



Judge W. Mona Scott<sup>1</sup> and Magistrate Michael Kulcar of the Cleveland Municipal Court, Housing Division. The relator seeks to compel the respondents to issue a decision in the underlying eviction action, *Shaker Hts. Apts. Owner, LLC v. Granberry*, Cleveland M.C. No. 2023-CVG-002960, and to do so in all cases in a timely manner. The relator also seeks to compel the respondents in forcible entry and detainer actions to require defendants to post bond if a continuance is granted in excess of eight days.

{¶ 2} On June 15, 2023, the respondents moved to dismiss on the grounds of mootness. The relator filed its brief in opposition on June 23, 2023, and the respondents filed a reply brief on June 29, 2023. The court has reviewed the filings, the attached materials, and the relevant law, and the matter is ripe for decision. For the following reasons, this court denies the motion to dismiss and grants the writs of mandamus and procedendo to order the respondents to resolve the forcible entry and detainer actions in a timely manner.

{¶ 3} Recent cases illuminate the present controversy. *Shaker House LLC v. Daniel*, 2022-Ohio-2778, 193 N.E.3d 1159 (8th Dist.), showed how the Cleveland Municipal Court used its Loc.R. 3.015 to thwart evictions. That local rule required landlords in eviction cases to include in the complaints specified documentary evidence that the subject residence complied with Cleveland's lead-safe certification ordinance, Cleveland Codified Ordinances 365.04. The local rule further provided

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<sup>1</sup> Judge Scott is the sole judge of the Cleveland Municipal Court Housing Division.

that if sufficient documentation was not provided the court could dismiss the complaint and prohibit filing future eviction complaints related to any residential unit without proof of compliance. In *Daniel*, the landlord had fully complied with the requisites for an eviction action but did not include the specified documentary evidence showing compliance with the lead paint ordinance; the landlord argued that the local rule was invalid. The Cleveland Municipal Court dismissed the eviction action.

{¶ 4} On appeal, this court first noted that the purpose of R.C. Chapter 1923, the forcible entry and detainer statute, is to provide a summary, extraordinary, and speedy method for the recovery of real property. It then held that the local rule was invalid because it conflicted with a landlord's substantive rights under R.C. Chapter 1923. A rule may govern procedural matters, but it may not control matter of substantive law, such as R.C. Chapter 1923. This court also rejected the argument that the municipal court properly dismissed the eviction case on equitable grounds that Shaker House was not entitled to restitution of the property because it had "unclean hands" by not complying with the lead paint ordinance. This court ruled that the municipal court "may not use equitable powers to frustrate the purpose of the statutory remedy" under R.C. Chapter 1923, which is to provide a speedy method for the recovery of leased property. *Daniel* at ¶ 27. On August 11, 2022, this court reversed the municipal court's decision and remanded the case to grant Shaker House's forcible entry and detainer action within 30 days of this court's judgment.

{¶ 5} However, the respondent judge did not comply with this court's remand order. On September 16, 2022, Shaker House commenced *State ex rel. Shaker House, Ltd. Liab. Co. v. Scott*, 8th Dist. Cuyahoga No. 111952, a mandamus action to compel the respondent to issue a writ of restitution in the *Daniel* case. The respondent judge issued the writ of restitution on September 21, 2022.

{¶ 6} Glenville Plaza Holding, LLC, on August 10, 2022, commenced a forcible entry and detainer action in Cleveland Municipal Court to evict Glenville Laundromat, LLC, from its commercial property. *Glenville Plaza Holding, LLC v. Glenville Laundromat, LLC, et al.*, Cleveland M.C. No. 2022-CVG-007026. The court held the eviction hearing on September 14, 2022, and the parties reached a settlement that if the laundromat failed to satisfy its obligations, a writ of restitution would issue. The laundromat did not fulfill its obligations, and the municipal court issued a writ of restitution for a move out on December 16, 2022. However, on that date, the laundromat moved for a stay, and the court's personnel refused to effect the writ of restitution until the respondent judge ruled on the motion for stay. In response, on December 22, 2022, the landlord commenced *State ex rel. Glenville Plaza Holding, LLC v. Scott*, 8th Dist. Cuyahoga No.112264, a mandamus action to compel the respondents to perform the forced move-out as required by the municipal court's orders. The respondent judge denied the motion to stay on January 3, 2023, and reissued the writ of restitution on January 9, 2023, which mooted the mandamus action.

