

IN THE SUPREME COURT OF OHIO

STATE OF OHIO ex rel.)
 CHELSEA J. PANZECA, ESQ.)
 810 Sycamore Street, 5th Floor)
 Cincinnati, Ohio 45202)
)
 and)
)
 RONALD W. SHEPARD)
 2278 Kay Road)
 Sardinia, Ohio 45171,)
)
 Relators,)
)
 v.)
)
 THE HIGHLAND COUNTY)
 COURT OF COMMON PLEAS,)
 GENERAL DIVISION; JUDGE)
 ROCKY A. COSS)
 105 North High Street)
 Hillsboro, Ohio 45133,)
)
 Respondents.)

CASE NO: 2023-0582

ORIGINAL ACTION IN MANDAMUS

RESPONDENT JUDGE ROCKY A. COSS'S
 MOTION TO DISMISS

Now comes Judge Rocky A. Coss, Highland County Common Pleas Court, (Respondent) by and through undersigned counsel and respectfully requests this Court dismiss the above captioned action as this is not the appropriate remedy.

APPROPRIATE REMEDY

The nature of the relief requested by the Relator is essentially a request to this Court to enter an order preventing the Respondent from proceeding in a criminal case. As this Court has

repeatedly held, a Mandamus is not the appropriate remedy. “Where a petition filed in the Supreme Court or in the Court of Appeals is in the form of a proceeding in mandamus but the substance of the allegations makes it manifest that the real object of the relator is for [a] [prohibitory] injunction, the action must be dismissed for want of jurisdiction.” *State v. McGinty*, 2001 WL 894257, citing *State ex rel. Governor v. Taft* (1994), 71 Ohio St.3d 1, 3, 640 N.E.2d 1136, 1137-1138, quoting *State ex rel. Pressley v. Indus. Comm* (1967), 11 Ohio St.2d 141, 40 Ohio Op.2d 141, 228 N.E.2d 631, paragraph 4 of the syllabus. “We thus lack original jurisdiction to grant relators’ request for prohibitory injunctive relief.” *State ex rel. Crabtree v. Franklin Cty. Bd. of Health* (1997), 77 Ohio St.3d 247, 673 N.E.2d 1281, 1248, 77 Ohio St.3d 247, 673 N.E.2d 1281, 1283.

The requisites for mandamus relief are well established: (1) the relator must have a clear legal right to the requested relief; (2) the respondent must have a clear legal duty to perform the requested relief; and (3) there must be no adequate remedy at law. Additionally, while mandamus *may* be used to compel a court to exercise judgment or to discharge a function, it may not control judicial discretion, even if that discretion is abused. *State ex rel. Angelo v. Carroll*, 2013 WL 6408743 citing *State ex rel. Ney v. Niehaus* (1987), 33 Ohio St.3d 118, 515 N.E.2d 914.

There is currently an appeal pending in the Fourth District Court of Appeals and as such, there is an adequate remedy at law. The Writ filed is an attempt to control judicial discretion in granting a continuance which has been previously litigated. The timing of this Writ is also extremely suspect in that the Relator has known since April 20, 2023 that the continuance to August would not be granted, yet waited until two business days before the trial to file the Writ.

Finally, while Relator phrases this as a denial of right to counsel of his choice, the fact is that this is a ploy of trial strategy. Realtor would ask this Court to believe that he needs a female attorney to represent him and Chelsea Panzeca is unavailable and lead counsel. However, no filing in the case has indicated that Chelsea Panzeca is "lead" counsel. She and the firm partner, Adam Bleile entered notice of appearance as joint counsel. Relator admits that Shepard hired the "firm" and there are other female attorneys employed in the firm, including Ashley Dawson who filed an affidavit and has over twelve years of experience in litigating sexual assault cases. When Chelsea Panzeca learned that she would be going on maternity leave earlier than suspected and based upon the trial courts prior ruling that this case would not be continued to August 2023, the prudent and professionally responsible thing to do would be to seek one of the many female attorneys practicing law in Ohio to step in to litigate this matter. The necessity of a female attorney is trial strategy and trial strategy is neither a due process right nor a Constitutional right. As the Respondent noted in a prior entry: had the defense requested a continuance of a reasonable amount of time (1-2 months) that likely would have been granted. That would have allowed another female attorney to adequately prepare.

Finally, what must be taken into account is Marsy's Law, which guarantees the victims right to have this case handled expeditiously. The alleged victim in this matter is an eleven-year-old female. The suspect is a man in the position of her grandfather. There is no reason to force this victim to suffer through waiting until August, at least, to see the end of this traumatic event. It is a sad state of the criminal justice system when trial strategy outweighs a victim's Constitutional and codified right to have their case handled by the court in an expeditious manner.

For the foregoing reasons, and because this is not the appropriate remedy in this matter, the Respondent respectfully requests this Court dismiss the Writ of Mandamus.

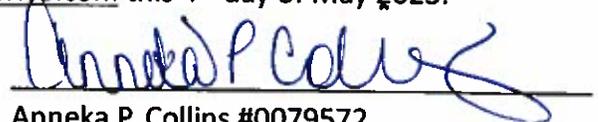
Respectfully Submitted,



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CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true and accurate copy of the foregoing was served upon Louis E. Grube by email at leg@pwfco.com this 4th day of May 2023.



Anneka P. Collins #0079572
Highland County Prosecutor