[Cite as *State ex rel. Dehler v. Kelly*, 2009-Ohio-2534.]

THE COURT OF APPEALS

ELEVENTH APPELLATE DISTRICT

TRUMBULL COUNTY, OHIO

STATE OF OHIO ex rel. LAMBERT DEHLER,	:	**PER CURIAM OPINION**
	:	**CASE NO. 2008-T-0062**
Relator,	:	
- vs -	:	
BENNIE KELLY, WARDEN OF THE TRUMBULL CORRECTIONAL INSTITUTION,	:	
	:	
Respondent.		

Original Action for Writ of Mandamus.

Judgment: Writ denied.

Lambert Dehler, pro se, PID: 273-819, Trumbull Correctional Institution, P.O. Box 901, Leavittsburg, OH 44430-0901 (Relator).

Richard Cordray, Attorney General, and *Ashley D. Rutherford*, Assistant Attorney General, Corrections Litigation Section, 150 East Gay Street, 16th Floor, Columbus, OH 43215 (For Respondent).

PER CURIAM.

{¶1} This action in mandamus is presently before this court for final disposition of the summary judgment motion of respondent, Warden Bennie Kelly of the Trumbull Correctional Institution. As the sole basis for his motion, respondent maintains that the merits of the sole claim before us have become moot because a member of the prison staff has already performed the specific act which relator, Lambert Dehler, was seeking

to compel. For the following reasons, we conclude that the motion to dismiss is well-taken.

{¶2} During the entire pendency of the instant action, relator has been confined at the Trumbull Correctional Institution. In his petition for relief, relator asserted that, as the warden of the state prison, respondent had been failing to satisfy his statutory duty to provide adequate clothing to the inmates. Specifically, he alleged that the prison's quartermaster was not keeping an ample supply of various necessities, including pants and shirts. In regard to himself, relator asserted that, even though he had submitted an appropriate request, the quartermaster still had not given him a pair of properly-fitting shoes.

{¶3} After respondent had filed his answer to the mandamus petition, relator moved this court to stay the instant proceedings so that he could have the opportunity to pursue two grievances pertaining to the "clothing" issue. Pursuant to R.C. 2969.26(B), we granted the stay for a period of one hundred eighty days. At the conclusion of this time frame, relator filed a new submission in which he averred that, despite the fact that two written decisions had been issued concerning his grievances, the same problem still existed regarding the amount of clothing the quartermaster was keeping "in stock." In light of this, he requested that a permanent injunction be rendered against respondent as to this situation.

{¶4} In conjunction with his response to relator's request for additional relief, respondent has now moved for summary judgment on the entire mandamus claim. In essence, he contends that he is entitled to final judgment because his staff at the prison has already taken the necessary steps to remedy the underlying problem. In support of

this contention, respondent has attached to his motion the affidavit of Jacqueline Scott, who is the prison's business administrator. In this affidavit, Scott first avers that, as part of her duties, she oversees the work of the quartermaster. She further asserts that, in September 2008, the quartermaster gave relator a new pair of shoes in the size which he had previously requested.

{¶5} In responding to the motion for summary judgment, relator has not denied that, subsequent to the filing of this case, he received a pair of properly-fitting shoes. In addition, he has admitted that, even though there were certain delays in the process, he received other items of clothing which he had requested. Despite this, relator maintains that the instant action should still go forward because the quartermaster's procedure for the distribution of clothing remains flawed in two respects. First, he again contends that the prison does not keep a sufficient supply of clothing on hand to be able to meet the immediate needs of the inmates. Second, he argues that the prison does not have a system under which an inmate can place his name on a waiting list and be ensured that he will receive the requested item when the supplies are ultimately replenished. As to the latter point, relator states that the quartermaster does not post a notice indicating when new supplies have been delivered, and that it is merely a question of luck whether an inmate will submit a new request at a time when the items are in stock.

{¶6} In support of the foregoing two points, relator has attached to his response the affidavits of two fellow inmates, Russell Stokes and James Parks. Our review of the two affidavits shows that they do not delineate any information concerning the alleged problems relator has had in obtaining clothing. Instead, the affidavits only refer to the separate problems which Stokes and Parks have supposedly encountered in attempting

to deal with the quartermaster.

