

COURT OF APPEALS
RICHLAND COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO EX REL. RANDY SHEPHERD	:	JUDGES:
	:	Sheila G. Farmer, P.J.
	:	W. Scott Gwin, J.
	:	Julie A. Edwards, J.
Relator	:	
	:	Case No. 2009 CA 0097
-vs-	:	
	:	
	:	<u>OPINION</u>
JUDGE JEFF PAYTON	:	
Respondent	:	

CHARACTER OF PROCEEDING: Mandamus Complaint

JUDGMENT: Dismissed

DATE OF JUDGMENT ENTRY: December 31, 2009

APPEARANCES:

For Relator

RANDY SHEPHERD
3558 Alvin Road
Shelby, Ohio 44875

For Respondent

DAVID L. REMY
Law Director
City of Mansfield, Ohio
30 North Diamond Street
Mansfield, Ohio 44902

Edwards, J.

{¶1} Relator, Randy Shepherd, has filed a Complaint requesting this Court issue a writ of mandamus compelling Respondent, Judge Jeff Payton, to comply with our holding in Case Number 08CA334. Relator further complains about Respondent's ruling on a motion for leave to file an answer in the underlying case. Respondent has filed a Motion to Dismiss and/or Motion for Summary Judgment.

{¶2} In appellate Case Number 08CA334, we held Relator was permitted to amend his counterclaim as a matter of law, and it was error for the trial court to consider a reply to the counterclaim. Further, we directed the trial court consider Relator's motion for default judgment in light of our holding allowing Relator to amend his counterclaim.

{¶3} On remand, the Plaintiff in the lower court case filed a motion for leave to answer Relator's counterclaim. The magistrate granted the motion for leave to reply, however, Respondent later vacated the magistrate's order due to the fact it conflicted with our decision in Case Number 08CA334.

{¶4} Respondent then conducted a hearing on Relator's Motion for Default Judgment. At the conclusion of the hearing, Respondent advised the parties the case would be transferred to the Court of Common Pleas because Relator was seeking damages in excess of the monetary jurisdictional limit of the municipal court. Because the amended counterclaim was beyond the jurisdiction of the municipal court, the trial court transferred the case to the Court of Common Pleas.

{¶5} Respondent has filed a Motion to Dismiss pursuant to Civ.R. 12(B)(6) urging this Court to find Relator has failed to state a claim upon which relief may be

granted. “Dismissal under Civ.R. 12(B)(6) for failure to state a claim upon which relief can be granted is appropriate if, after all factual allegations are presumed true and all reasonable inferences are made in [Relator’s] favor, it appears beyond doubt that he could prove no set of facts entitling him to the requested extraordinary relief in mandamus . . . *State ex rel. Turner v. Houk*, 112 Ohio St.3d 561, 2007-Ohio-814, 862 N.E.2d 104, ¶ 5.” *State ex rel. Agosto v. Cuyahoga Cty. Court of Common Pleas* 119 Ohio St.3d 366, 367, 894 N.E.2d 314, 315 (Ohio,2008).

{¶6} A relator is entitled to a writ of mandamus if the following conditions are satisfied: (1) the relator demonstrates a clear legal right to the relief prayed for; (2) the respondent is under a corresponding legal duty to perform the actions that make up the prayer for relief; and, (3) the relator has no plain and adequate remedy in the ordinary course of law. *Doss Petroleum, Inc. v. Columbiana Cty. Bd. of Elections*, 164 Ohio App.3d 255, 2005-Ohio-5633, 842 N.E.2d 66, citing to *State ex rel. Berger v. McMonagle* (1983), 6 Ohio St.3d 28, 29, 451 N.E.2d 225.

{¶7} The Complaint, Supplement to the Pleading, and Memorandum in Support of Mandamus filed by Relator are somewhat difficult to decipher. Relator appears to raise two issues which he believes warrant the issuance of a writ of mandamus.

