

COURT OF APPEALS OF OHIO
EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

STATE EX REL. AIY PROPERTIES,
INC.,

:

Relator,

:

No. 113276

v.

:

JUDGE W. MONA SCOTT,

:

Respondent.

:

JOURNAL ENTRY AND OPINION

JUDGMENT: WRIT GRANTED

DATED: October 24, 2023

Writ of Procedendo
Order No. 568744

Appearances:

Sarah S. Graham, *for relator.*

Mark Griffin, Cleveland Director of Law, *for respondent.*

MARY EILEEN KILBANE, P.J.:

{¶ 1} AIY Properties, Inc. (“AIY”), the relator, has filed a complaint for a writ of mandamus. AIY seeks an order from this court that requires Judge W. Mona Scott, the respondent, to issue a writ of restitution and an order of eviction in the

forcible entry and detainer action that is currently pending in *AIY Properties, Inc. v. Tiffany Blevins*, Cleveland M.C. No. 2023-CVG-010107.

{¶ 2} Although AIY requests a writ of mandamus, we employ our plenary authority to sua sponte convert the request for a writ of mandamus into a complaint for procedendo. *State ex rel. Dispatch Printing Co. v. Loudon*, 91 Ohio St.3d 61, 741 N.E.2d 517 (2001). Procedendo shall issue when a court has either refused to render a judgment or has unnecessarily delayed entering judgment. *State ex rel. R.W. Sidley, Inc. v. Crawford*, 100 Ohio St.3d 113, 2003-Ohio-5101, 796 N.E.2d 929. “[P]rocedendo 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.3d 332 (1995), quoting *State ex rel. Levin v. Sheffield Lake*, 70 Ohio St.3d 104, 110, 637 N.E.2d 319 (1994). For the following reason, we grant a peremptory writ of procedendo on behalf of AIY.

I. Facts and Procedural History

{¶ 3} The following facts are gleaned from the complaint for procedendo and the docket maintained in Cleveland M.C. No. 2023-CVG-1010107:¹

- (1) AIY is the manager of residential property located at 1903 Pleasantdale Road, Apt. 9, Cleveland, Ohio 44109;
- (2) the tenant did not make monthly rental payments after March 2023;

¹ This court is permitted to take judicial notice of court filings that are readily accessible from the internet. *In re Helfrich*, 5th Dist. Licking No. 13CA20, 2014-Ohio-1933, ¶ 35, citing *State ex rel. Everhart v. McIntosh*, 115 Ohio St.3d 195, 2007-Ohio-4798, 974 N.E.2d 516, ¶ 8, 10 (court can take judicial notice of judicial opinions and public records accessible from the internet).

- (3) on August 17, 2023, AIY served the tenant with a “3 day notice to vacate” pursuant to R.C. 1923.04;
- (4) on September 5, 2023, AIY filed a complaint for forcible entry and detainer;
- (5) on October 3, 2023 a forcible entry and detainer hearing was held;
- (6) on October 5, 2023, judgment was entered for AIY on the claim for forcible entry and detainer with an ordered “move out” set for October 17, 2023;
- (7) on October 10, 2023, AIY filed a request for a writ of restitution;
- (8) as of October 17, 2023, Judge Scott has not issued a writ of restitution and a writ of eviction.

II. Legal Analysis

{¶ 4} To be entitled to a writ of procedendo, AIY must demonstrate a clear legal right to require Judge Scott to proceed, a clear legal duty on the part of Judge Scott to proceed, and the lack of an adequate remedy in the ordinary course of the law. *State ex rel. Miley v. Parrott*, 77 Ohio St.3d 64, 671 N.E.2d 24 (1996); *State ex rel. Sherrills v. Cuyahoga Cty. Court of Common Pleas*, 72 Ohio St.3d 461, 650 N.E.2d 899 (1995). If it appears beyond doubt that AIY is entitled to a writ of procedendo, a peremptory writ shall be issued. *State ex rel. Stern v. Mascio*, 81 Ohio St.3d 297, 691 N.E.2d 253 (1998); *State ex rel. Findlay Publishing Co. v. Schroeder*, 76 Ohio St. 3d 580, 669 N.E.2d 835, 839 (1996).

