

[Cite as *State ex rel. Henderson v. Sutula*, 2015-Ohio-2710.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 102840

STATE OF OHIO, EX REL.
TROY HENDERSON

RELATOR

vs.

JUDGE JOHN SUTULA

RESPONDENT

JUDGMENT:
WRIT DENIED

Writ of Mandamus
Motion No. 485268
Order No. 486585

RELEASE DATE: June 29, 2015

FOR RELATOR

Troy Henderson, pro se
11040 Clark Road
Chardon, Ohio 44024

ATTORNEYS FOR RESPONDENT

Timothy J. McGinty
Cuyahoga County Prosecutor
By: Nora Graham
Assistant County Prosecutor
The Justice Center
1200 Ontario Street
Cleveland, Ohio 44113

SEAN C. GALLAGHER, J.:

{¶1} Troy Henderson has filed a complaint for a writ of prohibition. Henderson seeks to prohibit Judge John Sutula from exercising jurisdiction in *Henderson v. Alamby*, Cuyahoga C.P. No. CV-13-803590. Judge Sutula has filed a motion for summary judgment, which we grant for the following reasons.

{¶2} On April 21, 2015, Henderson was declared to be a vexatious litigator in *Henderson, supra*. The journal entry provided that “Troy Henderson is found to be a vexatious litigator. Therefore, he is prohibited from instituting and/or continuing any legal proceedings and/or making any application and/or any other prohibited conduct as specified in O.R.C. 2323.52.”

{¶3} R.C. 2323.52(D)(3) provides that:

A person who is subject to an order entered pursuant to division (D)(1) of this section may not institute legal proceedings in a court of appeals, *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 instituted by the vexatious litigator or another person in a court of appeals without first obtaining leave of the court of appeals to proceed pursuant to division (F)(2) of this section.

(Emphasis added.)

{¶4} R.C. 2323.52(F)(2) provides that a vexatious litigator “who seeks to institute or *continue* any legal proceedings in a court of appeals or make an application, other than an application for leave to proceed * * * shall file an application for leave to proceed in the court of appeals in which the legal proceedings would be instituted or are *pending* * * *.” (Emphasis added.)

{¶5} In addition, R.C. 2323.52(I) provides that:

Whenever it appears by suggestion of the parties or otherwise that a person found to be a vexatious litigator under this section has instituted, continued, or made an application in legal proceedings without obtaining leave to proceed from the appropriate court of common pleas or 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.

(Emphasis added.)

{¶6} Henderson's complaint for a writ of prohibition was filed on April 3, 2015. Henderson was declared a vexatious litigator pursuant to a journal entry journalized on April 21, 2015. Thus, Henderson was required to obtain leave to proceed in the pending complaint for a writ of prohibition. *Compare Gains v. Harman*, 148 Ohio App.3d 357, 2002-Ohio-2793, 773 N.E.2d 583 (7th Dist.); *Howard v. Admr. Bur. of Worker's Comp.*, 6th Dist. Lucas No. L-05-1055, 2005-Ohio-3598; *Farley v. Farley*, 10th Dist. Franklin Nos. 99AP-1103, 00AP-1282, 99AP-419, 03AP-226, 2005-Ohio-3994.

{¶7} Notwithstanding Henderson's failure to obtain leave to proceed in this original action, we find that the complaint for a writ of prohibition is moot. On February 3, 2015, Henderson dismissed all of his claims as filed in *Henderson* per Civ.R. 41(A)(1)(a). In addition, Judge Sutula conducted a bench trial and entered judgment as to all counts of the remaining counterclaim. Because there is no dispute that a judgment has been entered in the case, a writ of prohibition is not appropriate. A writ of prohibition may be awarded only to prevent the unlawful usurpation of jurisdiction and does not lie to prevent the enforcement of a claimed erroneous judgment previously

entered or the administrative acts following the rendering of a judgment by a court of competent jurisdiction; it may be invoked only to prevent proceeding in a matter in which there is an absence of jurisdiction and not to review the regularity of an act already performed. *State ex rel. Moss v. Clair*, 148 Ohio St. 642, 76 N.E.2d 883 (1947).

{¶8} Accordingly, we grant Judge Sutula's motion for summary judgment. Costs to Henderson. The court directs the clerk of courts to serve all parties with notice of this judgment and the date of entry upon the journal as required by Civ.R. 58(B).

{¶9} Writ denied.

SEAN C. GALLAGHER, JUDGE

EILEEN A. GALLAGHER, P.J., and
TIM McCORMACK, J., CONCUR