[Cite as *Nemeth v. Nemeth*, 2009-Ohio-3144.]

THE COURT OF APPEALS

ELEVENTH APPELLATE DISTRICT

GEAUGA COUNTY, OHIO

TERI LYNN NEMETH,	:	
		O P I N I O N
Relator,	:	
		CASE NO. 2009-G-2904
- vs -	:	
GARRY A. NEMETH,	:	
Respondent.	:	

Original Action for a Writ of Mandamus.

Judgment: Petition dismissed.

Teri Lynn Nemeth, pro se, P.O. Box 155, Chagrin Falls, OH 44203 (Relator).

Carolyn J. Paschke, Law Offices of Carolyn J. Paschke Co., L.P.A., 10808 Kinsman Road, P.O. Box 141, Newbury, OH 44065 (For Respondent).

CYNTHIA WESTCOTT RICE, J.

{¶1} This original action is presently before this court for final consideration of the motion of relator, Teri Lynn Nemeth, for leave to maintain a proceeding for a writ of mandamus. As the grounds for her motion, relator contends that, despite the fact that she was declared a vexatious litigator by the Geauga County Court of Common Pleas in December 2008, she should be allowed to bring this action to challenge the propriety of certain judgments rendered in an underlying divorce case. For the following reasons, we hold that relator has not satisfied the standard for the granting of leave to proceed under R.C. 2323.52(F)(2).

{¶2} In her petition, relator has alleged that she was the defendant in a divorce case brought by respondent, Garry A. Nemeth, in the Geauga County Court of Common Pleas. She has further asserted that, during the course of the trial proceedings, multiple errors occurred which resulted in serious violations of her basic constitutional rights to due process and equal protection of the law. According to relator, these errors led to a final divorce decree in which she was improperly denied the following: (1) ownership of the marital residence; (2) custody of two children who were minors at that time; and (3) sufficient spousal support. Based upon this, her petition contained the statement that she had suffered extreme financial hardships and other forms of damages.

{¶3} For her ultimate relief in this matter, relator has requested the issuance of an order that would compel the trial court in the divorce proceeding to render a new final judgment. Specifically, relator has asked this court to compel the trial court to grant her immediate access to the marital residence and monthly spousal support in the amount of $4,500.

{¶4} In her separate motion for leave to go forward, relator has readily admitted that she has brought the instant action for the purpose of "reopening" the divorce case and the three issues decided against her. In support of her position that such a reopening is permissible, relator has first stated that she has exhausted all of her available remedies before the trial court and other Geauga County public officials. Second, she has also stated that a writ of mandamus will lie in this instance because the trial court has a clear legal duty to grant her new relief in regard to the marital residence and spousal support.

{¶5} As was noted above, approximately five months prior to the initiation of the instant action, relator was declared a vexatious litigator in a separate case under R.C.

2323.52. In light of that declaration, relator cannot commence any form of legal action before an Ohio appellate court unless she first obtains leave from that specific court to go forward. R.C. 2323.52(D)(3). In relation to the standard which an appellate court must apply in reviewing a motion for leave, R.C. 2323.52(F)(2) states that a vexatious litigator should not be given leave to proceed unless the appellate court "is satisfied that the proceedings or application are not an abuse of process of the court and that there are reasonable grounds for the proceedings or application."

{¶6} Given the requirement of "reasonable grounds" for the new proceeding, it follows that a vexatious litigator should only be allowed to proceed when the assertions in her proposed petition are legally sufficient to state a viable claim. In the context of a mandamus action, a viable claim for the writ will not exist unless the relator will be able to demonstrate that: (1) she has a clear legal right to have a specific act performed by a public official; (2) the public official has a corresponding obligation to complete the act; and (3) the relator could not pursue an alternative legal remedy through which she could achieve the identical result. *State ex rel. Appenzeller v. Mitrovich*, 11th Dist. No. 2007-L-125, 2007-Ohio-6157, at ¶6.

{¶7} As to the third element for a writ, this court has generally held that a direct appeal of a final judgment in a trial proceeding constitutes an adequate remedy at law which would bar the issuance of a writ of mandamus. Id. Consistent with this holding, the Supreme Court of Ohio has specifically stated that a mandamus action cannot be employed as a substitute for an unsuccessful appeal. *State ex rel. Marshal v. Glavas*, 98 Ohio St.3d 297, 2003-Ohio-857, at ¶6. In other words, a relator cannot use this type of proceeding as a means of re-litigating issues which were reviewed, or could have been reviewed, in an earlier appeal.

{¶8} In the instant case, relator's various assertions indicate that a final decree has already been issued in the underlying divorce action. Furthermore, this court's own docket shows that relator has already pursued a direct appeal from that decree. See *Nemeth v. Nemeth*, 11th Dist. No. 2007-G-2791, 2008-Ohio-3263. Thus, to the extent that relator is merely seeking to reopen the divorce action, the allegations in her petition are legally insufficient to state a viable claim because she will never be able to satisfy the third element for a writ of mandamus; i.e., relator had an adequate legal remedy that she has already pursued. In light of these circumstances, this court finds that relator has failed to state any reasonable grounds for maintaining this proceeding, and that an abuse of process would occur if relator was allowed to go forward.

{¶9} Pursuant to the foregoing analysis, relator's motion for leave to proceed is overruled. It is the order of this court that the instant mandamus action is dismissed in its entirety.

TIMOTHY P. CANNON, J., concur,

COLLEEN MARY O'TOOLE, J., concurs in judgment only.