{¶ 5} Forcible entry and detainer actions are governed by R.C. Chapter 1923. The purpose of the forcible entry and detainer statutes is to *provide a summary, extraordinary, and speedy method* for the recovery of possession of real property. *Cuyahoga Metro. Hous. Auth. v. Jackson*, 67 Ohio St.2d 129, 131, 423 N.E.2d 177 (1981); 24 Ohio Jurisprudence 2d 455, Forcible Entry and Detainer, Section 2. “[G]iven its summary nature, the drafters of the Rules of Civil Procedure were

careful to avoid encrusting this special remedy with time consuming procedure tending to destroy its efficacy.” *Miele v. Ribovich*, 90 Ohio St.3d 439, 441, 739 N.E.2d 333 (2000), quoting *Jackson* at 131.

{¶ 6} R.C. 1923.02(A)(9) creates a cause of action for forcible entry and detainer “[a]gainst tenants who have breached an obligation imposed upon them by a written rental agreement.” It is undisputed that the tenant breached the terms of the lease by failing to pay rent. R.C. 1923.04(A) requires the landlord give the tenant notice of the eviction action “three or more days before beginning the action, by certified mail, return receipt requested, or by handing a written copy of the notice to the defendant in person, or by leaving it at the defendant’s usual place of abode or at the premises from which the defendant is sought to be evicted.” AIY provided the tenant with the required three-day notice. Also, the facts demonstrate that AIY complied with all of the requirements of R.C. 1923.01 et seq. for immediate possession of the real property currently occupied by the tenant. AIY is entitled to a peremptory writ of procedendo that requires Judge Scott to immediately issue a writ of restitution and an order of eviction.

III. Duties Under R.C. Chapter 1923

{¶ 7} R.C. 1923.09(A) provides that if the judge finds the complaint for forcible entry and detainer to be true, the judge shall render a general judgment against the defendant, in favor of the plaintiff, for restitution of the premises and costs of suit. Once again, this court is perplexed by the conduct of Judge Scott that seems to thwart the purpose of R.C. Chapter 1923 by not providing a summary,

extraordinary, and speedy method for the recovery of possession of AIY's real property. In fact, seven prior complaints for mandamus or procedendo, plus an appeal, and two pending complaints for mandamus or procedendo have been filed with this court in the past year that demonstrate Judge Scott's delay in issuing writs of restitution and orders of evictions:

