

ORIGINAL

IN THE SUPREME COURT OF OHIO

STATE OF OHIO ex rel.	)	Case No. <b>09-1121</b>
LAMBERT DEHLER,	)	
	)	
Relator-Appellant,	)	On Appeal from the Trumbull
	)	County Court of Appeals,
-vs-	)	Eleventh Appellate District
	)	
BENNIE KELLY, WARDEN OF	)	
THE TRUMBULL CORRECTIONAL	)	Court of Appeals
INSTITUTION,	)	Case No. <b>2008-T-0062</b>
	)	
Respondent-Appellee.	)	

---

**MERIT BRIEF OF RELATOR-APPELLANT LAMBERT DEHLER**

---

Lambert Dehler, #273-819  
 Trumbull Correctional Institution  
 PO Box 901  
 Leavittsburg, OH 44430-0901

**COUNSEL FOR RELATOR-APPELLANT, *PRO SE***

Richard Cordray, Attorney General (0038034)  
 Ashley D. Rutherford, Assistant Attorney General (Counsel of Record) (0084009)  
 Corrections Litigation Section  
 150 East Gay Street, 16<sup>th</sup> Floor  
 Columbus, OH 43215

**COUNSEL FOR RESPONDENT-APPELLEE,  
 BENNIE KELLY, WARDEN OF THE TRUMBULL  
 CORRECTIONAL INSTITUTION**

**RECEIVED**  
 JUL 06 2009  
 CLERK OF COURT  
 SUPREME COURT OF OHIO

**FILED**  
 JUL 08 2009  
 CLERK OF COURT  
 SUPREME COURT OF OHIO

TABLE OF CONTENTS

TABLE OF AUTHORITIES ..... ii

STATEMENT OF FACTS ..... 1

ARGUMENT ..... 4

**Proposition of Law No. I:**

If a public official actually performs the desired act sought in a petition for a writ of mandamus before the final merits of the mandamus claim are addressed, the case itself will not be considered moot if the claim is capable of repetition, yet evading review ..... 4

**Proposition of Law No. II:**

The original jurisdiction of an appellate court does not preclude a claim for a permanent injunction ..... 7

CONCLUSION ..... 8

PROOF OF SERVICE ..... 9

**APPENDIX**

**Appx. Page**

Notice of Appeal to the Ohio Supreme Court  
(Jun. 18, 2009) ..... 1

Per Curiam Opinion of the Trumbull County Court of Appeals  
(Jun. 01, 2009) ..... 3

Judgment Entry of the Trumbull County Court of Appeals  
(Jun. 01, 2009) ..... 9

**REFERENCE:**

Black's Law Dictionary, 8<sup>th</sup> Edition, (2004), [p.800] ..... 10

**TABLE OF AUTHORITIES**

<b><u>CASES:</u></b>	<b><u>Page</u></b>
<u>Blackwell v. Bd. of Ed. of Twp. Trustees, Ashtabula App. No. 2003-A-0061, 11th Dist., 2004-Ohio-2080</u> .....	7-9
<u>State ex rel. Carter v. Schotten, Warden of T.C.I., (1994), 70 Ohio St.3d 89</u> .....	7-8
<u>State ex rel. Calvary v. Upper Arlington, (2000), 89 Ohio St.3d 229</u> .....	5
<u>State ex rel. Consumer v. Bd. of Ed., 2002-Ohio-5311, 97 Ohio St.3d 58</u> .....	5
<u>State ex rel. Dispatch Printing Co. v. Geer, 2007-Ohio-4643, 114 Ohio St.3d 511</u> .....	5
<u>State ex rel. Law Office of Montgomery Cty. Pub. Defender v. Rosencrans, 2006-Ohio-5793, 111 Ohio St.3d 338</u> .....	4
 <b><u>STATUTES:</u></b>	
R.C. 2921.44(C)(2) .....	7
 <b><u>REFERENCE:</u></b>	
Black's Law Dictionary, 8 <sup>th</sup> Ed., (2004), [p.800] .....	8

## STATEMENT OF FACTS

This case arises from an original action filed in the Trumbull County Court of Appeals on July 9, 2008, by way of the filing of a petition for a writ of mandamus of Relator-Appellant Lambert Dehler (“Dehler”), pro se, seeking an order to compel the Respondent, Bennie Kelly (“Kelly”), Warden of the Trumbull Correctional Institution (“TCI”), to provide adequate clothing in compliance with **R.C. 2921.44(C)(2)**. See, **Court of Appeals Record, Item Number 1 (hereinafter “Dkt.#1”)**.

