

IN THE SUPREME COURT OF OHIO

STATE OF OHIO, EX REL.
RONALD BLOODWORTH,

Relator,

v.

THE TENTH DISTRICT COURT OF
APPEALS,

Respondents.

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: Case No. 2012-1027
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: Original Action in Mandamus
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**MOTION TO DISMISS OF RESPONDENT
THE TENTH DISTRICT COURT OF APPEALS**

RONALD BLOODWORTH
#366-695
Toledo Correctional Institution
2001 East Central Avenue
P.O. Box 80033
Toledo, Ohio 43608

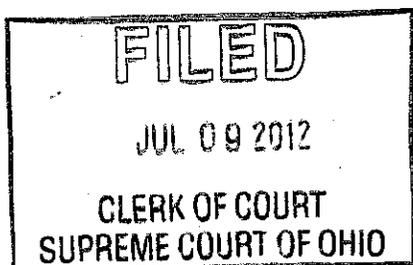
Relator

MICHAEL DEWINE (0009181)
Ohio Attorney General

ERIN BUTCHER-LYDEN (0087278)
*Counsel of Record

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*Counsel for Respondent
The Tenth District Court of Appeals*



MEMORANDUM IN SUPPORT OF RESPONDENT'S MOTION TO DISMISS

I. INTRODUCTION

Relator Ronald Bloodworth commenced this action for a writ of mandamus to compel Respondent the Tenth District Court of Appeals to rule on Relator's application for leave to proceed under R.C. 2323.52(F)(2). Because Relator fails to articulate any facts demonstrating that Respondent either refused to enter judgment or unnecessarily delayed proceeding to judgment, Relator's present action is moot and Respondent respectfully asks that this Court dismiss his complaint.

II. STATEMENT OF FACTS

On October 31, 2011, the Franklin County Court of Common Pleas found Relator to be a vexatious litigator pursuant to R.C. 2323.52. Relator's Compl. ¶ 1; *Ohio Attorney General v. Bloodworth*, Franklin Co. Case No. 11CVH-01-265. On January 26, 2012, in order to appeal a decision in his Court of Claims case, Relator filed an application for leave to proceed under R.C. 2323.52(F)(2) in the Tenth District Court of Appeals. Relator's Compl. ¶ 6; Relator's Exhibit A (*Bloodworth v. Ohio Dept. of Rehabilitation and Correction*, 10th Dist. No. 12-AP-01-0064). On June 14, 2012, Relator filed this mandamus action claiming that Respondent has failed to rule upon Relator's application for leave to proceed. On July 6, 2012, the Tenth District Court of Appeals denied his application for leave to proceed. *Bloodworth v. Ohio Dept. of Rehabilitation and Correction*, 10th Dist. No. 12-AP-01-0064, attached as Respondent's Exhibit 1.¹ Respondent's entry of July 6, 2012 renders Relator's action moot.

¹ A court may take judicial notice of judicial entries in deciding whether a case is moot without converting a 12(B)(6) motion to a motion for summary judgment. *State ex rel. Womack v. Marsh*, 128 Ohio St.3d 303, 2011-Ohio-229, 943 N.E.2d 1010 at ¶ 8.

III. ARGUMENT

A. Standard of Review

A motion to dismiss for failure to state a claim upon which a court can grant relief challenges the sufficiency of the complaint itself, not evidence outside of the complaint. *Volbers-Klarich v. Middletown Mgmt, Inc.*, 125 Ohio St.3d 494, 2010-Ohio-2057, 929 N.E.2d 434 at ¶ 11. When considering the factual allegations of the complaint, a court must accept incorporated items as true and “the plaintiff must be afforded all reasonable inferences possibly derived therefrom.” *Mitchell v. Lawson Milk Co.*, 40 Ohio St.3d 190, 192, 532 N.E.2d 753 (1988). Finally, a court must find that the plaintiff’s complaint does not provide relief on any possible theory. Civ. R. 12(B)(6); *State Auto. Mut. Ins. Co. v. Titanium Metals Corp.*, 108 Ohio St.3d 540, 2006-Ohio-1713, 844 N.E.2d 1199 at ¶ 8.

