

[Cite as *State ex rel. S.Y.C. v. Floyd*, 2018-Ohio-2743.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 106955

STATE OF OHIO,
EX REL., S.Y.C.

RELATOR

vs.

JUDGE ALISON L. FLOYD

RESPONDENT

JUDGMENT:
WRITS DENIED

Writs of Procedendo and Mandamus
Motion No. 517966
Order No. 518236

RELEASE DATE: July 10, 2018

FOR RELATOR

S.Y.C., pro se
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Broadview Heights, Ohio 44147

ATTORNEYS FOR RESPONDENT

Michael C. O'Malley
Cuyahoga County Prosecutor
By: Charles E. Hannan
Assistant County Prosecutor
The Justice Center, 8th Floor
1200 Ontario Street
Cleveland, Ohio 44113

SEAN C. GALLAGHER, P.J.:

{¶1} Relator, S.Y.C., the mother of two minor children, seeks writs of procedendo and mandamus directing respondent judge, Alison L. Floyd, to rule on several pending matters in the Juvenile Division of the Cuyahoga County Common Pleas Court. Respondent judge filed a motion for summary judgment asserting that S.Y.C.'s claims are moot. This court grants respondent judge's motion for summary judgment.

BACKGROUND

{¶2} According to the complaint, S.Y.C. was a party in juvenile court cases involving her two children in Lake County, Ohio. Those cases were transferred to Cuyahoga County and assigned to respondent judge in 2016. There were outstanding motions at the time the cases were transferred.

{¶3} After transfer, the father of the children ("Father"), the plaintiff in the juvenile court cases, refiled a motion to modify parenting time. S.Y.C. refiled her motion to modify custody and/or visitation. S.Y.C. also filed motions to share federal tax credits, to recalculate child support, and for court-ordered counseling for the children.

{¶4} In early December 2016, a hearing was conducted before a magistrate on Father's motion to modify parenting time and S.Y.C.'s motion to modify custody/visitation. The magistrate issued decisions on December 16, 2016 and January 3, 2017. Objections to the decisions were filed and, at the request of the parties, the court allowed additional time to file supplemental objections and set a cutoff date of May 15, 2017. Supplemental objections were filed by both parties, but no ruling was forthcoming.

{¶5} S.Y.C. attempted to coax the respondent judge to proceed to judgment on other matters, such as her motion to share federal tax credits and motion to recalculate child support. No rulings on these matters were forthcoming so, on March 19, 2018, S.Y.C. filed the instant original action.¹

{¶6} On May 8, 2018, respondent judge filed a motion for summary judgment that was subsequently stricken and refiled on May 30, 2018. There, she argued that the action was moot because rulings had been issued on the outstanding matters, and a motion hearing was scheduled for May 22, 2018, where any outstanding matters could be addressed. According to S.Y.C.'s brief in opposition to summary judgment, filed May 31, 2018, this hearing went forward and the trial court ruled on S.Y.C.'s motion for counseling. S.Y.C. also generally admitted that rulings were issued, but reiterated that those rulings were in no way timely, and asked this court to send a strong message to the respondent judge that the manner in which the judge managed her courtroom should not be suffered by S.Y.C. or others.

STANDARDS FOR MANDAMUS AND PROCEDENDO

{¶7} A writ of mandamus will issue where an applicant demonstrates a clear legal right to relief, that an official has a clear legal duty to provide that relief, and the applicant has no adequate remedy at law. *State ex rel. Taxpayers for Westerville Schools v. Franklin Cty. Bd. of Elections*, 133 Ohio St.3d 153, 2012-Ohio-4267, 976 N.E.2d 890, ¶ 12. A writ of procedendo addresses a similar, but more narrow situation, where a relator must show a clear legal right to require a court to proceed, a clear legal duty on the part of the court to proceed, and the lack of an

¹Her original complaint was stricken for violations of Loc.App.R. 13.2 and refiled. Respondent judge's original motion for summary judgment was stricken for the same reason.

adequate remedy in the ordinary course of the law. *State ex rel. Sherrills v. Cuyahoga Cty. Court of Common Pleas*, 72 Ohio St.3d 461, 462, 650 N.E.2d 899 (1995). Such a writ is proper when a court has refused to enter judgment or has unnecessarily delayed proceeding to judgment. *State ex rel. Crandall, Pheils & Wisniewski v. DeCessna*, 73 Ohio St.3d 180, 184, 652 N.E.2d 742 (1995).