Dehler alleged in the petition: “For the past six months, the Quartermaster has been routinely out of stock of: shirts, pants, underpants, undershirts, socks, towels, shoes, etc.” (**Dkt.#1 at ¶4**). Dehler attached a letter that he wrote to Kelly on June 11, 2008 in which he complained that there has been a problem of severe clothing shortages at the Quartermaster for quite some time, and he needed shoes to wear. (**Dkt.#1, Exhibit 1**). For relief, Dehler asked the Court to issue a writ of mandamus compelling Kelly to order shoes and to keep all other necessary clothing available to the TCI inmate population. (**Dkt.#1, p.4**).

On July 24, 2008, the appellate court filed a judgment entry issuing an alternative writ and required an answer from Kelly within twenty days. (**Dkt.#3**).

On December 26, 2008, Dehler filed, “Relator’s Filing of Final Status of Two Grievances and Request for a Permanent Injunction.” (**Dkt.#12**). Dehler’s request for a permanent injunction was worded as follows:

“For Relief, Relator requests a permanent injunction be issued against the Respondent (Warden Bennie Kelly) pursuant to **R.C. §§ 2727.02, 2727.03, et.seq.** because the TCI Quartermaster is still out of state clothing as alleged in **Exhibit C at ¶¶ 6-8.**”  
**(Dkt.#12, p.5).**

The “**Exhibit C**” attachment to **Dkt.#12**, reads, in relevant part:

“6) On December 11, 2008, I received a pass to return to the Quartermaster Department to pick-up my annual allotment of state clothing. At approximately 1:15 p.m., Ms. Douglas showed me a sign posted in the Quartermaster Department, which alerted the inmate population that the quartermaster was currently out-of-stock of: almost all sizes of state shoes; and out-of-stock of almost all sizes of state [outer] clothing (shirts and pants). I was not given a date certain when I could obtain a pair of pants and shirts.

7) The decision of the Chief Inspector on a Grievance Appeal (see, **Exhibit A**) [dated October 1, 2008] could not be true because the TCI Quartermaster is again out-of-stock of state shoes and clothing.

8) These facts, along with the allegations in the petition for a writ of mandamus, are sufficient to allow the issuance of a permanent injunction against the Respondent.”

On January 23, 2009, Kelly filed, “Respondent’s Response to Relator’s Final Status of Two Grievances and Motion for Summary Judgment.” **(Dkt.#15)**. Kelly attached an affidavit from Jacqueline Scott which stated that Dehler received a pair of state shoes on September 25, 2008, and therefore, Dehler’s claim is now moot.<sup>1</sup>  
**(Dkt.#15, p.2).**

On February 10, 2009, Dehler filed in reply (with three affidavits in support): “Relator’s Response in Opposition to Respondent’s Motion for Summary Judgment.” **(Dkt.#16)**. Dehler admitted that he received a pair of state shoes on September 25, 2008, but there are still severe clothing shortages at the Quartermaster:

---

<sup>1</sup> The state shoes issued (concerning this mandamus) are already worn out. The right shoe is split open between the sole and upper. The tread is also worn out completely. Around 6/16/09, the TCI Quartermaster notified Dehler that they have no shoes. A fresh complaint was submitted to the TCI Warden on 6/17/09. A fresh grievance was mailed to the chief inspector on 6/22/09. Grievance No. **CI-06-09-00**-----(don’t know the grievance number as of today’s date).

“On December 11, 2008, there was a sign posted in the Quartermaster Department alerting inmates that the quartermaster was currently out-of-stock of: almost all sizes of state shoes; and out-of-stock of almost all sizes of state [outer] clothing (shirts and pants). Relator was not given a date certain when he could obtain a pair of pants and shirts. **id.**, at ¶7.

On January 28, 2009, Relator returned to the Quartermaster department and noticed two signs posted alerting the inmate population that they were out-of-stock of all the normal sizes of shoes, pants, and shirts. One of the signs specifically stated that they were out of size 2X shirts [2X is prison jargon for a normal large size]. Notwithstanding the sign, Relator was issued a brand new size 2X shirt, while other inmates that were present were being told that they had no 2X shirts. **id.**, at ¶9. Finally, Relater averred:

“10) There are approximately 960 inmates domiciled at TCI at any one specific point in time. For the past approximately two years, the TCI Quartermaster has no system of alerting inmates when the clothing is back in stock. For instance, there is no “waiting list” the quartermaster keeps to issue clothing to the inmates who have been waiting for a longer period of time to receive clothing when it finally arrives. It is purely a “hit and miss” situation for the inmates, and a “luck of the draw” being able to predict when to re-kite and obtain necessary clothing.” ”

**(Dkt.#16, pgs.2-3).**

Dehler requested that the case continue at this early stage in the proceedings; and “ \*\*\* [t]o find that summary judgment is not appropriate at this stage without a full disclosure of the significance of the clothing shortages at TCI which continues to this very day.” **(Dkt.#16, p.4).**

On March 4, 2009, Kelly replied, and filed, “Respondent’s Reply in Support of Motion for Summary Judgment.” **(Dkt.#17).** The appellate court granted summary judgment in favor of the respondent. **(Appx. 3, at ¶1).**

Dehler filed his notice of appeal to the Supreme Court of Ohio on June 18, 2009. **(Appx. 1).** This appeal now proceeds as a matter of right.