{¶ 7} In *State ex rel. Shaker Hts. Apts. Owner, LLC v. Scott*, 8th Dist. Cuyahoga No. 112587, 2023-Ohio-1901, the respondent judge had issued stays in 28 underlying forcible entry and detainer cases on the grounds of unclean hands. Pending in Cleveland Municipal Court was *Cleveland v. Shaker Hts. Apts. Owner, LLC*, Cleveland M.C. No. 2022CRB005101, a first-degree misdemeanor for failure to comply with an order of the Cleveland Building Department. On April 4, 2023, the landlord brought the mandamus and procedendo order to compel the judge to vacate the stays and immediately adjudicate the 28 eviction cases. The landlord argued that *Daniel*, 2022-Ohio-2778, 193 N.E.3d 1159 (8th Dist.), had ruled that the municipal court may not use its equitable powers to frustrate the purpose of the forcible entry and detainer statutes that is to provide a speedy method of recovery of leased property.

{¶ 8} On May 8, 2023, the respondent judge moved to dismiss the writ action as moot. The municipal court noted that there was no longer an outstanding warrant or capias against Apartments Owner. Thus, the municipal court lifted the stay and ordered that the 28 underlying cases proceed in their ordinary course. This court noted that most of the 28 cases had been set for eviction hearings on May 23, 2023. Thus, this court dismissed the writ action as moot.

{¶ 9} Finally, in the present writ action, Apartments Owner commenced the underlying forcible entry and detainer action against Granberry on March 13, 2023, on the grounds that Granberry had not paid his rent since November 2022. The municipal court conducted a magistrate's hearing on April 24, 2023.

Apartments Owner presented its evidence of nonpayment of rent and three-day notice, and Granberry did not appear. The magistrate announced that the matter would be taken as “heard and submitted.” However, on April 26, 2023, the magistrate issued his order in which he continued the matter until May 10, 2023, because of the pending writ, *State ex rel. Shaker Hts. Apts. Owner v. Scott*, 8th Dist. Cuyahoga No. 112587. On May 5, 2023, Apartments Owner filed its objections to the magistrate’s report arguing that the writ action had nothing to do with the *Granberry* case. Again, on May 10, 2023, Apartments Owner presented their evidence of compliance with R.C. Chapter 1923 and the nonpayment of rent. Again, Granberry did not appear. When no further action was taken on the *Granberry* case, Apartments Owner commenced this writ action on May 24, 2023.<sup>2</sup> The respondent judge on May 30, 2023, entered judgment for Apartments Owner in the underlying case and filed her motion to dismiss this writ action as moot.

**{¶ 10}** The requisites for mandamus are well established: (1) the relator must have a clear legal right to the requested relief, (2) the respondent must have a clear legal duty to perform the requested relief, and (3) there must be no adequate remedy at law. Additionally, although mandamus may be used to compel a court to exercise judgment or to discharge a function, it may not control judicial discretion,

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<sup>2</sup> This court notes that on July 11, 2023, two more mandamus and procedendo actions were filed against the respondent judge to issue a ruling in a forcible entry and detainer action, *State ex rel. Cleveland 2, LLC v. Scott, et al.*, 8th Dist. Cuyahoga No. 112961, and *State ex rel. AIY Properties, Inc. v. Scott, et al.*, 8th Dist. Cuyahoga No. 112962.

even if that discretion is grossly abused. *State ex rel. Ney v. Niehaus*, 33 Ohio St.3d 118, 515 N.E.2d 914 (1987).

{¶ 11} Moreover, the court has discretion in issuing it. In *State ex rel. Pressley v. Indus. Comm. of Ohio*, 11 Ohio St.2d 141, 228 N.E.2d 631 (1967), paragraph seven of the syllabus, the Supreme Court of Ohio ruled that “in considering the allowance or denial of the writ of mandamus on the merits, [the court] will exercise sound, legal and judicial discretion based upon all the facts and circumstances in the individual case and the justice to be done.” The court elaborated that in exercising that discretion the court should consider

the exigency which calls for the exercise of such discretion, the nature and extent of the wrong or injury which would follow a refusal of the writ, and other facts which have a bearing on the particular case. \* \* \* Among the facts and circumstances which the court will consider are the applicant’s rights, the interests of third persons, the importance or unimportance of the case, the applicant’s conduct, the equity and justice of the relator’s case, public policy and the public’s interest, whether the performance of the act by the respondent would give the relator any effective relief, and whether such act would be impossible, illegal, or useless.

*Id.* at 161-162. *State ex rel. Bennett v. Lime*, 55 Ohio St.2d 62, 378 N.E.2d 152 (1978); *State ex rel. Dollison v. Reddy*, 55 Ohio St.2d 59, 378 N.E.2d 150 (1978); and *State ex rel. Mettler v. Commrs. of Athens Cty.*, 139 Ohio St. 86, 38 N.E.2d 393 (1941).

