O'Neill filed a motion to dismiss on November 10, 2016. Henry filed a response on November 21, 2016.

{¶ 2} Judge O'Neill asserted that he resolved Henry's motion on November 8, 2016, and that this action is therefore moot. Henry has appealed the November 8 judgment. See Clark Appellate Case No. 16-CA-0078. On March 2, 2017, in the appeal, this court remanded the matter back to Judge O'Neill for additional proceedings. Judge O'Neill issued a supplemental entry clarifying his November 8, 2016 entry on March 2, 2017. The appeal is proceeding.

{¶ 3} We ordered the parties to supplement their dispositive motion filings in this case to address how, if at all, the additional trial court proceedings affect this case. Judge O'Neill filed a response on April 13, 2017; Henry filed on April 24, 2017. Henry filed two additional documents on May 4, 2017 and May 24, 2017.

{¶ 4} This action is at least partially moot. "Mandamus will not issue to compel an act that has already been performed." *State ex rel. Madsen v. Jones*, 106 Ohio St.3d 178, 2005-Ohio-4381, 833 N.E.2d 291, ¶ 11. Here, the mandamus petition sought to compel Judge O'Neill to decide Henry's April 5, 2016 motion. We may appropriately take judicial notice that Judge O'Neill has done so because he attached the journalized November 8, 2016 entry to his motion to dismiss. *State ex rel. Grove v. Nadel*, 84 Ohio St.3d 252, 253, 703 N.E.2d 304 (1998); see also *State ex rel. Hawkins v. Haas*, 141 Ohio St.3d 98, 2014-Ohio-5196, 21 N.E.3d 1060, ¶ 4, fn. 1 ("An event that causes a case to become moot may be proved by extrinsic evidence"). Because Judge O'Neill has decided the motion, the matter before us is moot to that extent.¹

¹ We do not reach the question of whether the second entry, the March 2, 2017 entry issued on remand, contains sufficient findings of fact and conclusions of law, as neither party has included

{¶ 5} Henry argues that the motion at issue is a post-conviction petition, and that Judge O'Neill has not yet issued the findings of fact and conclusions of law required on a post-conviction petition. See *State ex rel. Ferrell v. Clark*, 13 Ohio St.3d 3, 469 N.E.2d 843 (1984) ("Mandamus will lie to compel a court to proceed to final judgment in an action for post-conviction relief"). Judge O'Neill responds that the motion was not a post-conviction petition, but was, and was treated as, a motion to withdraw a plea pursuant to Crim.R. 32.1. Judge O'Neill further argues that if he incorrectly categorized Henry's motion, this court can so hold in Henry's pending appeal. Clark Appellate Case No. 16-CA-0078.

{¶ 6} Henry agrees that "[t]his error is fully correctable on appeal." He nonetheless argues that the appeal has no effect on this action. We disagree. The existence of the appeal, and the fact that Henry can ask this court to correct Judge O'Neill's conclusion, precludes relief in mandamus.

{¶ 7} To be entitled to a writ of mandamus, a relator must show "(1) that he has a clear legal right to the relief prayed for, (2) that respondents are under a clear legal duty to perform the requested act, and (3) that relator has no plain and adequate remedy at law." *State ex rel. Dayton Newspapers, Inc. v. Wagner*, 129 Ohio App.3d 271, 273, 717 N.E.2d 773 (2d Dist.1998); *State ex rel. Plain Dealer Publishing Co. v. Barnes*, 38 Ohio St.3d 165, 167, 527 N.E.2d 807 (1988). Relator's inability to show any of these elements subjects his mandamus claim to dismissal.

{¶ 8} Generally, an appeal is "a remedy sufficient to preclude a writ of mandamus." *State ex rel. Durrani v. Ruehlman*, Slip Opinion No. 2016-Ohio-7740. Thus, if Henry has an avenue to raise the issue in the normal course and can seek the relief he seeks here, he

that entry in the record of this case.

has an adequate remedy at law. Here, he has such an avenue, and concedes that this court can consider the issue on appeal. We conclude that the existence of an adequate remedy precludes that part of Henry's claim that seeks to compel findings of fact and conclusions of law.

{¶ 9} Accordingly, we SUSTAIN Judge O'Neill's motion to dismiss this action. The part of the mandamus petition that seeks to compel a decision on Henry's motion is moot, as a decision has been entered. The part of the petition that seeks to compel findings of fact and conclusions of law is precluded by the existence of an adequate remedy at law. Clark Appellate Case No. 16-CA-0061 is therefore DISMISSED.

SO ORDERED.

MICHAEL T. HALL, Presiding Judge

MARY E. DONOVAN, Judge

JEFFREY E. FROELICH, Judge

To The Clerk: Within three (3) days of entering this judgment on the journal, you are directed to serve on all parties not in default for failure to appear notice of the judgment and the date of its entry upon the journal, pursuant to Civ.R. 58(B).

MICHAEL T. HALL, Presiding Judge

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