- (1) *Shaker House LLC v. Daniel*, 8th Dist. Cuyahoga No. 111183, 2022-Ohio-2778 (8/11/22 — trial court judgment reversed and Judge Scott ordered to grant forcible entry and detainer to landlord);
- (2) *State ex rel. Shaker House, LLC v. Scott*, 8th Dist. Cuyahoga No. 111952 (9/29/22 — complaint for mandamus voluntarily dismissed because forcible entry and detainer granted in Cleveland M.C. No. 21-CVG-008203);
- (3) *State ex rel. Glenville Plaza Holding, LLC v. Scott*, 8th Dist. Cuyahoga No. 112264 (2/15/23 — complaint for mandamus declared moot because forcible entry and detainer granted in Cleveland M.C. No. 2022-CVG-007026);
- (4) *State ex rel. Shaker Hts. Apts. Owner, LLC v. Scott*, 8th Dist. Cuyahoga No. 112587, 2023-Ohio-1901 (6/2/23 — complaint for procedendo and mandamus declared moot because forcible entry and detainer adjudicated in 28 Cleveland M.C. cases);
- (5) *State ex rel. Shaker Hts. Apts. Owner v. Scott*, 8th Dist. Cuyahoga No. 112769, 2023-Ohio-2589 (7-21-23 — procedendo and mandamus ordered to resolve forcible entry and detainer action in Cleveland M.C. No. 2023-CVG-002960);
- (6) *State ex rel. Cleveland 2, LLC v. Scott*, 8th Dist. Cuyahoga No. 112961, 2023-Ohio-3066 (8/25/23 — procedendo and mandamus ordered to resolve forcible entry and detainer action in Cleveland M.C. No. 2023-CVG-003640);
- (7) *State ex rel. AIY Properties, Inc. v. Scott*, 8th Dist. Cuyahoga No. 112962 (8/7/23 — procedendo and mandamus moot because tenant vacated premises);
- (8) *State ex rel. AIY Properties, Inc. v. Scott*, 8th Dist. Cuyahoga No. 113029, 2023-Ohio-33484 (9/25/23 — procedendo and mandamus ordered to resolve forcible entry and detainer action in Cleveland M.C. No. 2023-CVG-003825);
- (9) *State ex rel. Fischer Asset Management, LLC v. Scott*, 8th Dist. Cuyahoga No. 113237 (filed 10/4/23 — procedendo to compel forcible

entry and detainer in Cleveland M.C. No. 2023-Ohio-004911 — currently pending);
(10) *AIY Properties, Inc. v. Scott*, 8th Dist. Cuyahoga No. 113276 (filed 10/17/23 — mandamus to compel forcible entry and detainer in Cleveland M.C. No. 2023-CVG-010107 — currently pending).

{¶ 8} The continued conduct of Judge Scott, by failing to provide a summary, extraordinary, and speedy method for the recovery of possession of real property, in forcible entry and detainer actions, may be the result of the failure to appreciate the statutory requirements of R.C. Chapter 1923, or a misunderstanding of the purpose of R.C. Chapter 1923 by Judge Scott’s staff. Regardless, Judge Scott is placed on notice that the continued delay in granting writs of restitution and orders of eviction, when mandated, may result in this court assuming such failures to act are intentional.²

IV. Conclusion

{¶ 9} We sua sponte grant a peremptory writ of procedendo and order that Judge Scott immediately issue a writ of restitution and an order of eviction on behalf of AIY in *AIY Properties, Inc. v. Blevins*, Cleveland M.C. No. 2023-CVG-010107.

² Canons 1 and 2 of the Ohio Code of Judicial Conduct requires all judges to uphold and promote independence, integrity, and impartiality of the judiciary, and to avoid impropriety and the appearance of impropriety. The implementation of judicial discipline is to protect the general public, guarantee the evenhanded administration of justice, and maintain the public’s confidence in the integrity of the judiciary. *Disciplinary Counsel v. Carr*, 170 Ohio St.3d 401, 2022-Ohio-3633, 214 N.E.3d 496; *Disciplinary Counsel v. Horton*, 158 Ohio St.3d 76, 2019-Ohio-4139, 140 N.E.3d 561; *Disciplinary Counsel v. Burge*, 157 Ohio St.3d 203, 2019-Ohio-3205, 134 N.E.3d 153. The continued reluctance of Judge Scott, to provide a summary, extraordinary, and speedy method for the recovery of possession of real property, in forcible entry and detainer actions, may result in the referral of her conduct to the Disciplinary Counsel of the Board of Professional Conduct for violation of the Code of Judicial Conduct and the Rules of Professional Conduct.

{¶ 10} Costs to Judge Scott. 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). In addition, the clerk of courts shall forthwith deliver a copy of this opinion to Judge Scott and shall note upon the docket the date and time of delivery of the opinion to Judge Scott.

{¶ 11} Peremptory writ of procedendo granted.

MARY EILEEN KILBANE, PRESIDING JUDGE

EILEEN T. GALLAGHER, J., and
MICHAEL JOHN RYAN, J., CONCUR