{¶ 12} The writ of procedendo is merely an order from a court of superior jurisdiction to one of inferior jurisdiction to proceed to judgment. *Yee v. Erie Cty. Sheriff’s Dept.*, 51 Ohio St.3d 43, 553 N.E.2d 1354 (1990). Procedendo is

appropriate when a court has either refused to render judgment or has unnecessarily delayed proceeding to judgment. *State ex rel. Watkins v. Eighth Dist. Court of Appeals*, 82 Ohio St.3d 532, 696 N.E.2d 1079 (1998). However, the writ will not issue to control what the judgment should be, nor will it issue for the purpose of controlling or interfering with ordinary court procedure. Thus, procedendo will not lie to control the exercise of judicial discretion. Moreover, it will not issue when there is an adequate remedy at law. *State ex rel. Hansen v. Reed*, 63 Ohio St.3d 597, 589 N.E.2d 1324 (1992).

**{¶ 13}** In *State ex rel. GMS Management Co., Inc. v. Callahan*, 45 Ohio St.3d 51, 543 N.E.2d 483 (1989), the Supreme Court of Ohio issued a writ of mandamus in a forcible entry and detainer matter, even though the underlying case had been resolved. GMS filed the underlying forcible entry and detainer action on January 21, 1988, and Judge Callahan heard the matter on February 10, 1988. Both the landlord and tenant appeared and litigated the case. At the end of the hearing, Judge Callahan took the matter under consideration. When no ruling was forthcoming, GMS commenced the mandamus action. Subsequently, Judge Callahan on February 29, 1988, rendered judgment in favor of the tenant and issued, sua sponte, findings of fact and conclusions of law.

**{¶ 14}** Although Judge Callahan's ruling made the matter moot, the Supreme Court addressed the underlying issue of delay in forcible entry and detainer actions. It noted the "underlying purpose behind the forcible entry and detainer action 'is to provide a summary, extraordinary, and speedy method for the



recovery of [the] possession of real estate in the cases especially enumerated by statute.” *Id.* at 55, quoting *Cuyahoga Metro. Hous. Auth. v. Jackson*, 67 Ohio St.2d 129, 423 N.E.2d 177 (1981), quoting from 24 Ohio Jurisprudence 2d, Forcible Entry and Detainer, Section 2, 454, 455 (1957). It noted that the judge’s decision to issue Civ.R. 52 findings of fact and conclusions of law, sua sponte, caused the delay, and that GMS had “submitted evidence that tended to show somewhat of a pattern in [the municipal court] whereby the filing of judgment entries was apparently delayed for varying lengths of time in forcible entry and detainer proceedings.” *Id.* Thus, the Supreme Court ruled that the case presented issues that are capable of repetition, yet evading review and that to more fully accomplish the aims of justice, it was necessary to reach the merits of the case. It denied the motion to dismiss and ruled that Civ.R. 52 was not applicable in a forcible entry and detainer action, and that if a judge thought it necessary to issue findings of fact and conclusions of law in a forcible entry and detainer action, the judge must do so within a period of seven working days after the hearing on the merits.

**{¶ 15}** So too in the present case, this court’s own docket evidences a pattern of delay in forcible entry and detainer cases that thwarts the purpose of R.C. Chapter 1923. The repetition of cases before this court convinces it that applying the principle of “capable of repetition, yet evading review” is appropriate in this matter and considering the underlying issue of delay in forcible entry and detainer actions. Thus, the court denies the respondents’ motion to dismiss on the grounds of mootness.

**{¶ 16}** The court further issues the writs of mandamus and procedendo and orders the respondents to resolve the forcible entry and detainer cases forthwith without delay.

**{¶ 17}** The court declines to issue the writs to compel the application of R.C. 1923.08 and the issuance of bonds if the delay is more than eight days, because the Supreme Court of Ohio in *GMS* ruled that the statute would not be applicable when the delay is caused by the court, sua sponte. The court's ruling today should render the discussion academic.

**{¶ 18}** In summary, the court denies the respondents' motion to dismiss. The court issues the writs of mandamus and procedendo and orders the respondents to resolve the forcible entry and detainer cases forthwith and without delay. Respondents to pay costs. This court directs the clerk of courts to serve all parties notice of the judgment and its date of entry upon the journal as required by Civ.R. 58(B).

**{¶ 19}** Writ granted.

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SEAN C. GALLAGHER, JUDGE

EILEEN A. GALLAGHER, P.J., and  
LISA B. FORBES, J., CONCUR