

**IN THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
TRUMBULL COUNTY, OHIO**

STATE OF OHIO, ex rel. RANDALL FELLOWS,	:	PER CURIAM OPINION
	:	
Relator,	:	CASE NO. 2014-T-0072
	:	
- VS -	:	
	:	
CYNTHIA L. EVERMAN, FIDUCIARY/ADMINISTRATOR,	:	
	:	
Respondent.	:	

Original Action for Writ of Mandamus.

Judgment: Petition dismissed.

Randall Fellows, pro se, PID: A173-423, Trumbull Correctional Institution, P.O. Box 901, Leavittsburg, OH 44430 (Relator).

Douglas J. Neuman, Neuman Law Office, LLC, 761 North Cedar Street, Suite 1, Niles, OH 44446-2566 (For Respondent).

PER CURIAM.

{¶1} This matter is before this court on the August 11, 2014 pro se petition for writ of mandamus, filed by relator, Randall Fellows. In relator's petition, he requested that Cynthia L. Everman, respondent, be compelled to return and record all true assets related to Trumbull County Probate estate Case No. 2013-EST-0805 and in land sale proceeding Case No. 2014-CVA-0004, so that creditors are paid before respondent continues into insolvency hearings. Relator argues that respondent was stripping the

estate of assets as fiduciary/administratrix and failing to record all estate assets as required by law. For the following reasons, relator's petition is hereby dismissed.

{¶2} On July 25, 2013, Shirley L. Fellows died intestate, survived by a son and a daughter. The Trumbull County Probate Court, having exclusive jurisdiction over the estate, issued Letters of Administration to respondent in September 2013. On September 2, 2014, respondent filed a "motion to dismiss petition for writ of mandamus." Respondent maintains that relator's petition fails to state a claim upon which a writ can be granted because respondent is not a public officer subject to the mandamus statutes and that relator is now time-barred from pursuing any claim.

{¶3} In moving to dismiss relator's claim, respondent has raised several arguments. Respondent asserts the claim is moot because she, as the administratrix of the estate, was appointed by the Trumbull County Probate Court and has followed all of the orders of the court during the administration of the estate. Further, she argues that relator was served all appropriate notices regarding the estate but failed to either appear in court or hire legal representation. In addition, respondent also asserts the inventory for the estate was approved by the Probate Court and was a final, appealable order, yet relator failed to file any exceptions to the court or file a timely notice of appeal. Moreover, a land sale proceeding was conducted to sell the real estate of decedent. Relator was a party to that litigation and was served the appropriate notices, but he failed to respond to the complaint in a timely manner.

{¶4} Despite being granted two extensions of time to file a response to respondent's motion to dismiss, relator has failed to file such a response.

{¶5} R.C. 2731.02 states: “Mandamus is 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.” “For a writ of mandamus to issue, the relator must establish a clear legal right to the relief prayed for; the respondent must have a clear legal duty to perform the act; and the relator must have no plain and adequate remedy in the ordinary course of the law.” *State ex rel. Widmer v. Mohnhey*, 11th Dist. Geauga No. 2007-G-2776, 2008-Ohio-1028, ¶31, citing *State ex rel. Natl. Broadcasting Co., Inc. v. Cleveland*, 38 Ohio St.3d 79, 80 (1988).

{¶6} We emphasize that relator, who filed no responsive pleading to respondent’s motion to dismiss, did not deny the assertion that he was sent all appropriate notices regarding the administration of the estate and the land proceeding. In his petition, relator acknowledged he received a “Notice of Hearing on Inventory.” Relator’s acknowledgment that he received such notices informing him of the date and time of hearing over matters concerning the estate estops him from denying that he was stripped of any opportunity to participate in the estate proceedings. *See Darling v. Lake Cty.*, 11th Dist. Lake No. 2012-L-079, 2013-Ohio-1291, at ¶23 (“In her responsive pleadings, relator has never denied or otherwise challenged the assertions contained in this notice. Therefore, it is not refuted that a significant amount of material has been made available to relator that, for whatever reason, she simply refuses to pick up. This puts relator in a position where she is unable to deny that the material has been provided to her.”). The inventory for the estate was then approved by the probate court, and relator failed to file exceptions to the inventory in a timely manner.

{¶7} Because respondent has satisfied all requirements prescribed to her by the Probate Court, relator cannot satisfy any of the requirements to request a writ of mandamus directed to respondent. Relator was given several opportunities over the course of the proceedings to file any exceptions and responses. Relator had an adequate remedy at law, but failed to exercise any of his rights in a timely manner.

{¶8} It is the order and judgment of this court that relator's petition for writ of mandamus is hereby dismissed in its entirety. Respondent's "Motion to Dismiss Petition for Writ of Mandamus" is hereby granted.

{¶9} Respondent's "Motion to Supplement the Record" is hereby denied.

TIMOTHY P. CANNON, P.J., DIANE V. GRENDALL, J., CYNTHIA WESTCOTT RICE, J., concur.