

**ORIGINAL**

**IN THE  
SUPREME COURT OF OHIO**

**State of Ohio ex. rel. DANIEL J.  
WILLIAMS**

:  
:  
:

**CASE NO. 2011-0959**

**Relator-Appellant**

**vs.**

**On Appeal of Right from the  
Hamilton County Court of Appeals  
First Appellate District of Ohio**

**HON. JON SIEVE, JUDGE  
HAMILTON COUNTY COURT OF  
COMMON PLEAS DIVISION OF  
DOMESTIC RELATIONS**

:  
:  
:

**Court of Appeals Case No. C-1100179**

**Respondent-Appellee**

:

**Case Originated in the Court of Appeals**

**MERIT BRIEF OF RESPONDENT-APPELLEE  
HON. JON SIEVE, JUDGE, HAMILTON COUNTY COURT OF COMMON PLEAS  
DIVISION OF DOMESTIC RELATIONS  
HAMILTON COUNTY, OHIO**

Daniel J. Williams  
11318 Kenshire Drive  
Cincinnati, Ohio 45102  
(513) 825.1049

Pro Se Relator-Appellant

JOSEPH T. DETERS  
Prosecuting Attorney  
Hamilton County, Ohio

Charles W. Anness (0082194)  
Assistant Prosecuting Attorney  
230 E. Ninth Street, Suite 4000  
Cincinnati OH 45202-2174  
DDN: (513) 946-3273  
FAX: (513) 946-3018  
[charles.anness@hcpros.org](mailto:charles.anness@hcpros.org)

Attorney for Respondent-Appellee

**FILED**  
**AUG 10 2011**  
**CLERK OF COURT**  
**SUPREME COURT OF OHIO**

**TABLE OF CONTENTS**

|   | <b><u>PAGE #</u></b> |
|---|----------------------|
| <b>TABLE OF AUTHORITIES .....</b>   | <b>-ii-</b>          |
| <b>STATEMENT OF FACTS .....</b>   | <b>-1-</b>           |
| <b>ARGUMENT .....</b>   | <b>-2-</b>           |
| <b>    PROPOSITION OF LAW I - A petition for a Writ of Mandamus must be dismissed unless a relator demonstrates that (1) the relator has a clear legal right to the relief prayed for, (2) respondent is under a corresponding clear legal duty to perform the requested acts, and (3) relator has no plain and adequate legal remedy. ....</b> | <b>-2-</b>           |
| <b>    PROPOSITION OF LAW II - A writ of mandamus cannot control judicial discretion per R.C. 2731.30 .....</b>   | <b>-4-</b>           |
| <b>    PROPOSITION OF LAW III - Mandamus cannot correct errors and procedural irregularities .....</b>  | <b>-4-</b>           |
| <b>CONCLUSION .....</b>   | <b>-5-</b>           |
| <b>CERTIFICATE OF SERVICE .....</b>   | <b>-6-</b>           |

## TABLE OF AUTHORITIES

### AUTHORITIES CITED:

|  |   |
|--|---|
| R.C. 2731.01 .....   | 2 |
| R.C. 2731.03 .....   | 4 |
| R.C. 2731.05 .....   | 3 |
| Civ. R. 53(D)(6) .....   | 3 |
| <i>In re Disqualification of Wilson</i> , 77 Ohio St. 3d 1250, 674 N.E.2d 360 (1996) .....   | 3 |
| <i>State ex rel. Harris v. Rhodes</i> (1978), 54 Ohio St.2d 41, 374 N.E.2d 641.....  | 2 |
| <i>State ex rel. Hunter v. Patterson</i> , 75 Ohio St. 3d 512, 664 N.E.2d 524 .....  | 3 |
| <i>State ex rel. Myocare Nursing Home, Inc. v. Cuyahoga Cty. Court of Common Pleas</i> ,<br>145 Ohio App.3d 22, 761 N.E.2d 1072 (8 Dist. 2001) .....     | 4 |
| <i>State ex rel. Ney v. Niehaus</i> (1987), 33 Ohio St.3d 118, 515 N.E. 2d 914 .....   | 4 |
| <i>State ex rel. Ohio Assn. of Pub. School Emp./AFSCME, AFL-CIO v. State Emp.</i><br><i>Relations Bd.</i> (1992), 64 Ohio St.3d 149, 593 N.E.2d 288..... | 2 |
| Article IV of the Constitution of the State of Ohio.....   | 2 |

