

IN THE SUPREME COURT OF OHIO

WAYNE BROWN

RELATOR,

Case No. 2023-379

v.

**Original Action in
Mandamus**

DAVID C. YOUNG, ET AL.

RESPONDENTS.

**MOTION TO DISMISS OF RESPONDENT
JUDGE DAVID YOUNG**

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**Judge William Klatt and two Unknown
Judges**

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Respondents

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RELATOR,

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DAVID YOUNG, ET AL.

RESPONDENTS.

MOTION TO DISMISS OF RESPONDENT JUDGE DAVID YOUNG

Now comes Respondent, the Honorable Judge David Young, by and through counsel to respectfully move this Court to dismiss the Complaint for a Writ of Mandamus filed by Relator, Wayne L. Brown, pursuant to Civ. R. 12(B)(6) and S.Ct.Prac.R. 12.04(A)(1). Relator has failed to state a claim upon which relief may be granted. As such, Relator is unentitled to the extraordinary relief requested.

Accordingly, for the reasons set forth in the attached Memorandum in Support, Respondent respectfully requests that the Relator's Petition be dismissed.

Respectfully submitted,

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¹ As of the time of this filing, the docket currently lists Prosecuting Attorney Tyack as the counsel of record for Judge William Klatt and two unknown Judges for the Tenth District Court of Appeals. These parties are represented by the Ohio Attorney General's office.

MEMORANDUM IN SUPPORT

I. Facts

Relator filed a complaint for a writ of mandamus with this Court on March 17, 2023. Relator named the following parties as Respondents in this matter: Judge David C. Young, Karina Conley, Julia Ross, Trisha Breedlove, Paul Filippelli, retired Judge William Klatt, and two unknown Judges for the Tenth District Court of Appeals. According to the Complaint, the requested writ relates to one underlying case in which Relator was a party: *Brown v. Hirschvogel Inc.*, Franklin C.P. No. 22CV345 (Sept. 28, 2022).

To summarize, the underlying case relates to a dispute regarding employment discrimination. In February 2020, Relator claims that he injured his back at work. *Brown v. Hirschvogel Inc.*, Franklin C.P. No. 22CV345, Complaint at 2, filed Jan. 18, 2022. This injury was exacerbated by a car accident. *Id.* at 3. Relator requested an accommodation, which he alleges Hirschvogel, Inc. improperly denied. *Id.* Ultimately, Relator alleges he was placed on unpaid leave and wrongfully terminated. *Id.* at 4.

After filing his Complaint on January 18, 2022, Relator's attorneys withdrew their representation on February 15, 2022. *Brown*, Franklin C.P. No. 22CV345, Entry Granting Motion to Withdraw, filed Feb. 15, 2022. Relator, who was now acting *pro se*, prematurely filed² a motion for summary judgement on February 18, 2022. *Brown*, Franklin C.P. No. 22CV345, Motion for Summary Judgement, filed Feb. 18, 2022. On March 4, 2022, Hirschvogel, Inc. filed a notice of

² The record in *Brown* shows that Relator served the Defendant in the underlying case at two different addresses. As a result, service was completed on two different dates: January 27, 2022 and February 11, 2022. The Defendants in the underlying matter had until February 24, 2022 at the earliest and March 11, 2022 at the latest to file their Answer. Civ.R. 12(A)(1). When Relator filed his motion on February 18, 2022, the Defendants still had time to file a responsive pleading or motion. According to Civ.R. 56(A), the motion for summary judgment was premature.

appearance and a motion for an extension of time. *Brown*, Franklin C.P. No. 22CV345, Notice of Appearance and Motion to Extend Time, filed March 4, 2022. Counsel for the defendant explained that they were recently retained and needed additional time to respond to both the Complaint and Motion for Summary Judgment. *Brown*, Franklin C.P. No. 22CV345, Motion to Extend Time at 1, filed March 4, 2022. In an Entry filed on Mar. 8, 2022, Respondent granted this request because the “Civ.R. 6(C) briefing time has not yet lapsed * * * and * * * [the court recognizes] the strong preference for getting to the merits of the case.” *Brown*, Franklin C.P. No. 22CV345, Entry at 1, filed Mar. 8, 2022.

