

**IN THE COURT OF APPEALS OF OHIO
ELEVENTH APPELLATE DISTRICT
PORTAGE COUNTY**

STATE OF OHIO ex rel.
BRUCE MILLER,

Relator,

- VS -

THE HONORABLE
DEBRA L. BOROS, JUDGE,
PORTAGE COUNTY COURT OF
COMMON PLEAS, DOMESTIC
RELATIONS DIVISION,

Respondent.

CASE NO. 2026-P-0060

Original Action for Writ of Procedendo

PER CURIAM OPINION AND JUDGMENT ENTRY

Decided: September 14, 2026
Judgment: Petition dismissed

Bruce L. Miller, pro se, 4920 State Route 59, Ravenna, OH 44266 (Relator).

Connie J. Lewandowski, Portage County Prosecutor, and *Christopher J. Meduri*, Assistant Prosecutor, 241 South Chestnut Street, Ravenna, OH 44266 (For Respondent).

PER CURIAM.

{¶1} Relator, Bruce Miller, pro se, filed a petition for writ of procedendo against Respondent, the Honorable Debra L. Boros, Judge, Portage County Court of Common Pleas, Domestic Relations Division. Relator seeks an order directing Respondent to rule on several post-judgment motions that he filed in a civil case. This matter is before the Court on Respondent's motion to dismiss.

{¶2} For the reasons that follow, we grant Respondent's motion to dismiss and dismiss Relator's petition.

Background

{¶3} On July 24, 2026, Relator filed a petition for writ of procedendo against Respondent, alleging as follows:

{¶4} Relator is the plaintiff in case no. 2023 DR 000678 in the Portage County Court of Common Pleas, Domestic Relations Division. On May 13, 2026, Respondent entered a final judgment entry and decree of divorce in that case. On May 28, 2026, Relator timely filed a direct appeal, which is pending. Following the filing of his notice of appeal, Relator filed several post-judgment motions in the trial court, including a Civ.R. 60(B) motion for relief from judgment, a motion for findings of fact and conclusions of law, a motion to stay judgment pending appeal, and a motion for an evidentiary hearing. Respondent has not ruled on Relator's post-judgment motions. Therefore, Relator requests that this Court issue a writ of procedendo ordering Respondent to do so.

{¶5} On July 29, 2026, we filed an alternative writ and granted Relator's motion for expedited consideration.

{¶6} On August 6, 2026, Respondent filed an amended Civ.R. 12(B)(6) motion to dismiss Relator's petition. Respondent argues that Relator's direct appeal divested Respondent of jurisdiction to consider Relator's Civ.R. 60(B) motion for relief from judgment; Relator untimely filed his motion for findings of fact and conclusions of law; Relator has an adequate legal remedy regarding his motion for an evidentiary hearing; and Relator's motion for a stay is moot because Respondent has since denied that motion.

{¶7} On August 10, 2026, Relator filed a brief in opposition to Respondent's amended motion to dismiss. Relator concedes that Respondent denied his motion for a stay and withdraws his request for relief on that issue. Relator also acknowledges that his direct appeal divested Respondent of jurisdiction over certain matters. However, he requests relief regarding "those matters, if any, over which Respondent continues to possess jurisdiction."

{¶8} On August 24, 2026, Respondent filed an untimely reply brief.

{¶9} On August 31, 2026, Relator filed a sur-reply without leave of this Court.

Standard of Review

{¶10} "A writ of procedendo is an extraordinary remedy in the form of an order from a higher tribunal directing a lower tribunal to proceed to judgment." *State ex rel. Mignella v. Indus. Comm.*, 2019-Ohio-463, ¶ 7. "A writ of procedendo may be used to compel an inferior, dilatory court to proceed to a final judgment." *State ex rel. O'Malley v. Russo*, 2019-Ohio-1698, ¶ 32. "The writ does not instruct the lower court as to what the judgment should be; rather, it merely instructs the lower court to issue a judgment." *State ex rel. Bechtel v. Cornachio*, 2021-Ohio-1121, ¶ 7. "A writ of procedendo is appropriate upon a showing of 'a clear legal right to require the trial court to proceed, a clear legal duty on the part of the trial court to proceed, and the lack of an adequate remedy in the ordinary course of the law.'" *State ex rel. White v. Woods*, 2019-Ohio-1893, ¶ 7, quoting *State ex rel. Ward v. Reed*, 2014-Ohio-4512, ¶ 9.

{¶11} "Dismissal of an action seeking writs of mandamus, prohibition, and/or procedendo under Civ.R. 12(B)(6) is appropriate if we find that after presuming all factual allegations in the complaint as true and drawing all reasonable inferences in the relator's

favor, it appears beyond doubt that the relator can prove no set of facts entitling him to relief.” *State ex rel. Gordon v. Summit Cty. Court of Common Pleas*, 2025-Ohio-2927, ¶ 8.

