

OPINIONS OF THE SUPREME COURT OF OHIO

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The State ex rel. Richard, Appellant v. O'Donnell, Judge, Appellee.

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

Mandamus to compel trial court judge to grant motion for default judgment -- Writ denied when trial court has no duty to grant the motion while case is on appeal to the court of appeals.

(No. 92-1937 -- Submitted August 16, 1993 -- Decided October 13, 1993.)

Appeal from the Court of Appeals for Cuyahoga County, No. 63886.

On September 26, 1991, appellant, Donald L. Richard, Sr., filed a civil action for damages in the Court of Common Pleas of Cuyahoga County. The case was assigned to appellee, Terrence O'Donnell, a judge of that court. On November 27, 1991, appellee dismissed appellant's complaint without prejudice after appellant failed to appear at a hearing. On December 23, 1991, appellant filed a notice of appeal. On January 3, 1992, the record was transmitted to the court of appeals. Nevertheless, on February 12, 1992, appellant filed a motion for default judgment in the trial court.

On June 12, 1992, appellant filed a "petition" for a writ of mandamus in the court of appeals to compel appellee to grant his motion for default judgment. When appellee failed to file a timely answer, appellant filed a motion for default judgment in the mandamus case.

On July 27, 1992, the court of appeals, acting as trial court in the mandamus action, ordered appellant to submit a certified copy of the trial docket in the underlying civil action. Appellant complied on August 20, 1992. On August 25, 1992, the court of appeals denied appellant's motion for default judgment and dismissed the case, finding that appellee had no duty to grant appellant's motion for default judgment while the case was on appeal to the court of appeals.

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

Donald L. Richard, Sr., pro se.

Per Curiam. The decision of the court of appeals is affirmed for the reasons cogently stated in its opinion.

Judgment affirmed.

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