## ARGUMENT

### Proposition of Law No. I:

If a public official actually performs the desired act sought in a petition for a writ of mandamus before the final merits of the mandamus claim are addressed, the case itself will not be considered moot if the claim is capable of repetition, yet evading review.

The court of appeals granted summary judgment in favor of the appellee because the merits of the sole claim before them became moot when a member of the prison staff already performed the specific act which Dehler requested. (Appx. 3-4). The court found that appellee gave Dehler a pair of shoes in September, 2008, and therefore, " \*\*\* [t]he final merits of relator's mandamus claim are now moot." (Appx. 5, 7 at ¶¶4, 9).

Dehler urges this Court to reverse the court of appeals' holding and find that if a public official actually performs the desired act sought in a petition for a writ of mandamus before the final merits of the mandamus claim are addressed, the case itself will not be considered moot if the claim is capable of repetition, yet evading review. A claim is not moot if it is capable of repetition, yet evading review. State ex rel. Law Office of Montgomery Cty. Pub. Defender v. Rosencrans, 111 Ohio St.3d 338, 2006-Ohio-5793, 856 NE 2d 250, ¶16. "This exception applies only in exceptional circumstances in which the following two factors are both present:

(1) the challenged action is too short in its duration to be fully litigated before its cessation or expiration, and

(2) there is a reasonable expectation that the same complaining party will be subject to the same action again."

State ex rel. Calvary v. Upper Arlington (2000), 89 Ohio St.3d 229, 231, 729 NE 2d 1182. See also, State ex rel. Dispatch Printing Co. v. Geer, 114 Ohio St.3d 511, 2007-Ohio-4643, 873 NE 2d 314, ¶¶13,20 (writ of prohibition granted to prevent Judge Geer from entering a future restriction because the Dispatch's claim is not moot, because it is capable of repetition, yet evading review.)

In State ex rel. Consumer v. Bd. of Edn., 97 Ohio St.3d 58, 2002-Ohio-5311, 776 NE 2d 82, ¶¶31-33, this Honorable Court granted a writ of mandamus and found, " \*\*\* [t]he issue of the timeliness of respondent's provision of public-records is not moot because it is capable of repetition yet evading review."

Dehler now briefs the two factors:

(1) The Challenged Action is Too Short in its Duration to be Fully Litigated Before its Cessation or Expiration.

Dehler submits that in these kinds of cases, a writ of mandamus could always be defeated when a prison employee issues clothing upon service of a petition for a writ of mandamus. In the case at bar, Dehler complained to Kelly of severe clothing shortages at TCI which are on-going. See, Dkt.#1, Exhibit 1. (Stating, "There has been a problem of severe clothing shortages at the Quartermaster for quite some time.") On July 14, 2008, Kelly received the petition for a writ of mandamus approximately one month later. (Dkt.#2).

Shortly thereafter, Kelly complied with his duty to provide clothing and issued state shoes to Dehler in September of 2008. (Appx. 5 at ¶4). Therefore, this Court should find that Dehler met the first factor when he showed how Kelly frustrated the petition for writ of mandamus by performing his legal duty shortly after he was served the petition. More importantly, this Court should look at the facts submitted in the second factor below, because Kelly still maintained severe clothing shortages during the entire pendency of this action; even worse as of today's date.

(2) There is a Reasonable Expectation that the Same Complaining Party will be Subject to the Same Action Again.

On February 10, 2009, Dehler filed his Response in Opposition to Repondent's Motion for Summary Judgment. (Dkt.#16). On page 4 therein, Dehler argued that the clothing problem at TCI is still on-going and is not moot. He showed systemic shortages of clothing, " \*\*\* [a]nd needs to be continually clothed during the duration of his confinement at TCI." id. Further, he attached an affidavit and stated there was a sign posted on January 28, 2009, which stated that the TCI Quartermaster was out of: " \*\*\* [a]ll the normal sizes of shoes, pants and shirts." (Dkt.16, Exhibit C at ¶9).

Notwithstanding this fact in the record below, Dehler is now being denied, to this very day, a replacement of the shoes he was previously issued in September of 2008. TCI claims to be out of shoes again and refuses to replace the worn out ("holy") pair which has worn-out tread and a huge hole in the right pair. (See, fn.#1).

