

[Cite as *State ex rel. Belvoir Energy, Inc. v. Fuerst*, 2016-Ohio-5632.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 104024

**STATE OF OHIO, EX REL.
BELVOIR ENERGY, INC.**

RELATOR

vs.

JUDGE NANCY A. FUERST

RESPONDENT

**JUDGMENT:
WRIT DISMISSED**

Writ of Procedendo
Order No. 499162

RELEASE DATE: August 26, 2016

ATTORNEYS FOR RELATOR

Jeffrey W. Krueger
Eric D. Valente
P.O. Box 360135
Cleveland, Ohio 44136

ATTORNEYS FOR RESPONDENT

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

MARY J. BOYLE, J.:

{¶1} The relator, Belvoir Energy, Inc. (Belvoir), commenced this procedendo action to compel the respondent, Judge Nancy Fuerst, to submit a statement of evidence or proceedings pursuant to App.R. 9(C) in the underlying case, *Harris v. Belvoir Energy, Inc.*, Cuyahoga C.P. No. CV-13-816379. Belvoir has appealed a discovery order in the underlying case on the grounds that the order would force Belvoir to reveal trade secrets. *Harris v. Belvoir Energy, Inc.*, 8th Dist. Cuyahoga No. 103460. Belvoir proffered its 9(C) statement to the judge, and Harris submitted his response and objections to the statement. After obtaining several extensions of time to submit the record and the judge had not yet filed the final 9(C) statement, Belvoir commenced this writ action.

{¶2} 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), and *State ex rel. Hansen v. Reed*, 63 Ohio St.3d 597, 589 N.E.2d 1324 (1992).

{¶3} A review of the docket in the underlying case reveals that the respondent judge on June 28, 2016, finalized and filed a statement of proceedings for inclusion in the appellate record. A review of this court's docket in Appeal No. 103460, shows that the record was received by the court of appeals clerk on July 22, 2016. The record was deemed complete on that date, and the appellant's brief is due on Sept. 16, 2016. The relator has not objected to the statement. Thus, the dockets show that the respondent judge has proceeded to judgment by finalizing and filing a statement of proceedings, and this writ is moot.

{¶4} Accordingly, this court, sua sponte, dismisses the application for a writ of procedendo as moot. Costs assessed against respondent; costs waived. 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).

{¶5} Writ dismissed.

MARY J. BOYLE, JUDGE

MARY EILEEN KILBANE, P.J., and
ANITA LASTER MAYS, J., CONCUR