{¶8} S.Y.C. seeks relief in both mandamus and procedendo. The Ohio Supreme Court has said that “procedendo and mandamus will lie when a trial court has refused to render, or unduly delayed rendering, a judgment.” *State ex rel. Culgan v. Collier*, 135 Ohio St.3d 436, 2013-Ohio-1762, 988 N.E.2d 564, ¶ 10, quoting *State ex rel. Reynolds v. Basinger*, 99 Ohio St.3d 303, 2003-Ohio-3631, 791 N.E.2d 459, ¶ 5. However, it has also indicated that where a court has unduly delayed in rendering judgment, procedendo is the more appropriate remedy: “[A]lthough mandamus will lie in cases of a court’s undue delay in entering judgment, procedendo is more appropriate since ‘an inferior court’s refusal or failure to timely dispose of a pending action is the ill a writ of procedendo is designed to remedy.’” *State ex rel. Dehler v. Sutula*, 74 Ohio St.3d 33, 35, 656 N.E.2d 332, 333 (1995), quoting *State ex rel. Levin v. Sheffield Lake*, 70 Ohio St.3d 104, 110, 637 N.E.2d 319 (1994). Therefore, this court will primarily address the request for writ of procedendo.

PROCEDENDO — DELAY IN RULING ON MOTIONS

{¶9} The Ohio Rules of Superintendence provide guidelines for the timely resolutions of matters. Specifically, Sup.R. 40(A) states that motions should be decided within 120 days and trial matters should be completed within 90 days from the date of submission for decision. Sup.R. 40(A)(2) and (A)(3). While this rule does not create an enforceable right in mandamus

or procedendo, it partially informs courts of appeals and the Ohio Supreme Court in determining whether the issuance of a writ is appropriate. *Collier* at _ 11.

{¶10} In response to S.Y.C.'s complaint, respondent judge filed a motion for summary judgment with attached certified journal entries indicating that rulings have been made on the matters submitted to the court for determination and motion hearings have been scheduled to resolve any other pending matters. Specifically, respondent judge ruled on objections to the magistrate's decisions, overruling them and adopting the magistrate's decisions issued December 16, 2016 and January 3, 2017. These decisions dismissed without prejudice S.Y.C.'s motions to modify custody and/or visitation. These entries establish that the request for writs of procedendo and mandamus are moot. *State ex rel. Bortoli v. Dinkelacker*, 105 Ohio St.3d 133, 2005-Ohio-779, 823 N.E.2d 448, ¶ 3 ("A writ of procedendo will not issue to compel the performance of a duty that has already been performed."); *State ex rel. Pettway v. Cuyahoga Cty. Court of Common Pleas*, 8th Dist. Cuyahoga No. 98699, 2012-Ohio-5423.

{¶11} S.Y.C. admits in her brief in opposition to summary judgment, filed May 31, 2018, that respondent judge ruled on these matters and her pending motion for counseling for the children. In fact, S.Y.C. generally admits that respondent judge has ruled on her outstanding motions. The sole exception is the motion to modify child support, which S.Y.C. acknowledges is set for an August 22, 2018 hearing. The Ohio Supreme Court has held that setting a matter for hearing renders an action for a writ of procedendo moot. *State ex rel. Rohrer v. Holzapfel*, 149 Ohio St.3d 132, 2016-Ohio-7827, 73 N.E.3d 482, _ 11.

{¶12} S.Y.C. seeks to have this court review the decisions of respondent judge and direct action beyond that permitted in procedendo or mandamus. This court's role in the present action is not supervisory in the sense that we cannot dictate respondent judge's decisions.

We may only direct a respondent to proceed to judgment. This does not include the authority to sanction a reticent judge. The Ohio Supreme Court has sole authority to remove a judge from a case pursuant to R.C. 2701.03. Further, the ethical rules governing the bar and the judiciary have their own mechanisms for the lodging of complaints.

CONCLUSION

{¶13} The present action is moot in light of respondent judge's rulings on S.Y.C.'s motions and objections, and the scheduling of a hearing for August 22, 2018. Therefore, respondent judge's motion for summary judgment is granted. Relator to pay costs; costs waived. The clerk is directed to serve upon the parties notice of this judgment and its date of entry upon the journal. Civ.R. 58(B).

{¶14} Writs denied.

SEAN C. GALLAGHER, PRESIDING JUDGE

PATRICIA ANN BLACKMON, J., and
KATHLEEN ANN KEOUGH, J., CONCUR