

**IN THE SUPREME COURT OF OHIO**

WAYNE BROWN

Case No. 2023-423

v.

**Original Action in  
Mandamus**

ALLEN REIS, ET AL.

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**MOTION TO DISMISS OF RESPONDENTS MAGISTRATE  
PETRUCCI, JUDGE BROWN AND MAGISTRATE SKEENS**

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WAYNE L. BROWN

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**MOTION TO DISMISS OF RESPONDENTS  
MAGISTRATE PETRUCCI, JUDGE BROWN, AND MAGISTRATE SKEENS**

Now come Respondents, Judge Jeffrey M. Brown, Magistrate Mark Petrucci, and Magistrate Edwin Skeens (“judicial Respondents”), by and through counsel to respectfully move this Court to dismiss them as parties from the above-captioned matter, 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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## MEMORANDUM IN SUPPORT

### **I. Facts**

Relator filed a document entitled “Complaint/Charge” with this Court on March 29, 2023. Relator named the following parties as Respondents in this matter: Allen Reis, Magistrate Mark Petrucci, Judge Jeffrey M. Brown, and Magistrate Edwin Skeens. The above-captioned matter was filed as a Writ of Mandamus by the Clerk of Court. According to this Complaint, the requested writ relates to one case where Relator is a party in Franklin County Court of Common Pleas: *Ally Bank v. Brown Bey*, Franklin C.P. No. 19CV8898 (Jan. 5, 2021).

To summarize, the underlying case relates to a dispute regarding a car loan. On November 5, 2019, Ally Bank, the plaintiff in the underlying case, filed a complaint alleging that Relator purchased a 2017 Chevrolet Equinox and signed a retail installment sale contract in March 2019. *Ally*, Franklin C.P. No. 19CV8898, Complaint, pgs. 1-2, filed Nov. 5, 2019. After receiving the car, Relator failed to make regular payments on the loan. The plaintiff filed suit in the Franklin County Court of Common Pleas to assert its right to receive payment and to repossess the vehicle. *Id.*

The parties attended a hearing on December 2, 2019 before Respondent, Magistrate Petrucci. At the hearing, Respondent found that Relator admitted to entering into the contract and failing to make payments required by the contract. *Ally*, Franklin C.P. No. 19CV8898, Magistrate’s Decision at 1, filed Dec. 2, 2019. Accordingly, Respondent ruled in favor of Plaintiff. *Id.* Respondent, Judge Brown, issued an order of possession on December 13, 2019. *Ally*, Franklin C.P. No. 19CV8898, Order of Possession, filed Dec. 13, 2019. Relator attempted to appeal this decision but, without a final order, Relator was unsuccessful. *Ally Bank v. Brown Bey*, 10th Dist. Franklin No. 19AP867, 2020-Ohio-5093, Decision, filed Oct. 29, 2020. Ultimately, in an entry

filed on December 13, 2019, Respondent Judge Brown issued an Order of Possession commanding Respondent to surrender the vehicle to the Sheriff. *Ally*, Franklin C.P. No. 19CV8898, Entry, filed Dec. 13, 2019.

When Relator failed to comply with the Court's order to return the vehicle, Plaintiff filed a Motion to Show Cause on November 10, 2020. *Ally*, Franklin C.P. No. 19CV8898, Motion to Show Cause, filed Nov. 10, 2020. Relator was ordered to show why he should not be found in contempt in an entry filed on January 5, 2021. *Id.* A hearing was held before Respondent, Magistrate Skeens, on March 5, 2021. After reviewing all the evidence and considering the arguments presented, Respondent found in favor of Plaintiff. *Ally*, Franklin C.P. No. 19CV8898 Magistrate's Decision, filed March 5, 2021. Relator was ordered to return the vehicle at issue within ten days or face arrest. *Id.* at 3. Relator objected to the order, but the Court ultimately adopted the Magistrate's decision in an entry filed on October 14, 2021. *Ally*, Franklin C.P. No. 19CV8898 (Jan. 5, 2021).

Instead of filing an appeal to fight this order, Relator filed a complaint in the above-captioned matter. It is unclear what he seeks to accomplish with this writ. Relator opens with a Notice addressed to Mayor Andrew Ginther and Columbus City Attorney Zackary Klein, who are not parties in this action. It appears he is attempting to instruct both the mayor and city attorney to charge the named Respondents with various crimes. In the Complaint itself, Relator accuses Respondent Judge Brown of permitting theft and stalking. Respondent Magistrate Skeens is accused of threatening Relator with arrest. Respondent Magistrate Petrucci is not mentioned in the body of the Complaint. This omission means Respondent does not know why he has been named as a party in the instant matter. Finally, Relator appears to demand a remedy of \$500,000. Compl. at 2.

Respondents now respectfully ask this Court to dismiss any claims against them in the above-captioned matter pursuant to Civ.R. 12(B)(6).