The defendant was ultimately able to file its responses on time and attempted to move the case forward. However, Relator refused to participate in the discovery process. According to the motion to dismiss filed on September 13, 2022, Relator refused to serve initial disclosures and refused to attend a properly noticed deposition. *Brown*, Franklin C.P. No. 22CV345, Motion to Dismiss, pgs. 3-5, filed Sept. 13, 2022. Respondent, then, issued an order to show cause requiring Relator to explain why he failed to appear to the deposition by September 25, 2022. *Brown*, Franklin C.P. No. 22CV345, Order to Show Cause, filed Sept. 14, 2022. Relator responded with an answer that was “nonsensical.” *Brown*, Franklin C.P. No. 22CV345, Dismissal Order at 2, filed Sept. 28, 2022. Ultimately, the Franklin County Court of Common Pleas relied on Civ.R. 37(B)(1)(e) to dismiss the underlying matter without prejudice on September 28, 2022. *Id.* at 1.

After the underlying case was dismissed, Relator appealed to the Tenth District Court of Appeals. However, Relator failed to attach a certificate of service to the brief filed on November 8, 2022. *Brown v. Hirschvogel Inc.*, 10th Dist. Franklin No. 22AP626, Journal Entry, filed Nov. 9, 2022. Relator ignored a court order requiring him to correct this error by November 24, 2022. *Id.* Ultimately, this appeal was dismissed in an entry filed on November 29, 2022. *Brown*, 10th Dist.

Franklin No. 22AP621, Journal Entry of Dismissal, filed Nov. 29, 2022.

Instead of re-filing his appeal, Relator filed a complaint in the above-captioned matter in an attempt to use this writ to dispute Respondent's rulings in this underlying case. Specifically, Relator disagrees with Respondent's decision to give the defendant in the underlying case additional time to respond to the original Complaint and Motion for Summary Judgement. He also disagrees with Respondent's decision to dismiss the underlying case in its entirety. However, it is unclear exactly what duty Respondent has failed to perform. Instead, Relator alleges that Respondent has "violat[ed] due process" or violat[ed] my natural rights." Compl. at 3. He also alleges that Respondent committed judicial misconduct by violating "rules of procedures." *Id.* However, Relator is referring to past acts instead of a duty that Respondent has failed to perform. Relator proposes remedies which are inappropriate here. For example, he provides this Court with the remedies provided in various sections of R.C. Chapter 5810 and demands Respondent return property to Relator. Compl., pgs. 4-5. In another portion of his Complaint, he demands a total of \$300,000. *Id.* at 6.

Respondent now respectfully asks this Court to dismiss any claims against him in the above-captioned matter pursuant to Civ.R. 12(B)(6) and S.Ct.Prac.R. 12.04(A)(1).

II. Standard of Review

In considering a motion to dismiss for failure to state a claim, the Court must construe all material allegations in the Complaint and all inferences that may be reasonably drawn in favor of the nonmoving party. *Fahnbulleh v. Strahan*, 73 Ohio St.3d 666, 667, 653 N.E.2d 1186, 1187 (1995). In order for a court to dismiss a complaint for failure to state a claim upon which relief can be granted, "it must appear beyond doubt from the complaint that [relator] can prove no set of facts warranting relief." *State ex rel. Jennings v. Nurre*, 72 Ohio St.3d 596, 597, 651 N.E.2d 1006 (1995); *York v. Ohio State Highway Patrol*, 60 Ohio St.3d 143, 144, 573 N.E.2d 1063 (1991).

