

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

State of Ohio, ex relator,
Melissa J. Tillinghast

Court of Appeals No. E-11-079

Relator

v.

Judge Roger E. Binette

DECISION AND JUDGMENT

Respondent

Decided: February 3, 2012

* * * * *

Barbara J. Rogachefsky, for relator.

Kevin J. Baxter, Erie County Prosecuting Attorney, and Sandy J. Rubino and
Jason R. Hinners, Assistant Prosecuting Attorneys, for respondent.

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HANDWORK, J.

{¶ 1} Relator, Melissa J. Tillinghast, filed a petition for writ of mandamus, requesting that this court order respondent, Judge Roger E. Binette, to rule on a motion for a second in camera interview with the relator's minor child, and that a magistrate issue a decision as ordered by this court on remand from appeal. See *Sedlack v. Palm*, 6th Dist. No. E-09-072, 2010-Ohio-3924.

{¶ 2} In response, respondent has filed a motion to dismiss, stating that both rulings have been issued, making the action in mandamus moot. Respondent has provided copies of those decisions. In the three weeks following the filing of the action in mandamus, the motion for a second in camera interview was denied on September 23, 2011, and a magistrate's decision was issued on September 30, 2011. These judgments comply with our decision on appeal, which specified only that, on remand, a new magistrate's decision be issued. This court has no authority to require a specific outcome in that ruling, or that the court conduct a second in camera interview with the child. See *State ex rel. White v. Suster*, 8th Dist. No. 79986, 2001 WL 1608660 (Dec. 13, 2001) (use of mandamus not proper to compel judge to enter specific judgment). Therefore, we conclude that relator's mandamus is both moot and improper.

{¶ 3} Accordingly, respondent's motion to dismiss is well-taken and granted. Costs of this action are assessed to relator.

Motion granted.

Peter M. Handwork, J.

JUDGE

Thomas J. Osowik, P.J.

JUDGE

Stephen A. Yarbrough, J.
CONCUR.

JUDGE

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