

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

State ex rel. Scott D. Weaver,	:	
Relator,	:	
v.	:	No. 26AP-311
[Honorable] Carl A. Aveni,	:	(REGULAR CALENDAR)
Respondent.	:	

D E C I S I O N

Rendered on September 10, 2026

On brief: *Scott D. Weaver*, pro se.

On brief: *Shayla D. Favor*, Prosecuting Attorney, and
Krista R. Mason, for respondent.

IN PROCEDENDO
ON RESPONDENT’S MOTION TO DISMISS

JAMISON, J.

{¶ 1} Relator, Scott D. Weaver, seeks a writ of procedendo ordering respondent, Judge Carl A. Aveni of the Franklin County Court of Common Pleas, to proceed to judgment on a motion filed by relator on March 5, 2026. Respondent filed a motion to dismiss for failure to state a claim upon which relief can be granted.

{¶ 2} Pursuant to Civ.R. 53 and Loc.R. 13(M) of the Tenth District Court of Appeals, this matter was referred to a magistrate who issued the appended decision. The magistrate recommended granting the motion to dismiss and dismissing relator’s request for a writ of procedendo as moot. We agree.

{¶ 3} The magistrate’s decision informed the parties of their right to file objections to his recommendation under Civ.R. 53(D)(3)(b). Relator has filed no objection to the magistrate’s decision. “If no timely objections are filed, the court may adopt a magistrate’s

decision, unless it determines that there is an error of law or other defect evident on the face of the magistrate's decision." Civ.R. 53(D)(4)(c).

{¶ 4} Our review of the magistrate's decision reveals no error of law or other evidentiary defects. *See, e.g., State ex rel. Alleyne v. Indus. Comm.*, 2004-Ohio-4223 (10th Dist.) (adopting the magistrate's decision where no objections were filed).

{¶ 5} The magistrate inadvertently captioned the case as "IN MANDAMUS"; however, the correct caption is "IN PROCEDENDO." Finding no error of law or other defect on the face of the magistrate's decision, we adopt the magistrate's decision with correction, including findings of fact and conclusions of law, as our own decision. We find that relator has not established that he is entitled to a writ of procedendo as the action requested has been taken by the trial court. Accordingly, we grant respondent's motion to dismiss the action and dismiss relator's complaint for writ of procedendo as moot.

*Writ of procedendo dismissed as moot;
motion to dismiss granted.*

DORRIAN and DINGUS, JJ., concur.

APPENDIX

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State ex rel. Scott D. Weaver,	:	
	:	
Relator,	:	
	:	
v.	:	No. 26AP-311
	:	
Carl A. Aveni,	:	(REGULAR CALENDAR)
	:	
Respondent.	:	

MAGISTRATE'S DECISION

Rendered on July 1, 2026

*Scott D. Weaver, pro se.**Shayla D. Favor, Attorney General, and Krista R. Mason, for respondent.*IN MANDAMUS
ON RESPONDENT'S MOTION TO DISMISS

{¶ 6} Relator, Scott D. Weaver, requests a writ of procedendo ordering respondent, Judge Carl A. Aveni of the Franklin County Court of Common Pleas, to proceed to judgment on a motion filed by relator in a case pending before respondent. Respondent has filed a motion to dismiss for failure to state a claim upon which relief can be granted. For the following reasons, the magistrate recommends granting the motion to dismiss and dismissing relator's complaint for writ of procedendo as moot.

I. Findings of Fact

{¶ 7} 1. On March 5, 2026, relator filed in Franklin C.P. No. 24 CV 6477 (hereinafter referred to as the “underlying case”) a motion to alter or amend judgment pursuant to Civ.R. 59(A)(1) and (9).

{¶ 8} 2. On April 1, 2026, relator initiated this case by filing a complaint for writ of procedendo. Relator requested that this Court “[i]ssue a writ of procedendo compelling Respondent to rule on the pending Civ.R. 59 motion filed March 5, 2026.” (Emphasis removed.) (Compl. at 4.)

{¶ 9} 3. On April 3, 2026, respondent issued a decision and entry in the underlying case that, in part, denied relator’s March 5, 2026 motion to alter or amend judgment.

{¶ 10} 4. On May 12, 2026, respondent filed a motion to dismiss this case.

II. Discussion and Conclusions of Law

{¶ 11} Respondent has filed a motion to dismiss for failure to state a claim upon which relief can be granted pursuant to Civ.R. 12(B)(6).