This case was dismissed prematurely, even before Dehler had a chance to request discovery from Kelly. Therefore, this Court should find that Dehler established both factors, thereby proving the claim is not moot because it is capable of repetition, yet evading review. Dehler needs to be continually clothed during his incarceration at TCI and sufficiently alerted the Court of on-going clothing shortages at the TCI Quartermaster. (Dkt.#1, at ¶¶3-4; Dkt.#12, at page 5, and Exhibit C, at ¶¶6-7; Dkt.#16, at page 4, Exhibit C, at ¶¶9-11.)

**Proposition of Law No. II:**

**The original jurisdiction of an appellate court does not preclude a claim for a permanent injunction.**

The appellate court held that it could not issue a permanent injunction because, " \*\*\* [w]e would not be able to grant that form of relief because the original jurisdiction of an appellate court does not include a claim for a permanent injunction.

**Blackwell v. Bd. of Twp. Trustees, Ashtabula Twp.**, 11<sup>th</sup> Dist. No. 2003-A-0061, 2004-Ohio-2080, at ¶5." (Appx. 7, at ¶11.)

The appellate court appears to have overruled the decision which this Honorable Court decided in a similar case regarding the failure of the Warden at TCI to provide adequate clothing to its' prisoners as stated in **State ex rel. Carter v. Schotten, Warden of TCI**, (1994), 70 Ohio St.3d 89, 93, 637 NE 2d 306, 310 (R.C. 2921.44(C)(2) requires the TCI Warden to provide adequate clothing).

The lower court erroneously applied **Blackwell**.

Dehler submits that the appellate court erroneously applied the **Blackwell** case. (Appx. 7, at ¶11.) **Blackwell** is inapposite. That case involved the Relator's request to issue a "cease and desist" order. *id.*, at ¶¶2, 6-9, 12. The **Blackwell** court held that an appellate court cannot issue an injunction. *id.*, at ¶5. Dehler submits that is true, as long as the relief sought is one which prevents an action. See, Black's Law Dictionary definition of "injunction":

"A court order commanding or preventing an action."  
(Appx. 10.)

In the case at bar, Dehler requested a court order commanding an action, not preventing one, as so held in **Blackwell**. Therefore, this Court should continue to follow **Schotten, supra**, and find that an appellate court is allowed to issue a claim for a permanent injunction when a prison warden fails to provide adequate clothing to its' prisoners. Further, clarifying that an injunction does indeed cover orders commanding an action would prevent other court of appeals from wrongly applying **Blackwell** in the future.

### CONCLUSION

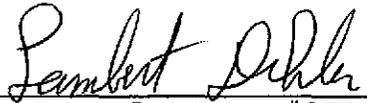
The decision below should be reversed because a writ of mandamus may issue in exceptional cases where the challenged action is too short in its duration to be fully litigated before its cessation or expiration, and (2) there is a reasonable expectation that the

same complaining party will be subject to the same action again. Dehler proved both factors in the court below. In fact, he still needs a pair of shoes to wear. (fn.#1).

The decision must also be reversed pursuant to Proposition of Law No. II, because the decision below confused the true definition of "injunction" which also includes a court order commanding an action. The lower court erred by not recognizing the distinction and thereby improperly applied the Blackwell case which dealt with a request to issue an order prohibiting certain behavior. Blackwell at ¶6.

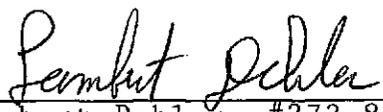
Respectfully submitted,

Lambert Dehler, Relator-  
Appellant, pro se

  
Lambert Dehler, #273-819  
Relator-Appellant, pro se

Certificate of Service

I certify that a copy of this Merit Brief was sent by ordinary U.S. mail to counsel for appellee, Ashley D. Rutherford, Assistant Attorney General, Corrections Litigation Section, 150 East Gay Street, 16<sup>th</sup> Floor, Columbus, OH, 43215, on this 1<sup>st</sup> day of July, 2009.

  
Lambert Dehler, #273-819  
Relator-Appellant, pro se

**IN THE SUPREME COURT OF OHIO**

STATE OF OHIO ex rel.	)	Case No. <b>09-1121</b>
LAMBERT DEHLER,	)	
	)	
Relator-Appellant,	)	On Appeal from the Trumbull
	)	County Court of Appeals,
-vs-	)	Eleventh Appellate District
	)	
BENNIE KELLY, WARDEN OF	)	
THE TRUMBULL CORRECTIONAL	)	Court of Appeals
INSTITUTION,	)	Case No. <b>2008-T-0062</b>
	)	
Respondent-Appellee.	)	

---

**APPENDIX**

---

Lambert Dehler, #273-819  
Trumbull Correctional Institution  
PO Box 901  
Leavittsburg, OH 44430-0901