Respondent understands that this Court generally only considers the content of the pleadings when considering a motion to dismiss. However, Respondent respectfully requests this Court to take judicial notice of the record in *Brown v. Hirschvogel Inc.*, Franklin C.P. No. 22CV345 (Sept. 28, 2022) and *Brown v. Hirschvogel Inc.*, 10th Dist. Franklin No. 22AP621 (Nov. 29, 2022). Although generally, a Civ.R. 12(B)(6) determination cannot rely on factual allegations or evidence outside the complaint, courts may take judicial notice of appropriate matters in determining a Civ.R. 12(B)(6) motion without converting it to a motion for summary judgment. *See State ex rel. Everhart v. McIntosh*, 115 Ohio St.3d 195, 2007-Ohio-4798, 874 N.E.2d 516, ¶10. This includes “notice of the docket and record in a closely related case to determine whether the current complaint states a claim for relief.” *State ex rel. Neguse v. McIntosh*, 161 Ohio St.3d 125, 2020-Ohio-3533, 161 N.E.3d 571, ¶18.

III. Law and Argument

Relator has failed to present this Court with sufficient facts or arguments demonstrating his entitlement to the requested writ. Relator’s claims fail on two fronts. First, Respondent is protected by judicial immunity. Second, Relator has failed to demonstrate any of the elements required to show his entitlement to a writ of mandamus. As a result, Respondent respectfully asks this Court to dismiss the claims against him pursuant to Civ.R. 12(B)(6) and S.Ct.Prac.R. 12.04(A)(1).

A. Judicial Immunity

Relator’s claims are barred by absolute immunity and this matter should be dismissed. A judge is immune from civil liability for actions taken within the judge's official capacity, even if those actions were in error, in excess of authority, or malicious. *Reasoner v. City of Columbus*, 10th Dist. Franklin No. 02AP831, 2003-Ohio-670, ¶ 15 citing *Kelly v. Whiting*, 17 Ohio St.3d 91,

93, 477 N.E.2d 1123 (1985). A judge loses their immunity only if a court finds that : “(1) the judge acted in a ‘clear absence of all jurisdiction’; or (2) the action at issue was not judicial in nature, i.e., an action not normally performed by a judge.” *Reasoner* citing *Forsyth v. Supreme Court of Ohio*, 10th Dist. Franklin No. 98AP59, 1998 WL 542700 (Aug. 25, 1998).

In the instant matter, there is no evidence that Respondent was acting without jurisdiction. The Franklin County Court of Common Pleas has general subject matter jurisdiction over cases that come before the court, meaning that the court can determine its own jurisdiction, unless the lack of jurisdiction is “patent and unambiguous.” *State ex rel. Stevenson v. Gill*, 10th Dist. Franklin No. 08AP60, 2008-Ohio-5699, ¶2. Here, Relator has failed to present any facts that, if true, challenge Respondent’s jurisdiction over the underlying case.

Furthermore, the acts attributed to Respondent in the Complaint are purely judicial in nature. Respondent issued decisions on motions and dismissed the underlying case. These are acts normally performed by a judge acting within his judicial capacity. As a result, Relator has failed to prove that Respondent has lost his judicial immunity and this writ should not issue.

B. Writ of Mandamus

In order to obtain a writ of mandamus, relator must establish three elements: (1) a clear legal right to the requested relief; (2) the respondent has a clear legal duty to perform the requested act; and (3) the lack of an adequate remedy in the ordinary course of law. *State ex rel. Ward v. Reed*, 141 Ohio St.3d 50, 2014-Ohio-4512, 21 N.E.3d 303, ¶ 10. Mandamus compels the performance of a present existing duty as to which there is a present default. *See State ex rel. Home Care Pharmacy, Inc. v. Creasy*, 67 Ohio St.2d 342, 343-344, 423 N.E.2d 482 (1981). Mandamus will not issue to require a judicial officer to prospectively observe the law, or to remedy the anticipated nonperformance of that duty. *See Id.* at 343; *see also State ex rel. Evans v. Tieman*, 157

Ohio St.3d 99, 2019-Ohio-2411, 131 N.E.3d 930. The issuance of a writ of mandamus “is reserved for extreme cases of direct disobedience.” *State ex rel. Cowan v. Gallagher*, 153 Ohio St.3d 13, 2018-Ohio-1463, 100 N.E.3d 407, ¶ 12. It is impermissible to substitute mandamus actions for appeals. *State ex rel. Steinle v. Dewey*, 147 Ohio St.3d 327, 2016-Ohio-5549, 65 N.E.3d 721, ¶ 10.

