

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

ANGEL L. ALBINO-ALBINO

Relator

-vs-

CLERK OF COURTS, PROBATE COURT OF STARK COUNTY

Respondent

JUDGES:

Hon. William B. Hoffman, P .J.

Hon. Sheila G. Farmer, J.

Hon. John W. Wise, J.

Case No. 2011 CA 00205

O P I N I O N

CHARACTER OF PROCEEDING: Writ of Mandamus

JUDGMENT: Dismissed

DATE OF JUDGMENT ENTRY: January 23, 2012

APPEARANCES:

For Relator

ANGEL L. ALBINO-ALBINO
PRO SE
MANSFIELD CORRECTIONAL INST.
Post Office Box 788
Mansfield, Ohio 44901

For Respondent

JOHN D. FERRERO
PROSECUTING ATTORNEY
AMY A. SABINO
ASSISTANT PROSECUTOR
110 Central Plaza South, Suite 510
Canton, ohio 44702

Wise, J.

{¶1} Relator, Angel L. Albino-Albino, has filed a Petition for Writ of Mandamus requesting a writ be issued which would require Respondent to accept an objection to a petition for adoption for filing. Respondent, Judge Dixie Park, has filed a Motion to Dismiss.

{¶2} Relator presented an objection to a petition for adoption to the Clerk of the Probate Court. The objection was returned to Respondent with a letter indicating the objection would not be filed without a filing fee. The letter also advised Respondent that the filing fee would not be waived under any circumstances.

{¶3} Once the instant Petition was filed, Respondent through counsel agreed to allow Relator to file an objection without advancing the filing fee. Relator in turn did file the objection with Respondent on October 20, 2011.

{¶4} For a writ of mandamus to issue, the relator must have a clear legal right to the relief prayed for, the respondents must be under a clear legal duty to perform the requested act, and relator must have no plain and adequate remedy in the ordinary course of law. *State, ex rel. Berger, v. McMonagle* (1983), 6 Ohio St.3d 28, 6 OBR 50, 451 N.E.2d 225.

{¶5} The Supreme Court has held, "Neither procedendo nor mandamus will compel the performance of a duty that has already been performed. *State ex rel. Grove v. Nadel* (1998), 84 Ohio St.3d 252, 253, 703 N.E.2d 304, 305." *State ex rel. Kreps v. Christiansen* (2000), 88 Ohio St.3d 313, 318, 725 N.E.2d 663, 668.

{16} Because the relief requested in the Petition has been performed, we find the Petition to be moot. For this reason, Respondent's Motion to Dismiss is granted. The request for the issuance of a writ of mandamus is denied.

By: Wise, J.

Hoffman, P. J., and

Farmer, J., concur.

JUDGES