**COUNSEL FOR RELATOR-APPELLANT, *PRO SE***

Richard Cordray, Attorney General (0038034)  
Ashley D. Rutherford, Assistant Attorney General (Counsel of Record) (0084009)  
Corrections Litigation Section  
150 East Gay Street, 16<sup>th</sup> Floor  
Columbus, OH 43215

**COUNSEL FOR RESPONDENT-APPELLEE,  
BENNIE KELLY, WARDEN OF THE TRUMBULL  
CORRECTIONAL INSTITUTION**

IN THE SUPREME COURT OF OHIO

09-1121

STATE OF OHIO ex rel. )  
LAMBERT DEHLER, )  
 )  
Relator-Appellant, )  
 )  
-vs- )  
 )  
BENNIE KELLY, WARDEN OF )  
THE TRUMBULL CORRECTIONAL )  
INSTITUTION, )  
 )  
Respondent-Appellee. )

Case No. \_\_\_\_\_

On Appeal from the Trumbull  
County Court of Appeals,  
Eleventh Appellate District

Court of Appeals  
Case No. 2008-T-0062

RECEIVED  
JUN 18 2009  
CLERK OF COURT  
SUPREME COURT OF OHIO

NOTICE OF APPEAL OF APPELLANT LAMBERT DEHLER

Lambert Dehler, #273-819  
Trumbull Correctional Institution  
PO Box 901  
Leavittsburg, OH 44430-0901

**Counsel for Relator Appellant, pro se**

FILED  
JUN 18 2009  
CLERK OF COURT  
SUPREME COURT OF OHIO

Richard Cordray, Attorney General (0038034)  
Ashley D. Rutherford, Assistant Attorney General (Counsel of Record) (0084009)  
Corrections Litigation Section  
150 East Gay Street, 16<sup>th</sup> Floor  
Columbus, OH 43215

**COUNSEL FOR RESPONDENT-APPELLEE,  
BENNIE KELLY, WARDEN OF THE TRUMBULL  
CORRECTIONAL INSTITUTION**

**Notice of Appeal of Relator-Appellant Lambert Dehler**

Appellant Lambert Dehler hereby gives notice of appeal to the Supreme Court of Ohio from the judgment of the Trumbull County Court of Appeals, Eleventh Appellate District, entered in Court of Appeals case No. **2008-T-0062** on June 1, 2009.

This case originated in the court of appeals and is a direct appeal as a matter of right.

Respectfully submitted,

Lambert Dehler  
Lambert Dehler, #273-819  
Trumbull Correctional Institution  
PO Box 901  
Leavittsburg, OH 44430-0901  
**COUNSEL FOR APPELLANT, PRO SE**

**Certificate of Service**

I certify that a copy of this Notice of Appeal, with the opinion and judgment entry from the court of appeals, and affidavit of grievance exhaustion, affidavit of prior civil actions or appeals pursuant to R.C. 2929.25 with cashier's statement, was sent by ordinary U.S. mail to counsel for appellee, Ashley D. Rutherford, Assistant Attorney General, at 150 East Gay Street, 16<sup>th</sup> Floor, Columbus, OH, 43215, on this 13<sup>th</sup> day of **June, 2009**.

Lambert Dehler  
Lambert Dehler, #273-819  
**COUNSEL FOR APPELLANT, PRO SE**

THE COURT OF APPEALS  
ELEVENTH APPELLATE DISTRICT  
TRUMBULL COUNTY, OHIO

STATE OF OHIO ex rel.  
LAMBERT DEHLER,

Relator,

- vs -

BENNIE KELLY, WARDEN OF  
THE TRUMBULL CORRECTIONAL  
INSTITUTION,

Respondent.

PER CURIAM OPINION

CASE NO. 2008-T-0062

**FILED**  
COURT OF APPEALS

JUN 01 2009

TRUMBULL COUNTY, OH  
KAREN INFANTE ALLEN, CLERK

Original Action for Writ of Mandamus.

Judgment: Writ denied.

*Lambert Dehler*, pro se, PID: 273-819, Trumbull Correctional Institution, P.O. Box 901, Leavittsburg, OH 44430-0901 (Relator).

*Richard Cordray*, Attorney General, and *Ashley D. Rutherford*, Assistant Attorney General, Corrections Litigation Section, 150 East Gay Street, 16th Floor, Columbus, OH 43215 (For Respondent).

PER CURIAM.

{¶1} This action in mandamus is presently before this court for final disposition of the summary judgment motion of respondent, Warden Bennie Kelly of the Trumbull Correctional Institution. As the sole basis for his motion, respondent maintains that the merits of the sole claim before us have become moot because a member of the prison staff has already performed the specific act which relator, Lambert Dehler, was seeking

to compel. For the following reasons, we conclude that the motion to dismiss is well-taken.

