

[Cite as *State ex rel. Quinn v. Rastatter*, 2016-Ohio-434.]

IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
CLARK COUNTY

STATE OF OHIO ex rel.
JAMES QUINN

Petitioner-Relator

v.

JUDGE DOUGLAS RASTATTER CLARK COUNTY COMMON PLEAS COURT

Respondent

Appellate Case No. 15-CA-0090

[Original Action in Procedendo]

DECISION AND FINAL JUDGMENT ENTRY

January 28, 2016

PER CURIAM:

{¶ 1} On October 16, 2015, James Quinn filed a petition for a writ of procedendo. He asked this court to compel Respondent, the Honorable Judge Douglas Rastatter, to “proceed to judgment” on his post-conviction petition filed in Clark County Common Pleas Court Case No. 13-CR-869 on February 17, 2015.

{¶ 2} Judge Rastatter moved to dismiss this case, arguing that it is moot. Specifically, Judge Rastatter asserted that he overruled Quinn’s post-conviction petition on October 26, 2015, and he attached a copy of that decision in support of his motion to

dismiss. Quinn filed a memorandum in opposition, acknowledging that Judge Rastatter ruled on the petition, but arguing that Judge Rastatter failed to issue findings of fact and conclusions of law in his ruling, as required in the dismissal of a post-conviction petition. Judge Rastatter did not file a reply.

{¶ 3} Upon consideration, we dismiss this action as moot. A writ of procedendo will not issue to “compel the performance of a duty that has already been performed.” *State ex rel. Grove v. Nadel*, 84 Ohio St.3d 252, 253, 703 N.E.2d 304 (1998). “[T]he merits of a claim in procedendo will be considered moot when the judicial officer [has] already completed the precise act which the relator sought to compel.” *Davis v. Smalheer*, 11th Dist. Geauga No. 2010-G-2982, 2010-Ohio-6061, ¶ 5.

{¶ 4} Here, the petition for a writ of procedendo seeks to compel Judge Rastatter to “proceed to judgment” on Quinn’s post-conviction petition. We may appropriately take judicial notice that Judge Rastatter has done so, by virtue of the journalized entry attached to the motion to dismiss. *Grove* at 253; *State ex rel. Hawkins v. Haas*, 141 Ohio St.3d 98, 2014-Ohio-5196, 21 N.E.3d 1060, ¶ 4, fn. 1 (“An event that causes a case to become moot may be proved by extrinsic evidence”). As Judge Rastatter has already proceeded to judgment, the matter before us is moot.

{¶ 5} We find it moot despite Quinn’s argument that Judge Rastatter failed to issue the findings of fact and conclusion of law required by R.C. 2953.21(C). “A writ of procedendo only compels a judge to rule on a motion. It does not tell a judge how to rule.” *State ex rel. Morgan v. Fais*, 10th Dist. Franklin No. 2014-1663, 2015-Ohio-1514, ¶ 4. The proper course for a defendant seeking findings of fact and conclusions of law, pursuant to the Supreme Court of Ohio, is to seek a writ of mandamus. *State v. Sapp*, 2d Dist. Clark No. 2002-CA-8, 2002-Ohio-3922, fn. 1, citing *State ex rel. Ferrell v. Clark*, 13 Ohio St.3d 3,

469 N.E.2d 843 (1984). At this time, we make no determination of the adequacy of the entry at issue, as that is outside the scope of a procedendo action. *State, ex rel. Utley v. Abruzzo*, 17 Ohio St.3d 203, 204, 478 N.E.2d 789 (1985) (procedendo merely orders a court to proceed to judgment, and does not control “what that judgment should be”).

{¶ 6} Accordingly, we SUSTAIN Judge Rastatter’s motion to dismiss this action. Clark Appellate Case No. 15-CA-0090 is DISMISSED.

SO ORDERED.

MARY E. DONOVAN, Presiding Judge

MICHAEL T. HALL, Administrative Judge

JEFFREY E. FROELICH, Judge

To The Clerk: Within three (3) days of entering this judgment on the journal, you are directed to serve on all parties not in default for failure to appear notice of the judgment and the date of its entry upon the journal, pursuant to Civ.R. 58(B).

MICHAEL T. HALL, Administrative Judge

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