

**IN THE SUPREME COURT OF OHIO**

**State of Ohio ex rel.  
LARRY KLAYMAN,**

Relator,

v.

**CUYAHOGA COUNTY COURT  
OF COMMON PLEAS, et al,**

Respondents.

:  
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:  
: Case No. 2013-0296  
:  
: Original Action in Mandamus  
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**MOTION TO DISMISS OF RESPONDENT  
EIGHTH DISTRICT COURT OF APPEALS**

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*Relator*

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MAR 13 2013  
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SUPREME COURT OF OHIO

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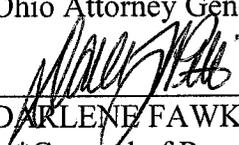
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Pursuant to Sup. Ct. Prac. R. 12.01, 12.04(A) and Civ.R. 12(B)(6), Respondent the Eighth District Court of Appeals hereby moves this Court to dismiss Relator’s petition for a writ of mandamus. A memorandum in support is attached.

Respectfully submitted,

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**MEMORANDUM IN SUPPORT OF RESPONDENT**  
**EIGHTH DISTRICT COURT OF APPEAL'S MOTION TO DISMISS**

**I. INTRODUCTION**

Relator Larry Klayman seeks a writ of mandamus against Respondent the Eighth District Court of Appeals vacating its decision and ordering that it find that Relator does not owe child support. As argued below, Relator states no claims against Respondent the Eighth District Court of Appeals for which this Court may grant him relief. Accordingly, Respondent the Eighth District Court of Appeals respectfully asks this Court to dismiss Relator's complaint against it.

**II. STATEMENT OF FACTS**

In 2007, Relator filed a lawsuit in Cuyahoga County Court of Common Pleas, Domestic Relations Division (case number DR-07-316840) against his ex-wife to modify the custody arrangement of their two minor children. Relator's Complaint, p. 2. A magistrate dismissed Relator's Motion to Allocate Parental Rights and Responsibilities and awarded Relator's ex-wife attorney fees. Relator's Exhibit 2. A judge adopted the magistrate's findings and ordered Relator to pay \$325,000.00 in attorney fees. Relator's Ex. 4. The judge also found that Relator was in contempt of court for failure to pay child support, noting that he was in arrears for \$47,600.90 and had failed to pay his children's school tuition. Relator's Ex. 3.

Relator appealed these two judgment entries. On July 26, 2012, Respondent the Eighth District Court of Appeals overruled Relator's assignments of error, affirming the lower court judgments finding Relator in contempt and denying his motion to modify parental rights. Relator's Ex. 5; *Klayman v. Luck*, 8th Dist. Nos. 97074 and 97075, 2012-Ohio-3354. Respondent the Eighth District Court of Appeals denied Relator's request for rehearing on September 25, 2012. Relator's Ex. 6. Relator appealed to the Ohio Supreme Court (case number 2012-1771), which declined jurisdiction on January 23, 2013. Relator's Ex. 7.

On February 14, 2013, Relator filed this request for a writ of mandamus, asking this Court to reconsider his arguments that the Respondent the Eighth District Court of Appeals and the Cuyahoga County Court of Common Pleas erred in their respective determinations in his custody battle with his ex-wife. Because Relator fails to state a claim for relief against the Eighth District Court of Appeals, this Court should dismiss Relator's request for mandamus.

### **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**

A writ of mandamus will issue only where three requirements are 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) the relator must have no adequate remedy at law. *State ex rel. Van Gundy v. Indus. Comm.*, 111 Ohio St.3d 395, 2006-Ohio-5854, 856 N.E.2d 951, ¶ 13, citing *State ex rel. Luna v. Huffman*, 74 Ohio St.3d 486, 487, 659 N.E.2d 1279 (1996).

Relator, however, meets none of the requirements for a writ of mandamus to issue. First, Relator has no legal right to have Respondent the Eighth District vacate a decision of a lower court awarding attorney fees and finding him in contempt. Respondent the Eighth District addressed Relator's argument regarding the choice-of-law clause in its decision and found that it did not apply to modifications of parental rights. See Relator's Ex. 5. Although Relator disagrees with the Eighth District's analysis, Relator does not have a legal right to have an appellate court agree with his interpretation of the law. *State ex rel. Avery v. Union County Court of Common Pleas*, 125 Ohio St.3d 35, 2010-Ohio-1427, 925 N.E.2d 969, ¶1, quoting *State ex rel. Dreamer v. Mason*, 115 Ohio St.3d 190, 2007-Ohio-4789, 874 N.E.2d 510, ¶12, ("Mandamus will not lie to control judicial discretion, even if that discretion is abused."); R.C. 2731.03.

Second, Respondent has no legal duty to grant Relator the relief he requests. Relator argues that Respondent the Eighth District Court of Appeals owes him a legal duty of "due process and equal protection of the laws before having his children taken away from him and having to pay the attorneys fees incorrectly awarded to [Luck]." Relator's Compl., p. 20. Respondent the Eighth District does not owe Relator a legal duty to rule in his favor, which is what he is actually seeking. A writ of mandamus will not issue to control judicial discretion. *Avery*, at ¶1; R.C. 2731.03.

Finally, Relator has an adequate remedy at law, which he has already exercised. An appeal is an adequate remedy at law and bars relief in mandamus. *State ex rel. Gilligan v. Ohio Bd. of Tax Appeals*, 70 Ohio St.3d 196, 201, 638 N.E.2d 74 (1994). Relator appealed the trial court's denial of his request to modify parental rights and the award of attorney fees. Respondent the Eighth District overruled Relator's assignments of error and affirmed the trial

court's judgment. Relator appealed to these issues to this Court, which declined to accept jurisdiction. Accordingly, Relator's request for a writ of mandamus against Respondent the Eighth District must fail.

**IV. CONCLUSION**

For the foregoing reasons, Respondent the Eighth District Court of Appeals respectfully asks for this Court to dismiss Relator's complaint.

Respectfully submitted,

MICHAEL DEWINE (0009181)  
Ohio Attorney General



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*Counsel for Respondent  
Eighth District Court of Appeals*

**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing *Motion to Dismiss of Respondent the Eighth District Court of Appeals* was served by regular U.S. mail, postage prepaid, on March 13, 2013 upon the following:

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