

[Cite as *State ex rel. Henderson v. Sweeney*, 2015-Ohio-2412.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 102541

STATE EX REL., TROY HENDERSON

RELATOR

vs.

JUDGE KRISTEN SWEENEY, ET AL.

RESPONDENTS

JUDGMENT:
COMPLAINT DISMISSED

Writ of Procedendo
Motion Nos. 483971 and 484925
Order No. 485836

RELEASE DATE: June 15, 2015

RELATOR

Troy Henderson, pro se
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ATTORNEYS FOR RESPONDENTS

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KATHLEEN ANN KEOUGH, J.:

{¶1} On January 26, 2015, the relator, Troy Henderson, commenced this procedendo action against the respondents, Judge Kristen Sweeney, Judge Jerry Hayes, and the Cuyahoga County Juvenile Court, to compel rulings on the following motions in the underlying case, *In re J.H.*, Cuyahoga J.C. No. PR-11-705281: (1) September 6, 2013 motion for relief from judgment per Civ.R. 60(B); (2) October 10, 2013 motion for discovery; (3) July 3, 2014 motion to compel discovery; (4) July 10, 2014 motion to dismiss support order; (5) July 14, 2014 motion to take judicial notice of case decisions and Henderson's indigent status from his criminal case; (6) July 16, 2014 motion for transcript; (7) July 16, 2014 motion to modify support order; (8) July 24, 2014 motion to dismiss support order; (9) July 24, 2014 motion to strike the July 10, 2014 hearing; and (10) December 16, 2011 motion to dismiss all orders. In the underlying case, the respondent court in October 2011, issued a child support order, which Henderson maintains is too much, and since that time he has engaged in extensive litigation to vacate or reduce the order. On March 24, 2015, the respondents moved for summary judgment on the grounds of mootness, res judicata, and the failure to show an unnecessary delay in proceeding to judgment. On April 23, 2015, Henderson filed his combined brief in opposition and cross-motion for summary judgment. The respondents filed a reply brief on May 12, 2015. For the following reasons, this court grants the respondents' motion for summary judgment, denies Henderson's cross-motion for summary judgment, and dismisses the application for a writ of procedendo.

{¶2} On April 21, 2015, in *Henderson v. Allamby*, Cuyahoga C.P. No. CV-803590, the court declared Troy Henderson to be a vexatious litigator pursuant to R.C. 2323.52. Division (D)(3) of that statute provides in pertinent part:

A person who is subject to an order [finding the person to be a vexatious litigator] may not * * * continue any legal proceedings that the vexatious litigator had instituted in a court of appeals prior to entry of the order, or make any application, other than the application for leave to proceed allowed by division (F)(2) of this section in any legal proceedings * * * in a court of appeals without first obtaining leave of the court of appeals to proceed pursuant to division (F)(2) of this section.

{¶3} R.C. 2323.52(F)(2) provides in pertinent part that a vexatious litigator who seeks to * * * continue any legal proceeding in a court appeals * * * shall file an application for leave to proceed in the court of appeals in which the legal proceedings * * * are pending. * * * The court of appeals may grant the application only after being satisfied that the proceedings or application are not an abuse of process of the court and that there are reasonable grounds to the proceedings or application. * * *

{¶4} Moreover, R.C. 2323.52(I) states:

Whenever it appears by suggestion of the parties or otherwise that a person found to be a vexatious litigator under this section had instituted, continued, or made an application in legal proceedings without obtaining leave to proceed from the appropriate * * * court of appeals to do so under division (F) of this section, the court in which the legal proceedings are pending shall dismiss the proceedings or application of the vexatious litigator.

{¶5} Although being declared a vexatious litigator, Henderson has not sought leave of this court to continue with this writ action. Accordingly, pursuant to R.C. 2323.52(I), this court dismisses this procedendo action. *Grundstein v. Carroll*, 8th Dist. Cuyahoga No. 86604, 2006-Ohio-2215.

