

COURT OF APPEALS OF OHIO

**EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA**

STATE OF OHIO EX REL.,
S.Y.C.,

:

Relator,

:

No. 112565

v.

:

JUDGE ALISON L. FLOYD,

:

Respondent.

:

JOURNAL ENTRY AND OPINION

JUDGMENT: COMPLAINT DISMISSED

RELEASED AND JOURNALIZED: July 7, 2023

Writs of Procedendo and Mandamus

Motion No. 564553

Order No. 565807

Appearances:

S.Y.C., *pro se*.

Michael C. O'Malley, Cuyahoga County Prosecuting Attorney, and Nora E. Poore, Assistant Prosecuting Attorney, *for respondent*.

ANITA LASTER MAYS, A.J.:

{¶ 1} S.Y.C., the relator, has filed a complaint for writs of procedendo and mandamus. S.Y.C. seeks to compel Judge Alison L. Floyd, the respondent, to render

rulings with regard to ten motions that are purportedly pending in Cuyahoga J.C. Nos. CU-16-101850 and CU-16-101851. Judge Floyd has filed a motion to dismiss and supplement to the motion to dismiss that contains a verified copy of the docket maintained in Cuyahoga J.C. Nos. CU-16-101850 and CU-16-101851. We grant the motion to dismiss because the request for procedendo and mandamus is moot.

{¶ 2} Mandamus will issue when the relator demonstrates a clear legal right to the requested relief, the respondent possesses a clear legal duty to provide the requested relief, and the relator possesses no other adequate remedy in the ordinary course of the law. *State ex rel. Taxpayers for Westerville Schools v. Franklin Cty. Bd. of Elections*, 133 Ohio St.3d 153, 2012-Ohio-4267, 976 N.E.2d 890. Procedendo, which is related to mandamus, requires that the relator demonstrate that the relator possesses a clear legal right to require a court to proceed, the court possesses a clear legal duty to proceed, and there exists no other adequate remedy in the ordinary course of the law. *State ex rel. Sherrills v. Cuyahoga Cty. Court of Common Pleas*, 72 Ohio St.3d 461, 650 N.E.2d 899 (1995). Procedendo will be granted if a court has refused to enter a judgment or has unnecessarily delayed proceeding to judgment. *State ex rel. Crandall, Pheils & Wisniewski v. DeCessna*, 73 Ohio St.3d 180, 652 N.E.2d 742 (1995).

{¶ 3} Herein, S.Y.C. seeks both mandamus and procedendo with regard to ten motions that purportedly have not been ruled upon by Judge Floyd as the result of undue delay. Procedendo and/or mandamus will lie when a trial court has refused to render, or unduly delayed, rendering a judgment. *State ex rel. Culgan v.*

Collier, 135 Ohio St.3d 436, 2013-Ohio-1762, 988 N.E.2d 564; *State ex rel. Reynolds v. Basinger*, 99 Ohio St.3d 303, 2003-Ohio-3631, 791 N.E.2d 459. “[A]lthough mandamus will lie in cases of a court’s undue delay in entering judgment, procedendo is more appropriate since ‘an inferior court’s refusal or failure to timely dispose of a pending action is the ill a writ of procedendo is designed to remedy.’” *State ex rel. Dehler v. Sutula*, 74 Ohio St.3d 33, 35, 656 N.E. 332 (1995), quoting *State ex rel. Levin v. Sheffield Lake*, 70 Ohio St.3d 104, 110, 637 N.E.2d 319 (1994).

