

OPINIONS OF THE SUPREME COURT OF OHIO

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The State ex rel. Richard, Appellant, v. Calabrese, Judge, Appellee.

[Cite as State ex rel. Richard v. Calabrese (1993), Ohio St.3d .]

Courts -- C.P.Sup.R. 6, construed.

(No. 93-26 -- Submitted February 16, 1993 -- Decided May 5, 1993.)

Appeal from the Court of Appeals for Cuyahoga County, No. 63888.

On June 12, 1992, appellant, Donald L. Richard, Sr., filed a complaint for a writ of mandamus in the court of appeals, alleging that on February 12, 1992 he had filed a motion for default judgment against a party in a case pending before appellee, Anthony O. Calabrese, Jr., Judge of the Court of Common Pleas of Cuyahoga County, and that appellee had the clear legal duty to grant the motion. On July 20, 1992, appellant filed a motion for default judgment in the instant case, appellee having failed to plead to the complaint.

On September 10, 1992, appellee filed a motion to dismiss or, in the alternative, for summary judgment, and a motion for leave to file motion to dismiss instant. On November 20, 1992, the court of appeals granted appellee's motion for summary judgment, holding that mandamus will not issue to compel a particular decision, and although it will issue to compel a court to act, it should not be issued in this case because a question of fact existed as to whether the alleged defaulting party in the underlying case had been properly served by publication.

The cause is before this court upon an appeal as of right.

Donald L. Richard, Sr., pro se.

Per Curiam. We affirm the decision of the court of appeals. On appeal to this court, appellant argues that the court of appeals abused its discretion and that C.P. Sup. R. 6, which inter alia requires motions outstanding for more than one hundred twenty days to be reported to this court, gives him a right to have his motion for default judgment in the underlying

case ruled on within one hundred twenty days. We hold that C.P. Sup. R. 6 creates no rights in litigants.

Judgment affirmed.

Moyer, C.J., A.W. Sweeney, Douglas, Wright, Resnick, F.E. Sweeney and Pfeifer, JJ., concur.