**IN THE  
SUPREME COURT OF OHIO**

|   |   |  |
|---|---|--|
| <b>State of Ohio ex. rel. DANIEL J.<br/>WILLIAMS</b>  | : | <b>CASE NO. 2011-0959</b>  |
|   | : |  |
| <b>Relator-Appellant</b>  | : | <b>On Appeal of Right from the<br/>Hamilton County Court of Appeals<br/>First Appellate District of Ohio</b> |
| <b>vs.</b>  | : |  |
| <b>HON. JON SIEVE, JUDGE<br/>HAMILTON COUNTY COURT OF<br/>COMMON PLEAS DIVISION OF<br/>DOMESTIC RELATIONS</b> | : | <b>Court of Appeals Case No. C-1100179</b>   |
|   | : | Case Originated in the Court of Appeals  |
| <b>Respondent-Appellee</b>  | : | <b>MERIT BRIEF OF RESPONDENT-<br/>APPELLEE</b>   |
|   | : |  |

**STATEMENT OF FACTS**

This case has its origins in the Hamilton County Domestic Relations Court case of *Stacia E. Perry v. Daniel J. Williams, Jr.*, case number DR1001444, before Hon. Judge Jon Sieve.

On April 1, 2011, Relator-Appellant Williams filed original actions, petitions for writ of mandamus and procedendo, in the First District Court of Appeals, case numbers C1100179 and C1100180. Williams sought the writ of mandamus in response to an entry from Judge Sieve denying his motion to disqualify the Magistrate hearing the underlying domestic relations action. On May 4, 2011, the Court of Appeals dismissed Williams's petitions. Williams filed an application for reconsideration a week later. This application was not well taken by the Court of Appeals and overruled on June 2, 2011. Williams now brings this action as an appeal of right. Williams claims that the Court of Appeals dismissed his petition for writ in error.

## ARGUMENT

In this appeal Relator Williams argues that he meets the requirements for the issuance of a writ of mandamus as “there has been a due process procedural law violation,” Judge Sieve was “under a clear and legal duty to perform the act of admitting evidence,” and that no adequate legal remedy exists. (Memorandum in support of jurisdiction, 6).

For the following reasons, the Court should affirm the decision of the First District Court of Appeals.

### FIRST PROPOSITION OF LAW

**For a writ of mandamus to issue, a relator demonstrates that (1) the relator has a clear legal right to the relief prayed for, (2) respondent is under a corresponding clear legal duty to perform the requested acts, and (3) relator has no plain and adequate legal remedy.**

A writ of mandamus is an extraordinary relief which is provided for both in Article IV of the Ohio Constitution as well as section 2731 of the Ohio Revised Code. Section 2731.01 of the Ohio Revised Code states,

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.

The Supreme Court of Ohio has enumerated the requirements for a writ of mandamus as, “relator must show (1) that he has a clear legal right to the relief prayed for, (2) that respondents are under a clear legal duty to perform the acts, and (3) that relator has no plain and adequate remedy in the ordinary course of the law.” *State ex rel. Harris v. Rhodes* (1978), 54 Ohio St.2d 41, 42, 374 N.E.2d 641, citing *State ex rel. National City Bank, v. Bd. of Education* (1977), 52 Ohio St.2d 81, 369 N.E.2d 1200. See also *State ex rel. Ohio Assn. Of Pub. School Emp./AFSCME, AFL-CIO v. State Emp. Relations Bd.* (1992), 64 Ohio St.3d 149, 151, 593 N.E.2d 288.

Williams does not have a clear legal right to the relief prayed for, nor does Judge Sieve have a clear legal duty to perform the acts demanded. Williams claims that he has a right to oral arguments and an evidentiary hearing on a motion to disqualify a magistrate. Further, Williams claims that Judge Sieve has a clear legal duty to hold oral arguments and an evidentiary hearing for the motion to disqualify the magistrate.<sup>1</sup> The Supreme Court has held, “the removal of a magistrate is within the discretion of the judge who referred the matter to the magistrate.” *In re Disqualification of Wilson*, 77 Ohio St. 3d 1250, 1251, 674 N.E.2d 360 (1996)<sup>2</sup>, see also Civ. R. 53(D)(6). “Judicial discretion” has been defined by the Supreme Court, as:

...the option which a judge may exercise between the doing and not doing of a thing which cannot be demanded as an absolute legal right, guided by the spirit, principles and analogies of the law, and founded upon the reason and conscience of the judge, to a just result in the light of the particular circumstances of the case.

*Krupp v. Poor*, 24 Ohio St. 2d 123, 126-27, 265 N.E.2d 268, 271 (1970), citing *State v. Winne* (1952), 21 N.J.Super. 180, 207, 91 A.2d 65.

