

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

DWAYNE HARRIS	:	JUDGES:
	:	W. Scott Gwin, P.J.
	:	John W. Wise, J.
Plaintiff	:	Julie A. Edwards, J.
	:	
-vs-	:	Case No. 2011CA00204
	:	
	:	
KEITH SMITH, et al.,	:	<u>OPINION</u>
	:	
Defendants	:	

CHARACTER OF PROCEEDING: Criminal Appeal from Stark County Court of Common Pleas Case No. 2010CV0165D

JUDGMENT: Dismissed

DATE OF JUDGMENT ENTRY: January 17, 2012

APPEARANCES:

For Plaintiff

DWAYNE HARRIS
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For Defendant Keith Smith

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For Defendant Judge
James DeWeese

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Edwards, J.

{¶1} Plaintiff, Dwayne Harris, has filed a “Request for Writ of Procedendo Ad Judicium” asking this Court to order Defendants, Keith Smith and Judge DeWeese to rule on outstanding motions in his trial court case.

{¶2} Initially, we find this cause of action has not been filed in the proper venue. All of the conduct which is the subject of the complaint occurred in Richland County. Plaintiff filed the complaint in Stark County. There is no conduct alleged to have occurred in Stark County and no defendant resides in Stark County. Because this Court also has jurisdiction to review original actions in Richland County, we will address the merits of the complaint.

{¶3} We find Defendant Smith, who is the warden of the Mansfield Correctional Institution, is not an appropriate party to this case. Writs of procedendo are limited to a superior court ordering a lower court to proceed, “[T]he limited purpose of the writ is to require a lower court to go forward ‘when a court has either refused to render a judgment or has unnecessarily delayed proceeding to judgment.’ *State ex rel. Miley v. Parrott* (1996), 77 Ohio St.3d 64, 65, 671 N.E.2d 24.” *State ex rel. Lemons v. Kontos* 2009 WL 4756269, 2 (Ohio App. 11 Dist.). Defendant Smith is not a court or a judge of a court. For this reason, the complaint is dismissed as to Defendant Smith.

{¶4} We now turn to the complaint as it relates to Judge DeWeese. The Supreme Court has held that a judge’s performance of the requested act makes the complaint in procedendo moot. *State ex rel. Hazel v. Bender*, 129 Ohio St.3d 496, 496, 954 N.E.2d 114, 115 (Ohio,2011). Subsequent to the filing of the instant complaint, Defendant DeWeese ruled on outstanding motions by issuing a final, appealable order

in the underlying case which Plaintiff has appealed to this Court. For this reason, we find the complaint is moot as it relates to Defendant DeWeese.

{¶5} For these reasons, we find the complaint in procedendo lacks merit and dismiss the complaint.

By: Edwards, J.

Gwin, P.J. and

Wise, J. concur

JUDGES

JAE/ads1212

