

IN THE COURT OF APPEALS OF OHIO  
SECOND APPELLATE DISTRICT  
MONTGOMERY COUNTY

STATE OF OHIO EX REL  
CHARLES J. SIMPSON AND  
HUBER HEIGHTS VETERANS  
CLUB, INC.

Petitioners

v.

HON. KIMBERLY A. MELNICK

Respondent

C.A. No. 29554

**DECISION AND FINAL JUDGMENT  
ENTRY**

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PER CURIAM:

{¶ 1} This matter is before the court on the September 15, 2023, motion of the Honorable Kimberly A. Melnick, respondent, to dismiss petitioner Charles J. Simpson’s mandamus action.<sup>1</sup> Simpson’s complaint seeks to compel Judge Melnick “to proceed to a final determination by jury trial of the issues and claims of all the parties” in Montgomery County Common Pleas Court Case No. 2018 CV 1457. On April 4, 2023, Simpson filed a response to Judge Melnick’s motion to dismiss. Accordingly, this matter is now ripe for our decision.

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<sup>1</sup> On August 25, 2022, this court dismissed the claims of petitioner Huber Heights Veterans Club, Inc., for failure to obtain leave to proceed in this court as a vexatious litigator. On September 16, 2022, Huber Heights Veterans Club appealed our decision. We stayed briefing on the motion to dismiss. On March 16, 2023, the Supreme Court affirmed our decision. See *State ex rel. Simpson v. Melnick*, Slip Op. No. 2023-Ohio-783, \_\_\_ N.E.3d \_\_\_. We ordered briefing to resume thereafter.

## **Factual Background**

{¶ 2} This matter concerns the litigation of a post-judgment contempt motion in Montgomery County Common Pleas Court Case No. 2018 CV 1457. Judge Melnick presides over the litigation. On May 26, 2022, the plaintiff, Grand Voiture d’Ohio La Societe Des 40 Hommes et 8 Chevaux (“Grande Voiture”), filed a motion to hold Simpson, one of the defendants, in contempt of court. Simpson was accused of violating the trial court’s April 29, 2019, order granting declaratory and injunctive relief to Grande Voiture.

{¶ 3} On June 1, 2022, Simpson responded with an answer and counterclaim. The pleading included a jury demand. Grande Voiture moved to strike Simpson’s pleading pursuant to Civ.R. 12(F). On July 22, 2022, Judge Melnick ordered Simpson’s answer and counterclaim stricken because “the pleading stage in this case closed over three years ago and the merits of the underlying suit of [sic] have been resolved by summary judgment and were subsequently affirmed by the Second District Court of Appeals.” Simpson moved for reconsideration of that order; however, Judge Melnick denied that motion on July 26, 2022.

{¶ 4} Undeterred, Simpson filed a “Jury Demand Repeated and Confirmed” on July 28, 2022, and a motion seeking leave to file a motion for summary judgment on the stricken answer and counterclaim on August 3, 2022. Grande Voiture sought to strike the jury demand and Judge Melnick sustained the motion on August 10, 2022. Judge Melnick also denied Simpson leave to file a summary judgment motion. Thereafter, on August 15, 2022, Simpson filed this mandamus action.

## Legal Standards

{¶ 5} This court must dismiss a mandamus action under Civ.R. 12(B)(6) for failure to state a claim upon which relief may be granted "if, after all factual allegations of the complaint are presumed true and all reasonable inferences are made in the relator's favor, it appears beyond doubt that he can prove no set of facts entitling him to the requested writ of mandamus." *State ex rel. Russell v. Thornton*, 111 Ohio St.3d 409, 2006-Ohio-5858, 856 N.E.2d 966, ¶ 9. The elements of a mandamus claim are: (1) a clear legal right to the requested relief, (2) a clear legal duty on the part of the respondent to provide it, and (3) the lack of an adequate remedy in the ordinary course of the law. *State ex rel. Love v. O'Donnell*, 150 Ohio St.3d 378, 2017-Ohio-5659, 81 N.E.3d 1250, ¶ 3.

## Analysis

{¶ 6} Judge Melnick argues that Simpson can prove no set of facts entitling him to a writ of mandamus because there is no right to a jury trial in contempt proceedings unless "a long term of imprisonment is involved." *Cincinnati v. Cincinnati Dist. Council 51*, 35 Ohio St.2d 197, 202, 299 N.E.2d 686 (1973). We agree. Further, Simpson does not offer any serious argument to the contrary. Reviewing the complaint, Simpson has made no factual allegation that Grande Voiture seeks to punish his alleged contempt with a jail sentence or that Judge Melnick intends to impose a jail sentence if he is found guilty of contempt. Accordingly, construing the facts of Simpson's complaint in the light most favorable to him, it appears beyond doubt that he can prove no set of facts establishing his clear legal right to a jury trial.

