

[Until this opinion appears in the Ohio Official Reports advance sheets, it may be cited as *State ex rel. Ames v. Pokorny*, Slip Opinion No. 2021-Ohio-2070.]

NOTICE

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SLIP OPINION NO. 2021-OHIO-2070

THE STATE EX REL. AMES *v.* POKORNY, JUDGE.

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Procedendo—Open Meetings Act—Writ of procedendo will not issue to compel performance of a duty that the judge has already performed—Cause dismissed.

(No. 2020-1465—Submitted April 27, 2021—Decided June 23, 2021.)

IN PROCEDENDO.

Per Curiam.

{¶ 1} Relator, Brian M. Ames, seeks a writ of procedendo ordering respondent, Judge Thomas J. Pokorny, to rule on Ames’s motions to dismiss counterclaims in consolidated cases pending in the Portage County Court of Common Pleas. Because Judge Pokorny has ruled on the motions, we dismiss this case as moot.

{¶ 2} In 2019, Ames brought four actions in the Portage County Court of Common Pleas against the Portage County Solid Waste Management District (“the district”) and the Portage County Board of Commissioners (“the board”)—case Nos. 2019CV00384, 2019CV00621, 2019CV00653, and 2019CV00808. Each complaint alleges violations of the Open Meetings Act, R.C. 121.22, related to the public business of the district conducted by the board. Judge Pokorny was assigned to preside over each of these cases after the judge initially assigned to the cases recused herself.

{¶ 3} On October 10, 2019, Judge Pokorny consolidated case Nos. 2019CV00384, 2019CV00621, and 2019CV00653. On January 8, 2020, the district and the board filed amended counterclaims for declaratory judgment in the three consolidated cases and in case No. 2019CV00808. On January 14, 2020, Ames filed motions to dismiss both counterclaims.

{¶ 4} Ames commenced this action on December 3, 2020, seeking a writ of procedendo to compel Judge Pokorny to rule on his motions to dismiss the counterclaims of the district and the board. Ames alleged that his motions to dismiss had been pending for ten months. On February 10, 2021, we dismissed Ames’s action as to case No. 2019CV00808; we sua sponte granted an alternative writ as to the three remaining consolidated cases and set a schedule for the submission of evidence and briefing. 161 Ohio St.3d 1426, 2021-Ohio-303, 162 N.E.3d 809.

{¶ 5} Ames has submitted as evidence a certified copy of a judgment entry signed by Judge Pokorny in the consolidated cases, which states: “Relator’s Motion to Dismiss Respondents’ Counterclaim for Declaratory Judgment is DENIED.” Also submitted as evidence is a certified copy of the docket in case No. 2019CV00384—the case number under which Judge Pokorny ordered all documents to be filed in the consolidated cases. The docket shows that an entry denying Ames’s counterclaims was filed on December 29, 2020.

{¶ 6} A writ of procedendo will issue when a court has refused to enter judgment or has unnecessarily delayed proceeding to judgment. *State ex rel. Culgan v. Collier*, 135 Ohio St.3d 436, 2013-Ohio-1762, 988 N.E.2d 564, ¶ 7. To be entitled to a writ of procedendo, Ames must establish (1) a clear legal right to require Judge Pokorny to proceed, (2) a clear legal duty on the part of Judge Pokorny to proceed, and (3) the absence of an adequate remedy in the ordinary course of the law. *See id.*

{¶ 7} A writ of procedendo will not issue to compel the performance of a duty that the judge has already performed. *State ex rel. Morgan v. Fais*, 146 Ohio St.3d 428, 2016-Ohio-1564, 57 N.E.3d 1140, ¶ 4. The evidence shows that Judge Pokorny has already denied the motions for which Ames seeks to compel a ruling in procedendo. Accordingly, we dismiss this action as moot.

Cause dismissed.

O'CONNOR, C.J., and KENNEDY, FISCHER, DEWINE, DONNELLY, STEWART,
and BRUNNER, JJ., concur.

Brian M. Ames, pro se.

Thomas J. Pokorny, pro se.
