

[Cite as *State ex rel. Davis v. Sutula*, 2017-Ohio-7179.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
No. 105817

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**STATE OF OHIO, EX REL.  
DWAYNE DAVIS**

RELATOR

vs.

**JUDGE KATHLEEN ANN SUTULA**

RESPONDENT

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**JUDGMENT:  
COMPLAINT DISMISSED**

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Writ of Mandamus  
Motion No. 507772  
Order No. 508377

**RELEASE DATE:** August 9, 2017

**FOR RELATOR**

Dwayne Davis, pro se  
Lake Erie Correctional Institution  
Inmate No. 644-653  
501 Thompson Road  
Conneaut, Ohio 44030

**ATTORNEYS FOR RESPONDENT**

Michael C. O'Malley  
Cuyahoga County Prosecutor  
By: James E. Moss  
Assistant County Prosecutor  
The Justice Center  
1200 Ontario Street  
Cleveland, Ohio 44113

ANITA LASTER MAYS, J.:

{¶1} The relator, Dwayne Davis, has filed this mandamus action against the respondent, Judge Kathleen Ann Sutula. Because Davis has failed to state a claim entitling him to the extraordinary writ of mandamus, we sua sponte dismiss his complaint.

**A. Procedural History and Facts**

{¶2} According to Davis’s complaint, Judge Sutula has failed to “follow the law” and “follow Civ.R. 56” when denying Davis’s motion for summary judgment in support of his petition for postconviction relief in Cuyahoga C.P. No. CR-13-574008-A. Although the relief that Davis seeks is not entirely clear, it appears that the gravamen of this mandamus action is to compel Judge Sutula to state her reasoning for denying his motion or produce evidence that would preclude summary judgment under Civ.R. 56. Specifically, Davis asserts that he does not want this court to compel Judge Sutula to “grant” the motion for summary judgment; instead, he seeks an order compelling Judge Sutula — “the non-movant” — “to adduce affirmative evidence as to why she dismissed and denied relator’s [motion for] summary judgment.”

**B. Mandamus**

{¶3} “Dismissal of a complaint for failure to state a claim upon which relief can be granted is appropriate if, after all factual allegations of the complaint are presumed true and all reasonable inferences are made in relator’s favor, it appears beyond doubt that relator can prove no set of facts entitling relator to the requested extraordinary relief.”

*State ex rel. Woods v. Oak Hill Community Med. Ctr.*, 91 Ohio St.3d 459, 461, 746 N.E.2d 1108 (2001), citing *State ex rel. Lanham v. Ohio Adult Parole Auth.*, 80 Ohio St.3d 425, 426, 687 N.E.2d 283 (1997).

{¶4} To be entitled to a writ of mandamus, Davis must establish (1) a clear legal right to the requested relief, (2) a clear legal duty on the part of Judge Sutula to provide it, and (3) the lack of an adequate remedy in the ordinary course of law. *See State ex rel. Waters v. Spaeth*, 131 Ohio St.3d 55, 2012-Ohio-69, 960 N.E.2d 452, ¶ 6.

{¶5} Here, Davis’s complaint fails to meet any of the requisites for mandamus. Davis’s complaint erroneously treats Judge Sutula as an adversary to the proceedings in Case No. CR-13-574008-A. Contrary to Davis’s assertion, Judge Sutula is not a “non-movant” to his motion for summary judgment filed in Case No. CR-13-574008-A and has no duty “to adduce affirmative evidence” or explain why she denied his motion for summary judgment. Civ.R. 56 neither entitles him to this relief; nor does it place such a duty on the trial court judge deciding a motion for summary judgment. Moreover, to the extent that Davis is dissatisfied with Judge Sutula’s ruling, he has an adequate remedy at law by way of an appeal after a final judgment, and mandamus is not a substitute for appeal. *Thompson v. State*, 8th Dist. Cuyahoga No. 99265, 2013-Ohio-1907, ¶ 7, citing *State ex rel. Keenan v. Calabrese*, 69 Ohio St.3d 176, 631 N.E.2d 119 (1994); and *State ex rel. Pressley v. Indus. Comm. of Ohio*, 11 Ohio St.2d 141, 228 N.E.2d 631 (1967), paragraph three of the syllabus.

{¶6} Because it appears beyond doubt that relator could prove no set of facts entitling him to the requested writ of mandamus, we dismiss, sua sponte, this application for a writ of mandamus. Relator to pay costs. It is further ordered that the clerk of courts serve notice of this judgment upon all parties as required by Civ.R. 58(B).

{¶7} Complaint dismissed.

ANITA LASTER MAYS, JUDGE

PATRICIA ANN BLACKMON, P.J., and  
LARRY A. JONES, SR., J., CONCUR

# 105817 Keywords:

Mandamus; Civ.R. 56; failure to state a claim. Mandamus does not lie to compel a judge to produce evidence demonstrating a genuine issue of material fact or to provide reasons for a ruling on a motion for summary judgment. Complaint failed to state a claim for relief of mandamus and therefore is dismissed.