## **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). 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 *Ally Bank v. Brown Bey*, Franklin C.P. No. 19CV8898 (Jan. 5, 2021) and *Ally Bank v. Brown Bey*, 10th Dist. Franklin No. 19AP867, 2020-Ohio-5093 (Oct. 29, 2020). 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 legal argument demonstrating his entitlement to the requested writ. Not only is the relief being requested by

Relator unclear, but Relator has also failed to prove any of the elements required to entitle him to a writ of mandamus. As a result, Respondents respectfully ask 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. Writ of Mandamus**

To obtain a writ of mandamus, relator must establish three elements: (1) a clear legal right to the requested relief; (2) that 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. Here, Relator cannot establish that he has a clear legal right to the requested relief as the issue at hand is moot. The

record in the underlying case shows that Respondent found in favor of Plaintiff in the Entry filed on January 5, 2021. *Ally Bank v. Brown Bey*, Franklin C.P. No. 19CV8898, Entry filed Jan. 5, 2021. Relator does not allege that Respondents have a duty to perform here.

It is unclear from the Complaint what type of relief Relator seeks to obtain from this Court. From the Notice addressed to Mayor Andrew Ginther and City Attorney Zackary Klein, included at the start of the Complaint, it appears that Relator may be attempting to force these officials to bring criminal charges against the Respondents.<sup>1</sup> As this Court is aware, mandamus will only issue to compel an individual to perform an outstanding legal duty. R.C. 2731.01. Ordering officials not named as parties in this Complaint to bring charges against Respondents, if this Court even construes that as the relief requested by Relator, is not a type of relief that can appropriately be requested in a mandamus action. . For this reason, Respondents respectfully ask this Court to dismiss these claims.

Respondent also demands to be “compensated handsomely” but, perplexingly, demands a loan of “anything of intrinsic value, of 500,000 dollars or something close to my demands.” Compl. at 2. Later, he states “[r]emedy sought is 500,000 dollars.” *Id.* Assuming Relator is actually requesting a remedy of \$500,000, this is inappropriate. Monetary damages are not a type of relief that can be granted at this time. 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.

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<sup>1</sup> As discussed previously, the body of Relator’s Complaint does not explain why Magistrate Petrucci is named as a Respondent in this suit.

Relator cannot establish that he has a clear legal right to the requested relief, regardless of what it is, as Relator does not have a clear legal right to relief and Respondents do not have a clear legal duty to provide such relief. In fact, Relator has not specified, and cannot show, what clear legal right or clear legal duty exists here. As a result, Relator has failed to successfully demonstrate that Relator has a clear legal right to relief or that Respondent has an outstanding legal duty to act.

Finally, Relator failed to address 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). Here, Relator can file an appeal of any final judgment in the underlying case, which 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 on December 23, 2019. His appeal was dismissed on November 5, 2022. *See Ally Bank v. Brown Bey*, 10th Dist. Franklin No. 19AP867, 2020-Ohio-5093. However, this appeal was dismissed since it was premature. There was no final order for the Tenth District to review. Now that the Franklin County Court of Common Pleas has issued its final ruling, Relator is free to file his appeal if allowed by the law and the rules of this Court. Therefore, a plain and adequate remedy exists, and this Court should not grant the requested writ.

Relator failed to establish all elements required for the writs of mandamus. Accordingly, Relator’s request for extraordinary relief must be denied.

## **B. 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; (d) Prohibition; [and] (e) Procedendo.” Ohio Constitution, Article IV, Section 2(B)(1)(a)-(e). While Relator has filed a mandamus action,<sup>2</sup> which this Court has original jurisdiction over, he makes additional allegations against Respondents which are improper. For example, he appears to be attempting to bring criminal charges against Respondents. Compl. at 1. Relator’s broad allegations against the judicial Respondents, accusing Judge Brown of permitting theft and stalking, and accusing Magistrate Skeens of threatening Relator with arrest. As discussed *infra*, what, if anything, Magistrate Petrucci is being accused of, is unclear.

While this Court is Court does not have the jurisdiction to review these additional claims, such claims against the judicial Respondents are otherwise barred by judicial immunity. *Reasoner v. City of Columbus*, 10th Dist. Franklin No. 02AP-831, 2003-Ohio-670, ¶15 citing *Kelly v. Whiting*, 17 Ohio St.3d 91, 93, 477 N.E.2d 1123 (1985) (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.) Therefore, to the extent that this Court can review such additional claims, Respondents respectfully asks this Court to dismiss those additional claims.

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<sup>2</sup> 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. This makes sense because Relator did not 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, “the writ of habeas corpus shall not be allowed.” R.C. 2725.05.

#### **IV. Conclusion**

Assuming all facts alleged to be true, Relator cannot establish the elements required for a writ mandamus to be issued. 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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Magistrate Mark Petrucci, and Magistrate Edwin  
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**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 20, 2023 to the following:

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