{¶ 7} Having proceeded so far, the dismissal of Simpson's complaint cannot be avoided. However, we would be remiss if we did not consider that Judge Melnick has

already ruled on the contempt motion. In extraordinary-writ actions, the court of appeals may take judicial notice of appropriate matters in determining a Civ.R. 12(B)(6) motion. See *State ex rel. Everhart v. McIntosh*, 115 Ohio St.3d 195, 2007-Ohio-4798, 874 N.E.2d 516, ¶ 10. Taking judicial notice of the proceedings in Montgomery County Common Pleas Court Case No. 2018 CV 1457, it appears that on December 7, 2022, Judge Melnick issued a “Decision, Order and Entry Sustaining Plaintiff’s Motion for Contempt.” The December 7 Decision sustains Grande Voiture’s May 26, 2022, motion and finds Simpson in contempt of court.<sup>2</sup> We note that the decision does not impose a jail sentence but instead imposes financial sanctions.

{¶ 8} Judge Melnick’s resolution of the motion supports additional grounds for the dismissal of this action: Simpson has an adequate remedy of law by way of appeal. “[A]ppealing a contempt order is an adequate remedy at law which will result in denial of [a] writ.” *State ex rel. Mancino v. Campbell*, 66 Ohio St.3d 217, 220, 611 N.E.2d 619 (1993) (affirming dismissal of prohibition action). An alleged contemnor may “appeal once from the finding of contempt and again from execution of sentence for failure to purge, presenting different issues for the appellate court to review.” *Docks Venture, LLC v. Dashing Pacific Group, Ltd.*, 141 Ohio St.3d 107, 2014-Ohio-4254, 22 N.E.3d 1035, ¶ 21. Thus, having been found guilty of contempt, Simpson may appeal Judge Melnick’s finding

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<sup>2</sup> On December 8, 2022, Simpson moved for findings of fact and conclusions of law pursuant to Civ.R. 52. On December 20, 2022, Judge Melnick overruled the motion.

and the denial of his right to a jury trial.<sup>3</sup> See *In re Guardianship of Polete*, 2d Dist. Montgomery No. 28003, 2018-Ohio-527, ¶ 29 (overruling contemnor's assignment of error pertaining to denial of jury trial when there was no indication the trial court considered imposing a jail sentence). Therefore, Simpson has an adequate remedy at law to challenge the trial court's denial of his claimed right to a jury trial.

### **Conclusion**

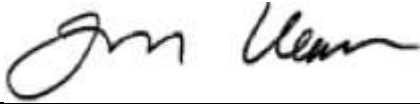
{¶ 9} For all the foregoing reasons, Judge Melnick's motion to dismiss is SUSTAINED. Petitioner Charles J. Simpson cannot prove any set of facts entitling him to relief in mandamus.<sup>4</sup> All pending motions are OVERRULED as moot. This action, Montgomery County Appellate Case No. 29554, is DISMISSED. Writ of mandamus DENIED.

SO ORDERED.

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<sup>3</sup> The trial court's statement in the December 7 Decision that "[t]his Order is not final until the sanction is imposed" has no bearing on whether the order is final. The court of appeals determines the finality of orders on appeal. *Gen. Acc. Ins. Co. v. Ins. Co. of N. Am.*, 44 Ohio St.3d 17, 22, 540 N.E.2d 266 (1989). We make no determination regarding the timeliness of such an appeal.

<sup>4</sup> On August 17, 2022, this court denied Simpson's request for a peremptory writ of prohibition to prevent Judge Melnick from "proceeding without allowing [Simpson] a jury trial and consideration of [his] answer and counterclaim." Simpson's prayer for relief does not seek a permanent writ of prohibition. Nevertheless, to the extent that Simpson seeks a permanent writ of prohibition, his claim has no merit. We deny the writ.



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JEFFREY M. WELBAUM, PRESIDING JUDGE



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MICHAEL L. TUCKER, JUDGE



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CHRISTOPHER B. EPLEY, JUDGE

To The Clerk: Within three (3) days of entering this judgment on the journal, you are directed to serve on all parties not in default for failure to appear notice of the judgment and the date of its entry upon the journal, pursuant to Civ.R. 58(B).



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JEFFREY M. WELBAUM, PRESIDING JUDGE