{¶8} First, Relator avers Respondent should not have accepted a motion for leave to file a reply to the counterclaim filed by the Plaintiff in the case below following our reversal and remand. Much of the original mandamus complaint centers on Respondent’s error in granting the Plaintiff below leave to answer the counterclaim. As we explained above, the trial court vacated this ruling. Although Relator believes it was erroneous for the trial court to grant leave to reply to the counterclaim, Relator

inexplicably also objects to the trial court's vacation of the order granting leave to reply to the counterclaim.

{¶9} If Relator believes Respondent erred in his ruling on the motion or vacating the ruling, Relator has an adequate remedy at law by way of appeal to challenge the ruling. See *State ex rel. Foster v. Buchanan* 2006 WL 1109773, 2 (Ohio App. 8 Dist.) (“[A]n adequate remedy at law by appealing the judge's decision on certification . . . precludes relief in mandamus.”)

{¶10} Finally, Relator alleges Respondent has failed to comply with the mandate issued in Case Number 08CA334. As we have already noted, we previously held Relator was permitted to amend his counterclaim as a matter of law, therefore, the counterclaim was amended. Our only other instruction to the trial court was to conduct a hearing on Relator's Motion for Default Judgment. Relator did conduct the hearing but determined the case was not within the jurisdiction of the municipal court due to the amount of damages sought by Relator. We instructed the trial court to address the Motion for Default Judgment in accordance with our opinion and the law.

{¶11} “Unlike courts of common pleas, which are created by the Ohio Constitution and have statewide subject-matter jurisdiction, see Section 4(A) and (B), Article IV, Ohio Constitution, municipal courts are statutorily created, R.C. 1901.01, and their subject-matter jurisdiction is set by statute. R.C. 1901.18(A) provides the applicable law in this regard: ‘Except as otherwise provided in this division or section 1901.181 of the Revised Code, subject to the monetary jurisdiction of municipal courts as set forth in section 1901.17 of the Revised Code, a municipal court has original jurisdiction within its territory in all of the following actions or proceedings * * *.’” *Cheap*

Escape Co., Inc. v. Haddox, LLC, 120 Ohio St.3d 493, 495, 900 N.E.2d 601, 604 (Ohio,2008).

{¶12} R.C. 1901.17 provides in part,

{¶13} “1901.17 Monetary jurisdiction;

{¶14} “A municipal court shall have original jurisdiction only in those cases in which the amount claimed by any party, or the appraised value of the personal property sought to be recovered, does not exceed fifteen thousand dollars, except that this limit does not apply to the housing division or environmental division of a municipal court.”

{¶15} The law prohibits a municipal court from entering judgment in excess of its jurisdictional limits, therefore, the Respondent transferred the case to a court with proper jurisdiction.

{¶16} Because Relator’s counterclaim exceeded the jurisdictional limit of the Municipal Court, Respondent was no longer under a clear legal duty to act upon the lower court case. Because Respondent has complied with his clear legal duty to the extent he was permitted to by law, we decline to issue the requested writ of mandamus.

{¶17} Further, where the requested act has been completed, mandamus will not lie. “Mandamus will not issue to compel an act that has already been performed.” *State ex rel. Madsen v. Foley Jones*, 106 Ohio St.3d 178, 2005-Ohio-4381, 833 N.E.2d 291, ¶ 11.

{¶18} The act Relator is requesting Respondent do is to consider his motion for default judgment. Respondent has considered the motion and acted accordingly, therefore, the requested act has been completed. We did not order Respondent to

grant the motion for default judgment. We merely ordered Respondent to consider the motion in light of our holding and the law.

{¶19} For these reasons, we grant Respondent's Motion to Dismiss the instant Complaint for failure to state a claim upon which relief may be granted.

{¶20} COMPLAINT DISMISSED.

{¶21} COSTS TO RELATOR.

By: Edwards, J.
Farmer, P.J. and
Gwin, J. concur

s/Julie A. Edwards

s/Sheila G. Farmer

s/W. Scott Gwin

JUDGES

JAE/as1123