{¶2} During the entire pendency of the instant action, relator has been confined at the Trumbull Correctional Institution. In his petition for relief, relator asserted that, as the warden of the state prison, respondent had been failing to satisfy his statutory duty to provide adequate clothing to the inmates. Specifically, he alleged that the prison's quartermaster was not keeping an ample supply of various necessities, including pants and shirts. In regard to himself, relator asserted that, even though he had submitted an appropriate request, the quartermaster still had not given him a pair of properly-fitting shoes.

{¶3} After respondent had filed his answer to the mandamus petition, relator moved this court to stay the instant proceedings so that he could have the opportunity to pursue two grievances pertaining to the "clothing" issue. Pursuant to R.C. 2969.26(B), we granted the stay for a period of one hundred eighty days. At the conclusion of this time frame, relator filed a new submission in which he averred that, despite the fact that two written decisions had been issued concerning his grievances, the same problem still existed regarding the amount of clothing the quartermaster was keeping "in stock." In light of this, he requested that a permanent injunction be rendered against respondent as to this situation.

{¶4} In conjunction with his response to relator's request for additional relief, respondent has now moved for summary judgment on the entire mandamus claim. In essence, he contends that he is entitled to final judgment because his staff at the prison has already taken the necessary steps to remedy the underlying problem. In support of

this contention, respondent has attached to his motion the affidavit of Jacqueline Scott, who is the prison's business administrator. In this affidavit, Scott first avers that, as part of her duties, she oversees the work of the quartermaster. She further asserts that, in September 2008, the quartermaster gave relator a new pair of shoes in the size which he had previously requested.

{¶5} In responding to the motion for summary judgment, relator has not denied that, subsequent to the filing of this case, he received a pair of properly-fitting shoes. In addition, he has admitted that, even though there were certain delays in the process, he received other items of clothing which he had requested. Despite this, relator maintains that the instant action should still go forward because the quartermaster's procedure for the distribution of clothing remains flawed in two respects. First, he again contends that the prison does not keep a sufficient supply of clothing on hand to be able to meet the immediate needs of the inmates. Second, he argues that the prison does not have a system under which an inmate can place his name on a waiting list and be ensured that he will receive the requested item when the supplies are ultimately replenished. As to the latter point, relator states that the quartermaster does not post a notice indicating when new supplies have been delivered, and that it is merely a question of luck whether an inmate will submit a new request at a time when the items are in stock.

{¶6} In support of the foregoing two points, relator has attached to his response the affidavits of two fellow inmates, Russell Stokes and James Parks. Our review of the two affidavits shows that they do not delineate any information concerning the alleged problems relator has had in obtaining clothing. Instead, the affidavits only refer to the separate problems which Stokes and Parks have supposedly encountered in attempting

to deal with the quartermaster.

{¶7} In relation to Stokes and Parks, this court would note that they have never been named as parties to the instant matter. More importantly, we would also note that relator's mandamus petition did not contain any allegations indicating that he sought to maintain this case as a class action under Civ.R. 23. In considering a similar situation, the Supreme Court of Ohio has concluded that when a mandamus petition fails to set forth any of the basic allegations for a class action, the proceeding must be viewed as an "individual" action for the benefit of the named relator only. See *State ex rel. Ogan v. Teater* (1978), 54 Ohio St.3d 235, 247. In other words, unless a mandamus case has been brought as a class action, mandamus relief cannot be granted to any other person except the named relator.

{¶8} In light of the *Ogan* precedent, the alleged "clothing" problems of Stokes and Parks cannot be resolved in the context of the instant proceeding. That is, because the allegations in the instant petition are limited to relator, only his alleged problems in obtaining proper clothing are before us for resolution. Moreover, since the allegations in the affidavits of Stokes and Parks pertain solely to their respective "clothing" problems, they are irrelevant for purposes of this litigation.

{¶9} As to relator, the averments in his separate affidavit essentially confirm the basic assertions in respondent's summary judgment motion; i.e., at this time, relator has received all of the clothing items which he requested from the prison quartermaster. In fact, there is no factual dispute that relator was given a pair of properly-fitting shoes shortly after the commencement of this action. Accordingly, even if relator could show that respondent is generally failing to satisfy his statutory duty under R.C. 2921.44(C) to

provide adequate clothing to the prison population, such a finding would not be directly beneficial to him because he has already obtained the exact remedy which he sought in maintaining this action. To this extent, the final merits of relator's mandamus claim are now moot.

{¶10} As this court has noted on numerous occasions, a writ of mandamus is generally employed as a means of requiring a public official to complete an act which he is legally obligated to perform. See, e.g., *Penko v. Mitrovich*, 11th Dist. No. 2003-L-191, 2004-Ohio-6326, at ¶5. As a result, if the public official actually performs the desired act before the final merits of the mandamus claim are addressed, the case itself will be considered moot and should not go forward. *Cunningham v. Lucci*, 11th Dist. No. 2006-L-052, 2006-Ohio-4666, at ¶9. Pursuant to this legal precedent, respondent is entitled to prevail in the instant matter because the employees under his control have already given relator the specific clothing items he sought to obtain.