{¶7} In relation to Stokes and Parks, this court would note that they have never been named as parties to the instant matter. More importantly, we would also note that relator's mandamus petition did not contain any allegations indicating that he sought to maintain this case as a class action under Civ.R. 23. In considering a similar situation, the Supreme Court of Ohio has concluded that when a mandamus petition fails to set forth any of the basic allegations for a class action, the proceeding must be viewed as an "individual" action for the benefit of the named relator only. See *State ex rel. Ogan v. Teater* (1978), 54 Ohio St.3d 235, 247. In other words, unless a mandamus case has been brought as a class action, mandamus relief cannot be granted to any other person except the named relator.

{¶8} In light of the *Ogan* precedent, the alleged "clothing" problems of Stokes and Parks cannot be resolved in the context of the instant proceeding. That is, because the allegations in the instant petition are limited to relator, only his alleged problems in obtaining proper clothing are before us for resolution. Moreover, since the allegations in the affidavits of Stokes and Parks pertain solely to their respective "clothing" problems, they are irrelevant for purposes of this litigation.

{¶9} As to relator, the averments in his separate affidavit essentially confirm the basic assertions in respondent's summary judgment motion; i.e., at this time, relator has received all of the clothing items which he requested from the prison quartermaster. In fact, there is no factual dispute that relator was given a pair of properly-fitting shoes shortly after the commencement of this action. Accordingly, even if relator could show that respondent is generally failing to satisfy his statutory duty under R.C. 2921.44(C) to

provide adequate clothing to the prison population, such a finding would not be directly beneficial to him because he has already obtained the exact remedy which he sought in maintaining this action. To this extent, the final merits of relator's mandamus claim are now moot.

{¶10} As this court has noted on numerous occasions, a writ of mandamus is generally employed as a means of requiring a public official to complete an act which he is legally obligated to perform. See, e.g., *Penko v. Mitrovich*, 11th Dist. No. 2003-L-191, 2004-Ohio-6326, at ¶5. As a result, if the public official actually performs the desired act before the final merits of the mandamus claim are addressed, the case itself will be considered moot and should not go forward. *Cunningham v. Lucci*, 11th Dist. No. 2006-L-052, 2006-Ohio-4666, at ¶9. Pursuant to this legal precedent, respondent is entitled to prevail in the instant matter because the employees under his control have already given relator the specific clothing items he sought to obtain.

{¶11} As a final point, this court would again note that, as part of his submissions in this action, relator also requested the issuance of a permanent injunction against respondent and his staff. Even if the merits of this action had not become moot, we would not be able to grant that form of relief because the original jurisdiction of an appellate court does not include a claim for a permanent injunction. *Blackwell v. Bd. of Twp. Trustees, Ashtabula Twp.*, 11th Dist. No. 2003-A-0061, 2004-Ohio-2080, at ¶5.

{¶12} "Under Civ.R. 56(C), the moving party in a summary judgment exercise is entitled to prevail when he can establish that: (1) there are no genuine factual disputes remaining to be litigated; (2) he is entitled to judgment as a matter of law; (3) the evidentiary materials are such that, even when those materials are interpreted in a way

which is most favorable to the non-moving party, a reasonable person could only come to a conclusion adverse to the non-moving party." *Sper v. Gansheimer*, 11th Dist. No. 2003-A-0124, 2004-Ohio-2443, at ¶7. In applying the foregoing standard to the parties' respective evidentiary materials, this court concludes that the granting of summary judgment is warranted as to relator's sole mandamus claim. Specifically, respondent has demonstrated that, pursuant to the undisputed facts, he is entitled to prevail as a matter of law because the merits of the underlying "clothing" dispute have already been resolved and, accordingly, are moot.

{¶13} Consistent with the foregoing discussion, respondent's motion for summary judgment is granted. It is the order of this court that the writ of mandamus is denied, and final judgment is hereby entered in favor of respondent in regard to relator's entire mandamus claim.

MARY JANE TRAPP, P.J., DIANE V. GRENDELL, J., COLLEEN MARY O'TOOLE, J., concur.