{¶ 4} Judge Floyd has filed a motion to dismiss as well as a supplement to the motion to dismiss. Attached to the supplement to the motion to dismiss is a copy of the docket maintained in both Cuyahoga J.C. Nos. CU-16-101850 and CU-16-101851.¹ The docket clearly demonstrates that all motions, which are the subject of the complaint for procedendo and mandamus, have been ruled upon by Judge Floyd. Thus, the request for procedendo and mandamus is moot and subject to dismissal pursuant to Civ.R. 12(B). Dismissal is appropriate even though the motion to dismiss and the supplement to the motion to dismiss present matters outside the pleading. This court is permitted to take judicial notice of mootness. “In fact, ‘an event that causes a case to be moot may be proved by extrinsic evidence outside the record.’ *Pewitt v. Lorain Correctional Inst.*, 64 Ohio St.3d 470, 472, 1992-Ohio-91,

¹ Cuyahoga J.C. Nos. CU-16-101850 and CU-16-101851 were consolidated, and the dockets maintained in each case are identical. See page 3 of the supplement to the motion to dismiss that provides “[t]he docket in CU16101851 is consolidated with CU16101850 and contains the same entries.”

597 N.E.2d 92, 94.” *State ex rel. Nelson v. Russo*, 89 Ohio St.3d 227, 228, 729 N.E.2d 1181 (2000). We take judicial notice of the mootness of the complaint for procedendo and mandamus based upon the docket that demonstrates Judge Floyd has issued rulings as to all pending motions.² *State ex rel. Whiteman v. Comstock*, 8th Dist. Cuyahoga No. 93642, 2009-Ohio-5231; *State ex rel. Mayes v. Ambrose*, 8th Dist. Cuyahoga No. 91980, 2009-Ohio-25. A writ of procedendo or mandamus will not issue to compel the performance of a duty that has already been performed. *State ex rel. Pettway v. Cuyahoga Cty. Court of Common Pleas*, 8th Dist. Cuyahoga No. 98699, 2012-Ohio-5423. Also, the setting of a matter for hearing renders a complaint for procedendo moot. *State ex rel. Rohrer v. Holzapfel*, 149 Ohio St.3d 132, 2016-Ohio-7827, 73 N.E.3d 482.

{¶ 5} Finally, S.Y.C. argues that Judge Floyd issued

[p]erfunctory rulings, without any of the due process protections guaranteed by both the Fourteenth Amendment as well as the Section 16, Article I of the Ohio Constitution, any argument that the court has performed its legal duty by issuing a flurry of unwarranted dismissals in the Judgment Entry of May 22, 2023, must be disregarded, as it is compliance with the duty of the trial court only in the barest sense of the word. * * * What it did not do was follow the provisions of either the U.S. Constitution or the Ohio Constitution. In failing in both of these duties, the Court has failed to actually address the reason the Procedendo was filed in the first place * * *.

² In fact, S.Y.C. admits in her brief in opposition to the motion to dismiss that Judge Floyd has addressed and dealt with all pending motions. “Yes, the court issued a judgment entry addressing Relator’s motions.” Relator’s brief in opposition to respondent Judge Allison L. Floyd’s motion to dismiss, pg. 5.

{¶ 6} S.Y.C. seeks what amounts to an appellate review of the judgments rendered by Judge Floyd. Such a review is not permitted through procedendo or mandamus. Procedendo and mandamus simply involve an order from a superior court to an inferior court to proceed to judgment or execute a duty. *State ex rel. Utley v. Abruzzo*, 17 Ohio St.3d 203, 478 N.E.2d 789 (1985); *State ex rel. Davey v. Owen*, 133 Ohio St. 96, 12 N.E.2d 144 (1937). Mandamus is not a substitute for an appeal, and since an appeal constitutes an adequate remedy at law, this court will not issue a writ mandamus. *State ex rel. Woods v. Gagliardo*, 49 Ohio St.2d 196, 360 N.E.2d 705 (1977).

{¶ 7} Accordingly, we grant Judge Floyd's motion to dismiss. Costs to S.Y.C.; costs waived. The court directs the clerk of courts to serve all parties with notice of this judgment and the date of entry upon the journal as required by Civ.R. 58(B).

{¶ 8} Complaint dismissed.

ANITA LASTER MAYS, ADMINISTRATIVE JUDGE

LISA B. FORBES, J., and
SEAN C. GALLAGHER, J., CONCUR