Law and Analysis

{¶12} Upon review, after presuming all factual allegations in Relator’s petition as true and drawing all reasonable inferences in Relator’s favor, it appears beyond doubt that Relator can prove no set of facts entitling him to procedendo relief.

{¶13} Regarding Relator’s motion for a stay, the Supreme Court of Ohio has held that “[p]rocedendo will not compel the performance of a duty that has already been performed.” *Bechtel* at ¶ 9. “When a relator seeks to compel the issuance of a judgment entry through a writ of procedendo and the judge issues the entry, the procedendo claim is moot.” *Id.* Relator concedes that his request for a ruling on his motion for a stay is moot. Therefore, we dismiss Relator’s claim involving that motion.

{¶14} Regarding Relator’s motion for findings of fact and conclusions of law and his motion for an evidentiary hearing, courts have held that an appeal divests a trial court of jurisdiction to consider such motions. *E.g., Ramos v. Ramos*, 1998 WL 683942, *2 (11th Dist. Sept. 30, 1998); *Perez Bar & Grill v. Schneider*, 2010-Ohio-1352, ¶ 9 (1st Dist.); *State v. Marshall*, 2002-Ohio-5037, ¶ 9 (9th Dist.); *Lakewood v. Pfeifer*, 61 Ohio Misc.2d 704, 712 (M.C. 1991). This is because “once an appeal is perfected, the trial court is divested of jurisdiction over matters that are inconsistent with the reviewing court’s jurisdiction to reverse, modify, or affirm the judgment.” *State ex rel. Rock v. School Emp. Retirement Bd.*, 2002-Ohio-3957, ¶ 8.

{¶15} We acknowledge that App.R. 4(B)(2) requires the court of appeals, “upon suggestion of any of the parties,” to “remand the matter to the trial court to resolve” a post-judgment “request for findings of fact and conclusions of law under Civ.R. 52.” However, App.R. 4(B)(2) also requires that post-judgment request to be “timely and appropriate.” Civ.R. 52 provides in relevant part:

When questions of fact are tried by the court without a jury, judgment may be general for the prevailing party unless one of the parties in writing requests otherwise before the entry of judgment pursuant to Civ.R. 58, or *not later than seven days after the party filing the request has been given notice of the court’s announcement of its decision*, whichever is later.

(Emphasis added.)

{¶16} As one court has observed:

In some cases, pursuant to Rule 58 of the Ohio Rules of Civil Procedure, a trial court may announce a decision before it enters judgment. Rule 52 was designed to provide for those cases. Neither Rule 52 nor Rule 58, however, requires a trial court to announce a decision before it enters judgment. *A trial court may, and usually does, announce its decision by entering its judgment. When that occurs, the parties have seven days following the entry of judgment in which to seek findings of fact.*

(Emphasis added.) *Bonham v. Bishop*, 1995 WL 89411, *2 (9th Dist. Mar. 1, 1995).

{¶17} Relator’s petition alleges that the trial court entered its final judgment on May 13, 2026, and that he filed his motion for findings of fact/conclusions of law after he filed his notice of appeal on May 28, 2026. Therefore, Relator’s motion was untimely because he filed it “after the seven day time period mandated by Civ.R. 52.” *Ramos*, 1998 WL 683942, at *2.

{¶18} Regarding Relator’s Civ.R. 60(B) motion, the Supreme Court has expressly held that “an appeal divests trial courts of jurisdiction to consider Civ.R. 60(B) motions for relief from judgment.” *Howard v. Catholic Social Servs. of Cuyahoga Cty., Inc.*, 1994-

Ohio-219, ¶ 18. “Jurisdiction may be conferred on the trial court only through an order by the reviewing court remanding the matter for consideration of the Civ.R. 60(B) motion.” *Id.* Based on *Howard*, Respondent lacks jurisdiction to rule on Relator’s Civ.R. 60(B) motion absent a remand order in Relator’s direct appeal. Therefore, Relator has or had an adequate remedy at law by way of a motion for remand in his direct appeal.

{¶19} For the foregoing reasons, Respondent’s motion to dismiss is granted, and Relator’s petition for writ of procedendo is dismissed.

JOHN J. EKLUND, J., EUGENE A. LUCCI, J., SCOTT LYNCH, J., concur.

JUDGMENT ENTRY

For the reasons stated in the per curiam opinion of this Court, Respondent's motion to dismiss is granted, and Relator's petition for writ of procedendo is dismissed.

All other pending motions are overruled as moot.

Costs to be taxed against Relator.

JUDGE JOHN J. EKLUND,
concur

JUDGE EUGENE A. LUCCI,
concur

JUDGE SCOTT LYNCH,
concur

THIS DOCUMENT CONSTITUTES A FINAL JUDGMENT ENTRY

A certified copy of this opinion and judgment entry shall constitute the mandate pursuant to Rule 27 of the Ohio Rules of Appellate Procedure.