

TENTH APPELLATE DISTRICT

State of Ohio ex rel. Clive Melhado, :  
 :  
 [Relator], :  
 :  
 v. : No. 10AP-1044  
 :  
 Franklin County Common Plea[s] Court; : (REGULAR CALENDAR)  
 Honorable Judge, John Bessey, :  
 :  
 Respondent. :  
 :

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D E C I S I O N

Rendered on February 9, 2012

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*Clive Melhado, pro se.*

*Ron O'Brien, Prosecuting Attorney, and Jeffrey C. Rogers,*  
*for respondent.*

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IN PROCEDENDO  
ON OBJECTIONS TO THE MAGISTRATE'S DECISION

FRENCH, J.

{¶ 1} Relator, Clive Melhado, filed an original action, which asks this court to issue a writ of procedendo ordering respondent The Honorable Judge John Bessey of the Franklin County Court of Common Pleas to rule on a motion submitted by relator to the common pleas court on April 12, 2010.

{¶ 2} This matter was referred to a 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 includes findings of fact and conclusions of law and is appended to this decision, recommending that this court deny the requested writ because Judge Bessey ruled on the motion on December 12, 2010. No objections to the magistrate's decision have been filed.

{¶ 3} Finding no error law or other defect in the magistrate's decision, we adopt the decision as our own, including the findings of fact and conclusions of law contained in it. In accordance with the magistrate's decision, we deny the requested writ of procedendo.

*Writ of procedendo denied.*

KLATT and TYACK, JJ., concur.

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**A P P E N D I X**

IN THE COURT OF APPEALS OF OHIO  
TENTH APPELLATE DISTRICT

State of Ohio ex rel. Clive Melhado,	:	
	:	
[Relator],	:	
	:	
v.	:	No. 10AP-1044
	:	
Franklin County Common Plea[s] Court;	:	(REGULAR CALENDAR)
Honorable Judge, John Bessey,	:	
	:	
Respondent.	:	
	:	

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MAGISTRATE'S DECISION

Rendered on September 20, 2011

*Clive Melhado, pro se.*

*Ron O'Brien, Prosecuting Attorney, and Jeffrey C. Rogers,  
for respondent.*

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ON PETITION FOR WRIT OF PROCEDENDO

{¶ 4} Relator, Clive Melhado, has filed this original action requesting that this court issue a writ of procedendo ordering respondent The Honorable Judge John Bessey of the Franklin County Court of Common Pleas "to rule on a Motion [titled] 'VACATE VOID JUDGMENT,' submitted to the Franklin County Clerk Of Court, and docketed April 12, 2010."

**Findings of Fact:**

{¶ 5} 1. Relator is an inmate currently incarcerated at North Central Correctional Institution.

{¶ 6} 2. Relator filed this procedendo action asking this court to require respondent "to rule on a Motion [titled] 'VACATE VOID JUDGMENT,' submitted to the Franklin County Clerk Of Court, and docketed April 12, 2010."

{¶ 7} 3. Because respondent failed to answer relator's complaint, the magistrate issued a show cause order asking respondent to demonstrate why relator's request should not be granted.

{¶ 8} 4. Respondent filed a motion seeking an extension of time to file a responsive pleading and this motion was granted.

{¶ 9} 5. Thereafter, in response to the magistrate's order to show cause, respondent filed a motion to dismiss or, in the alternative, for summary judgment. Relator argued that the act which relator asked this court to compel respondent to do had been performed and that the matter was now moot. Relator attached to his motion for summary judgment a certified copy of the December 21, 2010 decision and entry denying relator's motion to vacate void judgment.

{¶ 10} 6. The notice of summary judgment hearing was sent to the parties and relator has not filed anything opposing respondent's motion for summary judgment.

{¶ 11} 7. The matter is currently before the magistrate.

**Conclusions of Law:**

{¶ 12} For the reasons that follow, it is this magistrate's decision that this court should grant respondent's motion for summary judgment.

{¶ 13} In order to be entitled to a writ of procedendo, a relator must establish a clear legal right to require that court to proceed, a clear legal duty on the part of the court to proceed, and the lack of an adequate remedy in the ordinary course of law. *State ex rel. Miley v. Parrott* (1996), 77 Ohio St.3d 64, 65. A writ of procedendo is appropriate when a court has either refused to render a judgment or has unnecessarily delayed proceeding to judgment. *Id.*

{¶ 14} Attached to respondent's motion for summary judgment is a certified copy of the decision and entry denying relator's motion to vacate void judgment. At this time, respondent has performed the act which relator seeks to compel. Procedendo will not compel the performance of a duty that has already been performed. *State ex rel. Walker v. Kilbane Koch*, 98 Ohio St.3d 295, 2003-Ohio-856.

{¶ 15} Inasmuch as respondent has ruled on relator's motion to vacate void judgment, respondent has performed the act which relator sought to compel and relator's request for a writ of procedendo is moot. As such, this court should deny relator's request for a writ of procedendo and grant respondent's motion for summary judgment.

*/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).