

[Cite as *State ex rel. Barksdale v. Sutula*, 2009-Ohio-4885.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 93861

**STATE OF OHIO, EX REL.,
CHRISTOPHER BARKSDALE**

RELATOR

vs.

JUDGE KATHLEEN A. SUTULA

RESPONDENT

JUDGMENT:
COMPLAINT DISMISSED

WRIT OF MANDAMUS
ORDER NO. 426155

RELEASE DATE: September 15, 2009

FOR RELATOR:

Christopher S. Barksdale, pro se
3451 East 149th Street
Cleveland, Ohio 44120

ATTORNEYS FOR RESPONDENT:

William D. Mason
Cuyahoga County Prosecutor
9th Floor Justice Center
1200 Ontario Street
Cleveland, OH 44113

KENNETH A. ROCCO, J.:

{¶ 1} Relator, Christopher Barksdale, avers that he is the executor of the Estate of Jacqueline Barksdale Williams, Cuyahoga County Probate Court Case No. 2006 EST 0112945. In *Deutsche Bank Trust Co. Am. v. Jacqueline Barksdale Williams, et al.*, Cuyahoga County Court of Common Pleas Case No. CV-547780, respondent judge entered a judgment of foreclosure in favor of Deutsche Bank on March 2, 2006. Respondent also denied Barksdale's motion for relief from judgment and stay of foreclosure on May 30, 2006. Barksdale appealed and a majority of this court dismissed his appeal because he lacked standing to bring the appeal. *Deutsche Bank Trust Co. v. Williams*, 171 Ohio App.3d 230, 870 N.E.2d 232, 2007-Ohio-1838 [Case No. 88252].

{¶ 2} Barksdale also filed *Estate of Williams v. Deutsche Bank Trust Co. Am.*, Cuyahoga County Court of Common Pleas Case No. CV-643245, in which

he challenged the foreclosure. The court of common pleas entered summary judgment in favor of Deutsche Bank, and a majority of this court affirmed and held that res judicata barred the estate's efforts to challenge the foreclosure action.

{¶ 3} In Case No. CV-547780, Barksdale filed a motion to vacate or set aside judgment ("motion to vacate") on behalf of the estate to vacate the order of confirmation of sale which was journalized on October 17, 2007. The motion was filed on June 19, 2009 and remains pending. Barksdale requests that this court issue a writ of mandamus compelling respondent to grant the motion to vacate.

{¶ 4} "The requisites for mandamus are well established: (1) the relator must have a clear legal right to the requested relief, (2) the respondent must have a clear legal duty to perform the requested relief and (3) there must be no adequate remedy at law. Additionally, although mandamus may be used to compel a court to exercise judgment or to discharge a function, it may not control judicial discretion, even if that discretion is grossly abused. *State ex rel. Ney v. Niehaus* (1987), 33 Ohio St.3d 118, 515 N.E.2d 914. Furthermore, mandamus is not a substitute for appeal. *State ex rel. Keenan v. Calabrese* (1994), 69 Ohio St.3d 176, 631 N.E.2d 119; *State ex rel. Daggett v. Gessman* (1973), 34 Ohio St.2d 55, 295 N.E.2d 659; and *State ex rel. Pressley v. Indus. Comm.* (1967), 11 Ohio St.2d 141, 228 N.E.2d 631, paragraph three of the syllabus. Thus, mandamus does not lie to correct errors and procedural irregularities in the

course of a case. *State ex rel. Tommie Jerningham v. Judge Patricia Gaughan* (Sept. 26, 1994), Cuyahoga App. No. 67787. Furthermore, if the relator had an adequate remedy, regardless of whether it was used, relief in mandamus is precluded. *State ex rel. Tran v. McGrath*, 78 Ohio St.3d 45, 1997-Ohio-245, 676 N.E.2d 108 and *State ex rel. Boardwalk Shopping Center, Inc. v. Court of Appeals for Cuyahoga Cty.* (1990), 56 Ohio St.3d 33, 564 N.E.2d 86.” *State ex rel. Smith v. Fuerst*, Cuyahoga App. No. 86118, 2005-Ohio-3829, at ¶4.

{¶ 5} The disposition of a motion to vacate is within the discretion of a trial court. See, e.g., *Bradley v. Holivay*, Cuyahoga App. No. 91509, 2009-Ohio-3895, ¶4. To the extent that Barksdale requests that this court compel respondent to *grant* his motion to vacate, relief in mandamus is inappropriate.

{¶ 6} To the extent to which Barksdale requests that this court compel respondent to dispose of his motion to vacate, this action is premature. The motion to vacate was filed on June 19, 2009. Barksdale commenced this action on September 1, 2009, 74 days after the filing of the motion to vacate. “Sup. R. 40(A)(3) provides that motions shall be ruled upon within 120 days from the date of filing. Thus, a complaint in mandamus to compel a ruling on a motion which has been pending less than that time is premature. *State ex rel. Rodgers v. Cuyahoga Cty. Court of Common Pleas* (1992), 83 Ohio App.3d 684, 615 N.E.2d 689 and *State ex rel. Byrd v. Fuerst* (July 12, 1991), Cuyahoga App. No. 61985.’ *State ex rel. Smith v. Suster*, Cuyahoga App. No. 89031, 2007-Ohio-89, at ¶2

(dismissing an action in mandamus). Obviously, the filing of this action is premature.” *State ex rel. Myrieckes v. Gallagher*, Cuyahoga App. No. 93477, 2009-Ohio-3272, at ¶3. Barksdale’s premature filing of this action provides sufficient ground for dismissing his complaint.

{¶ 7} Defects in the complaint also provide grounds for dismissal. The caption of the complaint does not include the addresses of the parties as required by Civ.R. 10(A). Additionally, Barksdale has not supported his complaint with an affidavit specifying the details of his claim as required by Loc.App.R. 45(B)(1)(a). This is despite the fact that, in a journal entry and opinion issued on June 3, 2009, this court identified the same defects in a complaint in mandamus filed by Barksdale. *Barksdale v. Saffold*, Cuyahoga App. No. 93302, 2009-Ohio-2573.

{¶ 8} Accordingly, we dismiss this action sua sponte. Relator to pay costs. The clerk is directed to serve upon the parties notice of this judgment and its date of entry upon the journal. Civ.R. 58(B).

Complaint dismissed.

KENNETH A. ROCCO, JUDGE

COLLEEN CONWAY COONEY, A.J., and
LARRY A. JONES, J., CONCUR