{¶11} As a final point, this court would again note that, as part of his submissions in this action, relator also requested the issuance of a permanent injunction against respondent and his staff. Even if the merits of this action had not become moot, we would not be able to grant that form of relief because the original jurisdiction of an appellate court does not include a claim for a permanent injunction. *Blackwell v. Bd. of Twp. Trustees, Ashtabula Twp.*, 11th Dist. No. 2003-A-0061, 2004-Ohio-2080, at ¶5.

{¶12} "Under Civ.R. 56(C), the moving party in a summary judgment exercise is entitled to prevail when he can establish that: (1) there are no genuine factual disputes remaining to be litigated; (2) he is entitled to judgment as a matter of law; (3) the evidentiary materials are such that, even when those materials are interpreted in a way

which is most favorable to the non-moving party, a reasonable person could only come to a conclusion adverse to the non-moving party.” *Sper v. Gansheimer*, 11th Dist. No. 2003-A-0124, 2004-Ohio-2443, at ¶7. In applying the foregoing standard to the parties’ respective evidentiary materials, this court concludes that the granting of summary judgment is warranted as to relator’s sole mandamus claim. Specifically, respondent has demonstrated that, pursuant to the undisputed facts, he is entitled to prevail as a matter of law because the merits of the underlying “clothing” dispute have already been resolved and, accordingly, are moot.

{¶13} Consistent with the foregoing discussion, respondent’s motion for summary judgment is granted. It is the order of this court that the writ of mandamus is denied, and final judgment is hereby entered in favor of respondent in regard to relator’s entire mandamus claim.

MARY JANE TRAPP, P.J., DIANE V. GRENDALL, J., COLLEEN MARY O’TOOLE, J.,  
concur.

STATE OF OHIO )  
 )SS.  
COUNTY OF TRUMBULL )

IN THE COURT OF APPEALS  
ELEVENTH DISTRICT

STATE OF OHIO ex rel.  
LAMBERT DEHLER,

JUDGMENT ENTRY

Relator,  
- vs -

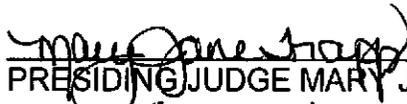
CASE NO. 2008-T-0062

BENNIE KELLY, WARDEN OF  
THE TRUMBULL CORRECTIONAL  
INSTITUTION,

Respondent.

For the reason stated in the Per Curiam Opinion of this court, respondent's motion for summary judgment is granted. It is the order of this court that the writ of mandamus is denied, and final judgment is hereby entered in favor of respondent as to relator's entire mandamus claim.

Pursuant to this judgment entry, all other pending motions are hereby overruled as moot.

  
\_\_\_\_\_  
PRESIDING JUDGE MARY JANE TRAPP

  
\_\_\_\_\_  
JUDGE DIANE V. GRENDALL

  
\_\_\_\_\_  
JUDGE COLLEEN MARY O'TOOLE

**FILED**  
COURT OF APPEALS

JUN 01 2009

TRUMBULL COUNTY, OH  
KAREN INFANTE ALLEN, CLERK

*Corporations* §§ 311-313, 315, 325-326; *Statutes* §§ 108-114, 116-136, 139-144.]

*in itinere* (in i-tin-ar-ee), *adv.* [Latin] *Hist.* On a journey; on the way. • This term referred to the justices in eyre (justices *in itinere*) and to goods en route to a buyer. See EYRE; IN TRANSITU.

*initium possessionis* (i-nish-ee-əm pə-zes[h]-ee-oh-nis). [Latin "the beginning of the possession"] *Hist.* The right by which possession was first held.

*injoin*, *vb.* Archaic. See ENJOIN.

*in iudicio* (in joo-dish-ee-oh), *adv.* & *adj.* [Latin] Before the judge. • The phrase is still sometimes used. Originally, in Roman law, *in iudicio* referred to the second stage of a Roman formulary trial, held before a private judge known as a *iudex*. — Also termed *apud iudicem*. See FORMULA (1). Cf. IN JURE (2).

*in iudicio possessorio* (in joo-dish-ee-oh pah-ses-sor-ce-oh). [Law Latin] *Hist.* In a possessory action.

*injunction* (in-jəŋk-shən), *n.* A court order commanding or preventing an action. • To get an injunction, the complainant must show that there is no plain, adequate, and complete remedy at law and that an irreparable injury will result unless the relief is granted. — Also termed *writ of injunction*. See IRREPARABLE-INJURY RULE. [Cases: Injunction ⊕1. C.J.S. *Injunctions* §§ 2-4, 12, 14, 22, 24, 166.]

