

IN THE COURT OF APPEALS OF OHIO

SEVENTH APPELLATE DISTRICT
JEFFERSON COUNTY

STATE EX REL. TERRANCE ZERLA,

Relator,

v.

ERIC MICHAEL RESZKE,

Respondent.

OPINION AND JUDGMENT ENTRY
Case No. 23 JE 0009

Writ of Mandamus

BEFORE:

Mark A. Hanni, Carol Ann Robb, David A. D'Apolito, Judges.

JUDGMENT:

Dismissed.

Terrance Zerla, *Pro Se*, 139 Forestview Drive, Wintersville, Ohio 43953, Relator and

Atty. Eric M. Reszke, 501 Washington Street, Suite 204, Steubenville, Ohio 43952,
Respondent.

Dated: August 22, 2023

PER CURIAM.

{¶1} Relator Terrance Zerla has filed this pro se original action in mandamus seeking to have this Court compel his former court-appointed counsel, Respondent Atty. Eric Michael Reszke, to provide him all case file materials from Jefferson County District One case number 22-334. Respondent represented Relator in that case and Relator contends Respondent is withholding discovery material provided to him by the state. Respondent has filed a Civ.R. 12(B)(6) motion to dismiss contending the attachments to Relator’s complaint reflect that he has provided him all the case file materials rendering this action moot.

{¶2} A motion to dismiss a complaint for a writ of mandamus should be granted if it appears beyond doubt that, after presuming the truth of all material factual allegations in the complaint and drawing all reasonable inferences in the relator’s favor, the relator is not entitled to the requested extraordinary relief. *State ex rel. Sapp v. Franklin Cty. Court of Appeals*, 118 Ohio St.3d 368, 2008-Ohio-2637, 889 N.E.2d 500, ¶ 13; *State ex rel. Scott v. Cleveland*, 112 Ohio St.3d 324, 2006-Ohio-6573, 859 N.E.2d 923, ¶ 14.

{¶3} “Mandamus is a writ, issued in the name of the state to an inferior tribunal, a corporation, board, or person, commanding the performance of an act which the law specially enjoins as a duty resulting from an office, trust, or station.” R.C. 2731.01. As it regards Respondent, it is established law that mandamus will not lie to enforce a private right against a private person. *State ex rel. Jackson v. Nau*, 7th Dist. Noble No. 03NO311, 2004-Ohio-564, ¶ 8 (mandamus will not lie to force an attorney from a legal aid society to perform requested services), citing *State ex rel. Longacre v. Penton Publishing Co.*, 77 Ohio St.3d 266, 267-268, 673 N.E.2d 1297 (1997); *see also State ex rel. Grahek v. McCafferty*, 8th Dist. Cuyahoga No. 88614, 2006-Ohio-4741, ¶ 5, *Booker v. Christman*, 8th Dist. Cuyahoga No. 84330, 2004-Ohio-2980, ¶ 2 (mandamus will not lie to direct a person’s counsel to surrender legal files in the possession of such attorney); *State ex rel. Moore v. McDonnell*, 8th Dist. Cuyahoga No. 76425, 1999 WL 462330 (July 1, 1999) (mandamus will not lie to compel an attorney to provide relator with copies of unspecified materials).

{¶4} Accordingly, in consideration of the foregoing and on the Court's own motion, IT IS ORDERED that this original action in mandamus is hereby DISMISSED. As a result, all pending motions and unresolved filings, including Respondent's motion to dismiss, are hereby dismissed as moot. Writ denied.

{¶5} IT IS FURTHER ORDERED by the court, pursuant to Civ.R. 58, that the Clerk of the Jefferson County Court of Appeals shall immediately serve upon all parties (including unrepresented or self-represented parties) notice of this judgment and its date of entry upon the journal. Costs assessed to Relator.

JUDGE MARK A. HANNI

JUDGE CAROL ANN ROBB

JUDGE DAVID A. D'APOLITO