This Court, when reviewing a writ of mandamus, only “consider[s] facts [available] at the time it determines whether to grant to requested writ.” *Id.* at ¶15, quoting *State ex rel. Everhart v. McIntosh*, 115 Ohio St.3d 195, 2007-Ohio-798, 874 N.E.2d 516, ¶11. This is done, in part, because “[m]andamus will not issue to compel a vain act” where “the underlying dispute has become moot, such that relief in the pending lawsuit will not affect the outcome.” *State ex rel. Burkons v. Beachwood*, 168 Ohio St.3d 191, 2022-Ohio-748, 197 N.E.3d 529, ¶14.

First, it is unclear what type of relief Relator is even requesting of this Court. At various points throughout the Complaint, Relator complains that Respondent has “violat[ed] due process” or violat[ed] my natural rights.” Complaint at 3. He also alleges that Respondent committed judicial misconduct by violating “rules of procedures.” *Id.* However, Relator is referring to past acts instead of a duty that Respondent has failed to perform. As this Court is well aware, mandamus will only issue to compel an individual to perform an outstanding legal duty. R.C. 2731.01.

The Complaint also includes a rote recitation of various sections of R.C Chapter 5810. Compl. pgs. 4-6. The cited chapters of the Revised Code only apply to “charitable and noncharitable inter vivos express trusts and to trusts created pursuant to a statute, judgment, or decree that requires the trust to be administered in the manner of an express trust.” R.C. 5801.02. Perplexingly, Relator accuses Respondent of being “executor de son tort and * * * ultra vires.” Compl. at 4. Respondent is also accused of “subrogating [Relator’s] position as creditor” and either stealing, embezzling, or extorting Relator’s unidentified property. *Id.* at 5. These allegations

are untethered both from the facts presented in the underlying case, which was an employment discrimination matter, and the mandamus issue presented here. This Court does not have jurisdiction to review these allegations or to award the requested relief. For this reason, Respondent respectfully asks this Court to dismiss these claims. Ohio Constitution, Article IV, Section 2(B)(1); R.C. 2731.01.

Relator's Complaint could also be read as requesting monetary damages as a type of relief. Respondent demands a remedy of "75,000 dollars and three times 75,000 dollars for treble and or compensatory damages * * * for a total of 300,000 thousand dollars." Compl. at 6. However, monetary damages do not constitute a type of relief that can be appropriately requested in a mandamus action. This Court must first rule on the mandamus issue before considering a claim for damages. *State ex rel. Natl. City Bank v. Maloney*, 103 Ohio St.3d 93, 2004-Ohio-4437, 814 N.E.2d 58, ¶13. Relator is only eligible to receive the requested damages if this Court rules in his favor. R.C. 2731.11. Since Relator has not demonstrated that he is entitled to receive the writ, he is not eligible to receive this requested relief.

Relator cannot establish that he has a clear legal right to the requested relief, whatever it may be, as the underlying case has already been dismissed. *Brown v. Hirschvogel Inc.*, Franklin C.P. No. 22CV345, Dismissal Order, filed Sept. 28, 2022. Since the underlying case is dismissed, Relator has not specified, and cannot show, what clear legal duty exists. Relator has failed to demonstrate a clear legal right to any requested relief or a clear legal duty on the part of Respondent to act. Therefore, this writ should not issue.