"In a general sense, every order of a court which commands or forbids is an injunction; but in its accepted legal sense, an injunction is a judicial process or mandate operating *in personam* by which, upon certain established principles of equity, a party is required to do or refrain from doing a particular thing. An injunction has also been defined as a writ framed according to the circumstances of the case, commanding an act which the court regards as essential to justice, or restraining an act which it esteems contrary to equity and good conscience; as a remedial writ which courts issue for the purpose of enforcing their equity jurisdiction; and as a writ issuing by the order and under the seal of a court of equity." 1 Howard C. Joyce, *A Treatise on the Law Relating to Injunctions* § 1, at 2-3 (1909).

*affirmative injunction*. See *mandatory injunction*.

*ex parte injunction*. A preliminary injunction issued after the court has heard from only the moving party. — Also termed *temporary restraining order*.

*final injunction*. See *permanent injunction*.

*head-start injunction*. *Trade secrets*. An injunction prohibiting the defendant from using a trade secret for a period equal to the time between the date of the secret's theft and the date when the secret became public. • So named since that period is the "head start" that the defendant unfairly gained over the rest of the industry. [Cases: Injunction ⊕189. C.J.S. *Injunctions* §§ 6, 235-236.]

*injunction pendente lite*. See *preliminary injunction*.

*interlocutory injunction*. See *preliminary injunction*.

*mandatory injunction*. An injunction that orders an affirmative act or mandates a specified course of conduct. — Also termed *affirmative injunction*. Cf. *prohibitory injunction*. [Cases: Injunction ⊕5, 133. C.J.S. *Injunctions* §§ 3, 8-9, 81.]

*permanent injunction*. An injunction granted after a final hearing on the merits. • Despite its name, a permanent injunction does not necessarily last forever. — Also termed *perpetual injunction*; *final in-*

*junction*. [Cases: Injunction ⊕1. C.J.S. *Injunctions* §§ 2-4, 12, 14, 22, 24, 166.]

*perpetual injunction*. See *permanent injunction*.

*preliminary injunction*. A temporary injunction issued before or during trial to prevent an irreparable injury from occurring before the court has a chance to decide the case. • A preliminary injunction will be issued only after the defendant receives notice and an opportunity to be heard. — Also termed *interlocutory injunction*; *temporary injunction*; *provisional injunction*; *injunction pendente lite*. Cf. *ex parte injunction*; TEMPORARY RESTRAINING ORDER [Cases: Injunction ⊕132. C.J.S. *Injunctions* §§ 4-5, 17, 166.]

*preventive injunction*. An injunction designed to prevent a loss or injury in the future. Cf. *reparative injunction*.

*prohibitory injunction*. An injunction that forbids or restrains an act. • This is the most common type of injunction. Cf. *mandatory injunction*.

*provisional injunction*. See *preliminary injunction*.

*quia-timet injunction* (kwī-ə tt-mēt or kwē-ə-tim-ēt). [Latin "because he fears"] An injunction granted to prevent an action that has been threatened but has not yet violated the plaintiff's rights. See QUILA TIMET.

*reparative injunction* (ri-par-ə-tiv). An injunction requiring the defendant to restore the plaintiff to the position that the plaintiff occupied before the defendant committed a wrong. Cf. *preventive injunction*.

*special injunction*. *Hist.* An injunction in which the prohibition of an act is the only relief ultimately sought, as in prevention of waste or nuisance.

*temporary injunction*. See *preliminary injunction*.

*injunction bond*. See BOND (2).

*injunctive*, *adj.* That has the quality of directing or ordering; of or relating to an injunction. — Also termed *injunctional*.

*in jure* (in joor-ee). [Latin "in law"] 1. According to the law. 2. *Roman law*. Before the praetor or other magistrate. • *In jure* referred to the first stage of a Roman formulary trial, held before the praetor or other judicial magistrate for the purpose of establishing the legal issues and their competence. Evidence was taken in the second stage, which was held before a *iudex*. See FORMULA (1). Cf. IN JUDICIO.

*in jure alterius* (in joor-ee al-teer-ee-əs), *adv.* [Latin] In another's right.

*in jure cessio* (in joor-ee sesh-ee-oh). [Latin "a surrender in law"] *Roman law*. A fictitious trial held to transfer ownership of property; a collusive claim to formally convey property, esp. incorporeal property, by a court's assignment of ownership. • At trial, the transferee appeared before a praetor and asserted ownership of the property. The actual owner also appeared, but did not contest the assertion, and so allowed the transfer of the property to the plaintiff. *In jure cessio* was most often used to convey incorporeal property. — Also spelled *in jure cessio*.

Black's Law Dictionary, 8th Edition (2004)