{¶6} Notwithstanding Henderson's failure to obtain leave to proceed in this writ action, it would also be appropriate to dismiss the action on mootness and the merits. The writ of procedendo is merely an order from a court of superior jurisdiction to one of

inferior jurisdiction to proceed to judgment. *Yee v. Erie Cty. Sheriff's Dept.*, 51 Ohio St.3d 43, 553 N.E.2d 1354 (1990). Procedendo is appropriate when a court has either refused to render a judgment or has unnecessarily delayed proceeding to judgment. *State ex rel. Watkins v. Eighth Dist. Court of Appeals*, 82 Ohio St.3d 532, 1998-Ohio-190, 696 N.E.2d 1079. However, the writ will not issue to control what the judgment should be, nor will it issue for the purpose of controlling or interfering with ordinary court procedure. Thus, procedendo will not lie to control the exercise of judicial discretion. Moreover, it will not issue when there is an adequate remedy at law. *State ex rel. Utley v. Abruzzo*, 17 Ohio St.3d 202, 478 N.E.2d 789 (1985); *State ex rel. Hansen v. Reed*, 63 Ohio St.3d 597, 589 N.E.2d 1324 (1992).

{¶7} For most of the ten motions, there is no doubt that the respondents have resolved them. The court rejected Henderson's September 6, 2013 motion to vacate (motion No.1) in its October 21, 2013 order by ruling that the 60(B) motion was not filed within a reasonable time and that the listed reasons were not the proper subject of a Civ.R. 60(B) motion. On July 11, 2014, respondent Judge Hayes noted Henderson's outstanding motions and dismissed them all without prejudice. This order included the October 10, 2013 motion for discovery (motion No. 2), the July 3, 2014 motion to compel discovery(motion No. 3), and the July 10, 2014 motion to dismiss the support order (motion No. 4). On July 28, 2014, the court granted the July 16, 2014 motion for a transcript (motion No. 6).

{¶8} The court conducted a hearing on Henderson's objections to the magistrate's decision that established the child support order. In an October 17, 2014 order the court overruled the objections. The court noted that Henderson's testimony

and lack of exhibits rendered his arguments incredible and unpersuasive. Thus, the court concluded that there was no reason to change the magistrate's decision. This ruling resolved the July 10, 2014 motion to dismiss the support order (motion No. 4), the July 16, 2014 motion to modify the support order (motion No. 7), and the July 24, 2014 motion to dismiss the support order (motion No. 8).

{¶9} Henderson's December 16, 2011 motion to dismiss all orders for lack of service (motion No. 10) has already been the subject of a mandamus action, *State ex rel. Henderson v. Sweeney*, 8th Dist. Cuyahoga No. 99605, 2013-Ohio-2919, in which this court ruled that the trial court had resolved that motion by dismissing all pending motions for want of prosecution. Thus, the trial court did resolve that motion, and res judicata bars further litigation concerning it.

{¶10} That leaves only the July 14, 2014 motion to take judicial notice of case decisions and Henderson's indigent status from his criminal case (motion No. 5) and the July 24, 2014 motion to strike the July 10, 2014 hearing (motion No. 9) as the two motions for which there might not be rulings. In *State ex rel. Rodgers v. Cuyahoga Cty. Court of Common Pleas*, 88 Ohio App.3d 684, 615 N.E.2d 689 (8th Dist.1992), this court noted some of the variables that could cause a trial court in the exercise of its discretion to delay in ruling on any given motion. These included the procedural posture of the case, the need for discovery, the issues presented, the possibility of settlement, other pending motions, and other pending matters before the court. This court also noted the risk of usurping a judge's discretion in resolving a case and encouraging gamesmanship in litigation by granting a writ of procedendo. Thus, in this contentious litigation, this court in the exercise of its discretion declines to issue the writ of

procedendo to compel rulings on any of the listed motions that may still be outstanding. Relator to pay costs. This court directs the clerk of courts to serve all parties notice of this judgment and its date of entry upon the journal as required by Civ.R. 58(B).

{¶11} Complaint dismissed.

KATHLEEN ANN KEOUGH, JUDGE

LARRY A. JONES, SR., P.J., and
MARY EILEEN KILBANE, J., CONCUR