B. Relator is not entitled to relief in mandamus.

In this case, Relator requests a writ of mandamus to compel Respondent to issue a ruling on his application for leave to proceed.² Regardless of how he captions his request for extraordinary relief, he is not entitled to a remedy from this Court. In order for a writ of mandamus to issue, three criteria must first be met: (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. *State ex rel. Ney v. Niehaus*, 33 Ohio St.3d 118, 515 N.E.2d 914 (1987). Relator’s complaint fails to meet these requirements.

A case is moot “when the issues presented are no longer ‘live’ or the parties lack a legally cognizable interest in the outcome.” *State ex rel. Gaylor, Inc. v. Goodenow*, 125 Ohio St.3d 407, 2010-Ohio-1844, 928 N.E.2d 728 at ¶ 10 (internal citations omitted). Additionally, while considering actions for extraordinary writs, “a court is not limited to considering the facts and

² A writ of procedendo “is the more appropriate means to remedy an inferior court’s refusal or failure to timely dispose of a pending action.” *State ex rel. Atkins v. Hoover*, 97 Ohio St.3d 76, 2002-Ohio-5313, 776 N.E.2d 99 at ¶ 7.

circumstances at the time that the writ was requested but can consider the facts and conditions at the time that entitlement to the writ is considered.” *State ex rel. Howard v. Skow*, 102 Ohio St.3d 423, 2004-Ohio-3652, 811 N.E.2d 1128, at ¶ 9. Further, mandamus will not issue to compel a vain act. *State ex rel. Moore v. Malone*, 96 Ohio St.3d 417, 2002-Ohio-4821, 775 N.E.2d 812 at ¶ 38. This Court will not issue a writ of mandamus when the act has already been performed. *State ex rel. Nat’l City Bank v. Maloney*, 103 Ohio St.3d 93, 2004-Ohio-4437, 814 N.E.2d 58 at ¶ 10.

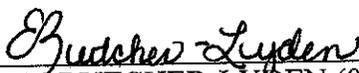
Relator inappropriately requests a writ of mandamus compelling Respondent to fulfill a duty that has already been performed. Judgment was entered on Relator’s application for leave on July 6, 2012 (Respondent’s Exhibit 1). No further issues remain unresolved before Respondent in Relator’s case. Relator’s action is therefore moot and must fail.

IV. CONCLUSION

For the foregoing reasons, Respondent respectfully asks this Court to dismiss Relator’s complaint.

Respectfully submitted,

MICHAEL DEWINE (0009181)
Ohio Attorney General


ERIN BUTCHER-LYDEN (0087278)
*Counsel of Record
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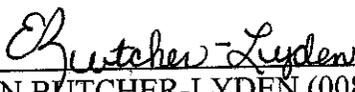
*Counsel for Respondent
The Ninth District Court of Appeals*

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing *Motion to Dismiss* was served by regular U.S. mail, postage prepaid, on July 9 2012, upon the following:

RONALD BLOODWORTH
#366-695
Toledo Correctional Institution
2001 East Central Avenue
P.O. Box 80033
Toledo, Ohio 43608

Relator



ERIN BUTCHER-LYDEN (0087278)
Assistant Attorney General

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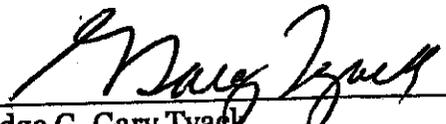
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FRANKLIN CO. OHIO
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CLERK OF COURTS

Ronald Bloodworth, :
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 Plaintiff-Appellant, :
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 v. :
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 Department of Rehabilitation and :
 Correction, :
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 Defendant-Appellee. :

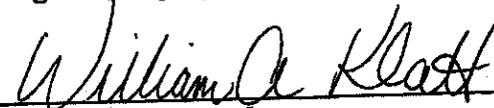
No. 12AP-64
(REGULAR CALENDAR)

JOURNAL ENTRY OF DISMISSAL

On January 26, 2012, appellant filed a notice of appeal together with an application for leave to proceed with the appeal despite his status as a "vexatious litigator¹." Having reviewed appellant's application, his notice of appeal, and the trial court case file, we conclude that there are no reasonable grounds for allowing appellant to proceed with this appeal. Accordingly, appellant's application to proceed is denied and this appeal is sua sponte dismissed.



Judge G. Gary Tyack



Judge William A. Klatt



Judge Julia L. Dorrian

¹ Appellant was found to be a vexatious litigator for purposes of R.C. 2323.52 by the Franklin County Court of Common Pleas in an order filed on October 31, 2011.