

[Cite as *State ex rel. Williams v. Bessey*, 2009-Ohio-5852.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State ex rel. Alan Williams,	:	
Relator,	:	
v.	:	No. 08AP-158
Judge [John] Bessey, Judge Steven McIntosh and Judge Beverly Pfeiffer,	:	(REGULAR CALENDAR)
Respondents.	:	

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D E C I S I O N

Rendered on November 5, 2009

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*Alan Williams*, pro se.

*Ron O'Brien*, Prosecuting Attorney, and *Paul Thies*, for  
respondents.

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IN MANDAMUS  
ON OBJECTION TO THE MAGISTRATE'S DECISION

BROWN, J.

{¶1} Relator, Alan Williams, has filed this original action against three judges of the Franklin County Court of Common Pleas and asks this court to "stop the misconduct of the Franklin County trial court through remanding a new case filed by the petitioner, to the judge of an old case not being now litigated by the petitioner. The attorney of the country and the defendants are intentionally using confusion." Respondents, Judge John

Bessey, Judge Steven McIntosh, and Judge Beverly Pfeiffer, filed a motion to dismiss asserting relator had failed to state a claim upon which relief could be granted.

{¶2} This matter was referred to a court-appointed magistrate pursuant to Civ.R. 53(C) and Loc.R. 12(M) of the Tenth District Court of Appeals. The magistrate issued a decision which is appended to this decision, including findings of fact and conclusions of law, and recommended that this court grant respondents' motion to dismiss relator's writ of mandamus. Relator has filed an objection to the magistrate's decision.

{¶3} A writ of mandamus is defined as, "a writ, issued in the name of the state to an inferior tribunal, a corporation, board, or person, commanding the performance of an act which the law specially enjoins as a duty resulting from an office, trust, or station." R.C. 2731.01. A writ of mandamus may be granted if the court finds that the relator: (1) has a clear legal right to the relief requested; (2) respondent is 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. Rogers v. Taft* (1992), 64 Ohio St.3d 193. In order to constitute an adequate remedy at law, the alternative must be complete, beneficial, and speedy. *State ex rel. Smith v. Cuyahoga Cty. Court of Common Pleas*, 106 Ohio St.3d 151, 2005-Ohio-4103, ¶19. The right to a direct appeal is an adequate remedy at law. *State ex rel. Dix v. McAllister* (1998), 81 Ohio St.3d 107, 108.

{¶4} A Civ.R. 12(B)(6) motion to dismiss for failure to state a claim is a procedural motion to test the sufficiency of the complaint. *State ex rel. Hanson v. Guernsey Cty. Bd. of Commrs.* (1992), 65 Ohio St.3d 545, 548. In reviewing the complaint, the court must take all the material allegations as admitted and construe all reasonable inferences in favor of the non-moving party. *Id.* A complaint in mandamus

states a claim if it alleges the existence of the legal duty and the want of an adequate remedy at law with sufficient particularity so that the respondent is given reasonable notice of the claim asserted. *Id.*, citing *State ex rel. Alford v. Willoughby Civ. Svc. Comm.* (1979), 58 Ohio St.2d 221, 224. A court will dismiss a complaint for failure to state a claim upon which relief can be granted if it appears beyond doubt from the complaint that the relator can prove no set of facts entitling him to recovery. *O'Brien v. Univ. Community Tenants Union, Inc.* (1975), 42 Ohio St.2d 242.

{¶5} Applying the aforementioned test, we agree with the magistrate that respondents have established that they are entitled to dismissal of relator's request for a writ of mandamus. The magistrate found that relator's petition fails to provide the court with any indication as to what relator hopes to achieve, and we concur in that assessment. Relator's complaint is generally confusing and convoluted. A review of the complaint in mandamus, along with the other evidence in the record, suggests that relator may be objecting to the transfer of one of his two lower court actions to the same judge that heard the other action. Relator seems to complain that he had to file this mandamus action because he has no other adequate remedy at law after this court, on March 27, 2008, dismissed his notice of appeal from the order of the trial court transferring one of the actions to the other judge. However, we properly dismissed that notice of appeal for lack of a final, appealable order. Insofar as relator's mandamus action may be referring to the actions taken by the trial court with respect to those two lawsuits, the proper remedy is a direct appeal from any final judgment rendered in those actions. For these reasons, relator has failed to show that respondents are under a clear legal duty to perform any

act, and relator has a plain and adequate remedy at law. Therefore, we grant respondents' motion to dismiss.