From the Supreme Court’s holdings, it is clear that when presented with a motion to disqualify a magistrate, a judge has the option of hearing oral arguments and conducting an evidentiary hearing before ruling, or ruling on the motion after review of the record and filings in the matter. In this case, Judge Sieve exercised the latter option.<sup>3</sup> The motion in question was within Judge Sieve’s discretion and Williams is not entitled to a writ of mandamus.

A writ of mandamus is not a substitute for appeal and a direct appeal is an adequate remedy at law precluding the issuance of a writ of mandamus. See R.C. 2731.05 and *State ex rel.*

---

<sup>1</sup> Williams’s claims are loosely based on the due process clause of the 14<sup>th</sup> Amendment to the U.S. Constitution. Williams can cite no specific statute or case law which requires specific proceedings for motions to disqualify a magistrate, or identifies the disqualification of a magistrate as a “property interest.”

<sup>2</sup> In addition, the Supreme Court in *Wilson* held, “[d]isagreement or dissatisfaction with legal rulings is not grounds for disqualification.” *Id.*, citing *In re Disqualification of Murphy* (1988), 36 Ohio St.3d 605, 522 N.E.2d 459.

<sup>3</sup> Williams’s attempted disqualification of Judge Sieve was denied by the Supreme Court on March 16, 2011, under case number 11-AP-028.

*Hunter v. Patterson*, 75 Ohio St. 3d 512, 514, 664 N.E.2d 524, 526. As Relator may appeal once a final judgment is rendered, Relator is not entitled to a writ of mandamus. The Court should affirm the decision of the Court of Appeals.

#### SECOND PROPOSITION OF LAW

**A writ of mandamus cannot control judicial discretion per R.C. 2731.30.**

R.C. 2731.03 clearly states, “the writ of mandamus may require an inferior tribunal to exercise its judgment, or proceed to the discharge of any of its functions, but it cannot control judicial discretion.” Judicial discretion cannot be controlled by a writ of mandamus even if that discretion is grossly abused. *State ex rel. Ney v. Niehaus* (1987), 33 Ohio St.3d 118, 515 N.E. 2d 914. Williams claims that Judge Sieve unjustly denied his motion without Williams having an opportunity to present oral arguments.

It is absolutely clear that Williams is not pleased with the ruling of Judge Sieve and is seeking a writ to control judicial discretion in direct violation of the Revised Code. The Court should affirm the decision of the Court of Appeals.

#### THIRD PROPOSITION OF LAW

**Mandamus cannot correct errors and procedural irregularities.**

In addition, mandamus does not lie to correct errors and procedural irregularities in the course of a case. *State ex rel. Myocare Nursing Home, Inc. v. Cuyahoga Cty. Court of Common Pleas*, 145 Ohio App.3d 22, 761 N.E.2d 1072 (8 Dist. 2001). As Williams’s chief complaint is an error or procedural irregularity, namely Judge Sieve ruling on his motion without oral

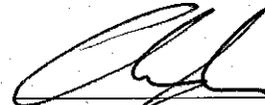
argument, Williams is not entitled to a writ of mandamus.<sup>4</sup> The appropriate remedy for errors and procedural irregularities is appeal. The Court should affirm the decision of the Court of Appeals.

#### CONCLUSION

For the foregoing reasons, the Judgment of the First District Court of Appeals denying the relief sought by Relator-Appellant Williams should be affirmed.

Respectfully submitted,

JOSEPH T. DETERS  
PROSECUTING ATTORNEY  
HAMILTON COUNTY, OHIO



---

Charles W. Anness, 0082194  
Assistant Prosecuting Attorney  
230 E. Ninth Street, Suite 4000  
Cincinnati, Ohio 45202-2174  
513/946-3273  
FAX 513/946-3018

ATTORNEY FOR RESPONDENT- APPELLEE

---

<sup>4</sup> Williams's "memorandum in support of jurisdiction" repeatedly states that he argues "only that there has been a due process procedural law violation in not allowing evidence to be presented at a court scheduled oral hearing," or "only that there has been a procedural violation in the due process." (Id. 6, 8) As he admits that he seeks mandamus "only" to correct a procedural error, he is not entitled to the relief sought.

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Merit Brief of Respondent-Appellee  
was served by regular U.S. Mail this 27<sup>th</sup> day of June, 2011 on:

Daniel J. Williams, Jr.  
11318 Kenshire Drive  
Cincinnati, Ohio 45240



---

Charles W. Anness, 0082194  
Assistant Prosecuting Attorney