

**THE STATE EX REL. EVANS, APPELLANT, v. MCGRATH, JUDGE, APPELLEE.**

[Cite as *State ex rel. Evans v. McGrath*, 153 Ohio St.3d 287, 2018-Ohio-3018.]

*Mandamus and prohibition—Court of Claims did not fail to comply with an appellate court’s mandate—Court of appeals’ judgment affirmed.*

(No. 2017-1259—Submitted February 27, 2018—Decided August 2, 2018.)

APPEAL from the Court of Appeals for Franklin County,

No. 17AP-40, 2017-Ohio-7418.

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**Per Curiam.**

{¶ 1} Appellant, William H. Evans Jr., appeals the judgment of the Tenth District Court of Appeals dismissing his complaint for writs of mandamus and prohibition against appellee, Judge Patrick M. McGrath of the Court of Claims. We affirm the judgment of the court of appeals.

**Background**

{¶ 2} In 2014, Evans, then an inmate at the Ross Correctional Institution, filed a negligence action against the Ohio Department of Rehabilitation and Correction in the Ohio Court of Claims. Judge McGrath dismissed the suit, but Evans appealed, and the Tenth District reversed and remanded “for further appropriate proceedings.” *Evans v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. Franklin No. 15AP-463, 2015-Ohio-3492, ¶ 17.

{¶ 3} While Evans’s negligence action was pending on remand, he filed with the Tenth District a complaint for writs of prohibition and mandamus against Judge McGrath. He sought an order prohibiting Judge McGrath from conducting proceedings on the defendant’s liability and requiring him to hold a damages-only hearing on Evans’s negligence claim. The court of appeals dismissed Evans’s complaint for the writs on the grounds that he had misunderstood its order to the

Court of Claims, because the court of appeals previously had held only that Evans had met the liberal pleading standards required of complaints for negligence and not that Evans had prevailed on the merits. 2017-Ohio-7418, WL 3775340, ¶ 4-5.

### **Legal Analysis**

{¶ 4} To be entitled to a writ of mandamus, Evans must establish (1) a clear legal right to the requested relief, (2) a corresponding legal duty on the part of Judge McGrath to provide it, and (3) the lack of an adequate remedy in the ordinary course of the law. *State ex rel. Marsh v. Tibbals*, 149 Ohio St.3d 656, 2017-Ohio-829, 77 N.E.3d 909, ¶ 24. Three elements are necessary for a writ of prohibition to issue: the exercise of judicial power, the lack of authority for the exercise of that power, and the lack of an adequate remedy in the ordinary course of the law. *State ex rel. Elder v. Campese*, 144 Ohio St.3d 89, 2015-Ohio-3628, 40 N.E.3d 1138, ¶ 13. He must prove entitlement to the writs by clear and convincing evidence. *Marsh* at ¶ 24. “Our plenary authority in extraordinary actions permits us to consider the instant appeal as if it had been originally filed in this court.” *State ex rel. Minor v. Eschen*, 74 Ohio St.3d 134, 138, 656 N.E.2d 940 (1995).

{¶ 5} Evans contends that a writ of mandamus and/or prohibition is appropriate to restrict Judge McGrath on remand to holding a damages-only hearing. In support, he cites *res judicata*, the law of the case, and the “cross-error rule.” However, the court of appeals had held only that Evans’s complaint sufficiently alleged the elements of a negligence claim and could withstand a motion to dismiss under Civ.R. 12(B)(6) (“failure to state a claim upon which relief can be granted”). It did not, as Evans contends, determine that Evans had *proved* negligence such that Judge McGrath was required to hold a damages-only hearing.

{¶ 6} A writ of mandamus “is an appropriate remedy to require a lower court to comply with an appellate court’s mandate directed to that court.” *State ex rel. Heck v. Kessler*, 72 Ohio St.3d 98, 100, 647 N.E.2d 792 (1995). However, the court of appeals did not order the court of claims to determine the negligence action

in Evans's favor, and nothing in the record suggests that Judge McGrath is refusing to comply with the mandate of the court of appeals. Nor does Judge McGrath lack the authority to preside over a claim for relief in negligence. Therefore, the court of appeals correctly dismissed Evans's complaint in mandamus and prohibition.

Judgment affirmed.

O'CONNOR, C.J., and O'DONNELL, KENNEDY, FRENCH, FISCHER, DEWINE, and DEGENARO, JJ., concur.

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William H. Evans Jr., pro se.

Michael DeWine, Ohio Attorney General, and Bridget C. Coontz, Assistant Attorney General, for appellee.

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