{¶6} After an examination of the magistrate's decision, an independent review of the evidence, pursuant to Civ.R. 53, and due consideration of relator's objection, we overrule relator's objection. We adopt the magistrate's findings of fact and conclusions of law as our own and, accordingly, grant respondents' motion to dismiss relator's request for a writ of mandamus.

*Objection overruled; writ of mandamus dismissed.*

SADLER and TYACK, JJ., concur.

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## APPENDIX

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

[State ex rel.] Alan Williams,	:	
Relator,	:	
v.	:	No. 08AP-158
Judge Bessy, Judge Steven McIntosh and Judge Beverly Pfeiffer,	:	(REGULAR CALENDAR)
Respondents.	:	

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### MAGISTRATE'S DECISION

Rendered on April 10, 2008

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*Alan Williams*, pro se.

*Ron O'Brien*, Prosecuting Attorney, and *Paul Thies*, for  
respondents.

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### IN MANDAMUS ON MOTION TO DISMISS

{¶7} Relator, Alan Williams, has filed this original action against three judges of the Franklin County Court of Common Pleas and asks this court to "stop the misconduct of the Franklin County trial court through remanding a new case filed by the petitioner, to

the judge of an old case not being now litigated by the petitioner. The attorney of the county and the defendants are intentionally using confusion."

Findings of Fact:

{¶8} 1. Relator filed the instant complaint seeking a writ of mandamus on February 27, 2008.

{¶9} 2. On March 10, 2008, respondents filed a motion to dismiss asserting that relator had failed to state a claim upon which relief could be granted.

{¶10} 3. On April 3, 2008, relator filed a "Motion to Strike Judge Bessey, McIntosh, Pfeiffer Motion to Dismiss" opposing respondents' motion to dismiss. Relator attached numerous documents in support of his argument that respondents' motion to dismiss should be denied.

{¶11} 4. The matter is currently before the magistrate for determination.

Conclusions of Law:

{¶12} In order for a court to dismiss a complaint for failure to state a claim upon which relief can be granted, it must appear beyond doubt from the complaint that relator can prove no set of facts entitling him to recovery. *O'Brien v. University Community Tenants Union* (1975), 42 Ohio St.2d 242. As such, a complaint for writ of mandamus is not subject to dismissal under Civ.R. 12(B)(6) if the complaint alleges the existence of a legal duty by the respondent and the lack of an adequate remedy at law for relator with sufficient particularity to put the respondent on notice of the substance of the claim being asserted against it, and it appears that relator might prove some set of facts entitling him to relief. *State ex rel. Boggs v. Springfield Local School Dist. Bd. of Edn.* (1995), 72 Ohio

St.3d 94. For the following reasons, respondents' motion should be granted and relator's complaint should be dismissed.

{¶13} The Supreme Court of Ohio has set forth three requirements which must be met in establishing a right to a writ of mandamus: (1) that relator has a clear legal right to the relief prayed for; (2) that respondent is under a clear legal duty to perform the act requested; and (3) that relator has no plain and adequate remedy in the ordinary course of the law. *State ex rel. Berger v. McMonagle* (1983), 6 Ohio St.3d 28.

{¶14} Upon review of relator's complaint and his memorandum opposing respondents' motion to dismiss, the magistrate agrees with respondents' assertion that relator's petition fails to provide this court with any indication as to what relator hopes to achieve. Further, relator attached two separate complaints which had been filed in the Franklin County Court of Common Pleas involving his daughter's care and death while apparently in the custody of Franklin County Children Services. To the extent that some error occurred in the trial court regarding either or both of those complaints, mandamus is not the appropriate remedy. Instead, relator would have a right to appeal from any adverse determination rendered in either or both of those cases.

{¶15} After construing all reasonable inferences in favor of relator, the magistrate finds that relator's complaint fails to allege the existence of a legal duty by respondents and the lack of an adequate remedy at law with sufficient particularity to put respondents on notice of the substance of the claim being asserted. As such, the magistrate finds that this court should grant respondents' motion to dismiss relator's complaint.

/s/ Stephanie Bisca Brooks  
STEPHANIE BISCA BROOKS  
MAGISTRATE

### NOTICE TO THE PARTIES

Civ.R. 53(D)(3)(a)(iii) provides that a party shall not assign as error on appeal the court's adoption of any factual finding or legal conclusion, whether or not specifically designated as a finding of fact or conclusion of law under Civ.R. 53(D)(3)(a)(ii), unless the party timely and specifically objects to that factual finding or legal conclusion as required by Civ.R. 53(D)(3)(b).