A. Standard for a Motion to Dismiss for Failure to State a Claim

{¶ 12} A motion to dismiss for failure to state a claim under Civ.R. 12(B)(6) is procedural and tests the sufficiency of the petition or complaint. *See State ex rel. Hanson v. Guernsey Cty. Bd. of Commrs.*, 1992-Ohio-73, ¶ 9, citing *Assn. for the Defense of the Washington Local School Dist. v. Kiger*, 42 Ohio St.3d 116, 117 (1989). When ruling on a Civ.R. 12(B)(6) motion, a court is permitted to consider certain “documents attached to or incorporated into the complaint.” *State ex rel. Gordon v. Summit Cty. Court of Common Pleas*, 2025-Ohio-2927, ¶ 8. *See* Civ.R. 10(C) (“A copy of any written instrument attached to a pleading is a part of the pleading for all purposes.”). A court reviewing the sufficiency of a complaint in resolving a Civ.R. 12(B)(6) motion must presume all factual allegations in the complaint to be true and make all reasonable inferences in favor of the nonmoving party. *Mitchell v. Lawson Milk Co.*, 40 Ohio St.3d 190, 192 (1988).

B. Purpose of and Requirements for Procedendo

{¶ 13} The purpose of a writ of procedendo is to compel an inferior court to act where the “court has either refused to render a judgment or has unnecessarily delayed

proceeding to judgment.” *State ex rel. Weiss v. Hoover*, 1999-Ohio-422, ¶ 7. In order for a writ of procedendo to issue in this matter, relator must establish (1) a clear legal right to require respondent to proceed, (2) a clear legal duty on the part of respondent to proceed, and (3) the lack of an adequate remedy in the ordinary course of the law. *State ex rel. Yeaples v. Gall*, 2014-Ohio-4724, ¶ 20. “[A] writ of procedendo will lie only to instruct a court to issue a judgment, not to instruct a court as to what that judgment should be.” *State ex rel. Martin v. McCormick*, 2026-Ohio-568, ¶ 6.

C. Relator’s Procedendo Action is Moot

{¶ 14} In his complaint, relator requests that this court issue a writ of procedendo compelling respondent to rule on the March 5, 2026 motion to alter or amend judgment pursuant to Civ.R. 59(A)(1) and (9) in the underlying case. Respondent asserts this procedendo action should be dismissed as moot because respondent has performed the action requested in relator’s complaint.

{¶ 15} An action is moot “ ‘ “when the issues presented are no longer ‘live’ or the parties lack a legally cognizable interest in the outcome.” ’ ” *State ex rel. Gaylor, Inc. v. Goodenow*, 2010-Ohio-1844, ¶ 10, quoting *Los Angeles Cty. v. Davis*, 440 U.S. 625, 631 (1979), quoting *Powell v. McCormack*, 395 U.S. 486, 496 (1969). “[W]hen events occur that make it impossible for a court to grant ‘any effectual relief whatever,’ a case is moot and the court must dismiss the [case].” *Maurent v. Spatny*, 2025-Ohio-5002, ¶ 11, quoting *Miner v. Witt*, 82 Ohio St. 237, 239 (1910).

{¶ 16} Generally, a court may not rely on evidence or allegations outside the complaint when ruling on a motion to dismiss. *State ex rel. Evans v. Mohr*, 2018-Ohio-5089, ¶ 5. In procedendo actions, however, a court is permitted to consider the record of the trial court in determining whether the respondent has already performed the act sought in the complaint. *See State ex rel. Sevilla v. Cocroft*, 2021-Ohio-4280, ¶ 6 (10th Dist.); *State ex rel. Cincinnati Enquirer v. Dupuis*, 2002-Ohio-7041, ¶ 8 (“An event that causes a case to become moot may be proved by extrinsic evidence outside the record.”). As the common pleas court’s docket is publicly available online and not subject to reasonable dispute, the magistrate takes judicial notice of the docket in the underlying case for the purpose of determining whether respondent has already performed the act sought in the complaint.

{¶ 17} Review of the docket in the underlying case reveals that respondent issued a decision and entry on April 3, 2026 denying several motions filed by relator. As relevant here, respondent denied relator's March 5, 2026 motion to alter or amend judgment pursuant to Civ.R. 59(A)(1) and (9). Because relator has already received the only relief able to be obtained through this action, relator's request for a writ of procedendo is moot and, therefore, must be dismissed. *See State ex rel. Dodson v. Phipps*, 2024-Ohio-4928, ¶ 14; *State ex rel. S.Y.C. v. Floyd*, 2024-Ohio-1387, ¶ 16.

D. Conclusion

{¶ 18} Accordingly, it is the decision and recommendation of the magistrate that respondent's motion to dismiss should be granted and relator's complaint for writ of procedendo dismissed as moot.

/S/ MAGISTRATE

JOSEPH E. WENGER IV

NOTICE TO THE PARTIES

Civ.R. 53(D)(3)(a)(iii) provides that a party shall not assign as error on appeal the court's adoption of any factual finding or legal conclusion, whether or not specifically designated as a finding of fact or conclusion of law under Civ.R. 53(D)(3)(a)(ii), unless the party timely and specifically objects to that factual finding or legal conclusion as required by Civ.R. 53(D)(3)(b). A party may file written objections to the magistrate's decision within fourteen days of the filing of the decision.