

[Cite as *Gabel v. Ambrose*, 2013-Ohio-3256.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 99902

KERMIT GABEL

RELATOR

vs.

JUDGE DICK AMBROSE

RESPONDENT

JUDGMENT:
WRIT DENIED

Writ of Mandamus and/or Procedendo
Motion No. 465789
Order No. 466639

RELEASE DATE: July 24, 2013

FOR RELATOR

Kermit Gabel, Pro Se
No. 551160
Marion Correctional Institution
P.O. Box 57
Marion, Ohio 43302

ATTORNEYS FOR RESPONDENT

Timothy J. McGinty
Cuyahoga County Prosecutor
By: James E. Moss
Assistant County Prosecutor
8th Floor, Justice Center
1200 Ontario Street
Cleveland, Ohio 44113

KATHLEEN ANN KEOUGH, J.:

{¶1} Kermit Gabel (“Gabel”) has filed a complaint for writ of mandamus and/or procedendo. Gabel seeks an order from this court that requires Judge Dick Ambrose to render rulings on motions filed in Cuyahoga C.P. Nos. CR-510594, CR-509892 and CR-504062. Gabel indicates motions were filed on June 20, 2008, September 10, 2012, and October 12, 2012; however, he does not indicate in which case(s) the motions were filed. It is unclear exactly which motions are at issue in this original action, however, Gabel generally refers to “motions to correct his sentence for void sentence” and “several other procedural motions.” Judge Ambrose has moved for summary judgment, which Gabel has not opposed, and we grant for the reasons that follow.

{¶2} Gabel’s complaint is defective in several respects that would warrant dismissal of the complaint. Civ.R. 10(A); *Jordan v. Cuyahoga Cty. Court of Common Pleas*, 8th Dist. No. 94578, 2011-Ohio-1813, ¶ 3 (failure to include addresses of the parties and failure to caption the action in accordance with R.C. 2731.04 may be grounds for dismissal). Further, the complaint is moot.

{¶3} Gabel is seeking rulings on motions that have been filed in the three cases referenced above. We note, however, that Cuyahoga C.P. Nos. CR-504062 and CR-509892 were both previously dismissed. Nonetheless, Judge Ambrose has submitted journal entries that indicate he has ruled on motions that Gabel had filed in all three cases.

In CR-504062, Judge Ambrose denied Gabel’s motions to correct sentence filed on September 10, 2012, October 12, 2012, and November 5, 2012, and denied his motion for summary judgment that was filed on December 12, 2012. In CR-509892 and

CR-510594, Judge Ambrose denied Gabel's motions to amend his motions to correct sentence that were filed on November 5, 2012. Gabel has not disputed Judge Ambrose's position that these rulings rendered Gabel's complaint moot. Accordingly, Gabel is not entitled to a writ of mandamus or procedendo. *State ex rel. Culgan v. Kimbler*, 132 Ohio St.3d 480, 2012-Ohio-3310, 974 N.E.2d 88 (a writ of mandamus will not issue to compel an act already performed); *see also State ex rel. Pettway*, 8th Dist. No. 99259, 2013-Ohio-1567, ¶ 2.

{¶4} Judge Ambrose's motion for summary judgment is granted and Gabel's complaint for mandamus and/or procedendo is denied. Relator to pay costs. Costs waived. The court directs the clerk of court to serve all parties with notice of this judgment and its date of entry upon the journal as required by Civ.R. 58(B).

{¶5} Writ denied.

KATHLEEN ANN KEOUGH, JUDGE

MELODY J. STEWART, A.J., and
FRANK D. CELEBREZZE, JR., J., CONCUR