

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

Stephen Horoszewski, On Behalf
of Himself and All Others Similarly
Situated

Court of Appeals No. L-06-1253

Relator

v.

Gene A. Zmuda, Judge

DECISION AND JUDGMENT ENTRY

Respondent

Decided: September 12, 2006

* * * * *

David W. Zoll and Daniel P. Goetz, for relator.

John T. Madigan, Acting Director of Law, and Adam Loukx,
General Counsel, for respondent.

* * * * *

PIETRYKOWSKI, J.

{¶ 1} This matter is before the court on a "Complaint for Writ of Procedendo," filed by relator, Stephen Horoszewski. Relator seeks an order from this court compelling respondent, Judge Gene A. Zmuda, to rule on motions filed in Case No. CVF-04-18482, captioned *Flower Hospital v. Stephen Horoszewski*. Specifically, relator seeks a ruling on his motion to reassign the matter to Judge Francis X. Gorman or, in the alternative, on his motion to transfer the matter to the Lucas County Court of Common Pleas.

{¶ 2} Relator filed his complaint on August 10, 2006. On August 18, 2006, respondent filed a motion to dismiss on grounds that the complaint is moot. Attached to the motion to dismiss was a copy of an opinion and judgment entry demonstrating that respondent had ruled on the motions in question.

{¶ 3} Because respondent ruled on relator's outstanding motions, his writ of procedendo is moot. "Neither procedendo nor mandamus will compel the performance of a duty that has already been performed." *State ex rel. Kreps v. Christiansen* (2000), 88 Ohio St.3d 313, 318, 2000-Ohio-335. As such, respondent's motion to dismiss relator's petition instante is granted, and relator's petition for writ of procedendo is hereby dismissed as moot. Costs assessed to relator.

PETITION DISMISSED.

Peter M. Handwork, J.

JUDGE

Mark L. Pietrykowski, J.

JUDGE

Dennis M. Parish, J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at: http://www.sconet.state.oh.us/rod/newpdf/?source=6.