Finally, Relator has failed to establish the third element required to obtain a writ of mandamus—that he has no plain and adequate remedy in the ordinary course of the law. An adequate remedy "is 'complete, beneficial, and speedy.'" *State ex rel. Kerns v. Simmers*, 153 Ohio

St.3d 103, 2018-Ohio-256, 101 N.E.3d 430, ¶10, quoting *State ex rel. Natl. Elec. Contrs. Assn., et al. v. Ohio Bur. Of Emp. Servs.*, 83 Ohio St.3d 179, 183, 699 N.E.2d 64 (1998). A party may challenge jurisdiction on appeal. *State ex rel. Stevenson v. Gill*, 10th Dist. Franklin No. 08AP60, 2008-Ohio-5699, ¶2. This is an adequate remedy. *State ex rel. Nye v. Coates*, 146 Ohio St.3d 426, 2016-Ohio-1559, 57 N.E.3d 1138, ¶10.

In fact, Relator has already utilized the appeals process by appealing the underlying case to the Tenth District. This appeal was dismissed on November 30, 2022. *See Brown v. Hirschvogel Inc.*, 10th Dist. Franklin No. 22AP621 (Nov. 30, 2022). However, Relator’s appeal was denied after he failed to comply with a court order and filed a brief without a certificate of service. *Brown*, 10th Dist. Franklin No. 22AP621, Journal Entry, filed Nov. 29, 2022. Since “a plain and adequate remedy at law has been unsuccessfully invoked, the extraordinary writ of mandamus will not lie either to relitigate the same question or as substitute for appeal.” *State ex rel. Inland Properties Co. v. Court of Appeals of the Eight Appellate Dist. of Ohio*, 151 Ohio St. 174, 176, 84 N.E.2d 922 (1949). Therefore, a plain and adequate remedy exists and this Court should not grant the requested writ.

Relator has failed to establish all elements required for a writ of mandamus to issue. Accordingly, Relator’s request for extraordinary relief must be denied..

C. Relator’s Additional Claims are Improper

S.Ct.Prac.R. 5.06 provides that an “original action” is a case that invokes the original jurisdiction of the Supreme Court pursuant to Article IV, Section 2(B)(1)(a) through (e) of the Ohio Constitution. This portion of Ohio’s Constitution states that this Court has original

jurisdiction over the following actions: “(a) Quo warranto; (b) Mandamus; (c) Habeas corpus;³ (d) Prohibition; [and] (e) Procedendo.” Ohio Constitution, Article IV, Section 2(B)(1)(a)-(e). While Relator has filed a mandamus action, which this Court has original jurisdiction over, he makes additional allegations against Respondent which are improper. For example, Relator accuses Respondent of being “in breach of trust” and relies on various provisions of R.C. Chapter 5810, which governs trusts, to demand financial remedies. Compl. at 4. This Court does not have the jurisdiction to review these claims. Therefore, to the extent that this Court can review such additional claims, Respondent respectfully asks this Court to dismiss those additional claims.

IV. Conclusion

Assuming all facts alleged to be true, Relator cannot establish the elements required for a writ mandamus to issue. For the foregoing reasons, Respondent respectfully requests this Court dismiss Relator’s action pursuant to Civ. R. 12(B)(6) and S.Ct.Prac.R. 12.04(A)(1).

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³ Relator’s Complaint indicates that he is requesting two writs here: mandamus and habeas corpus. However, the Clerk of Court docketed the above-captioned matter solely as a mandamus action. In fact, Relator not did file his application for a writ of habeas corpus correctly. R.C. 2725.04. Furthermore, the facts listed in the Complaint do not demonstrate that Relator is currently incarcerated or is otherwise deprived of his liberty. R.C. 2725.01. As a result, in so far as this Court may consider Relator’s filing as an application for a writ of habeas corpus, it should be denied. R.C. 2725.05.

CERTIFICATE OF SERVICE

This is to certify that the foregoing was filed electronically using the Court's electronic filing system. Notice of this filing will be sent to all counsel by operation of the Court's electronic filing system. Parties may access the filing through the Court's system.

A copy of the foregoing was also sent via U.S. Mail, postage prepaid, on April 13, 2023 to the following:

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