

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
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: Original Action in Mandamus
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**MEMORANDUM IN RESPONSE OF RESPONDENT THE EIGHTH DISTRICT
COURT OF APPEALS TO RELATOR'S MOTION FOR RECONSIDERATION**

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FILED
MAY 15 2013
CLERK OF COURT
SUPREME COURT OF OHIO

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MEMORANDUM IN RESPONSE OF RESPONDENT THE EIGHTH DISTRICT COURT OF APPEALS TO RELATOR’S MOTION FOR RECONSIDERATION

I. INTRODUCTION

On April 24, 2013, this Court granted the motions to dismiss of Respondent the Eighth District Court of Appeals and Respondent Cuyahoga County Court of Common Pleas, dismissing Relator Larry Klayman’s request for a writ of mandamus. This Court also denied Relator’s motions to strike each of the motions to dismiss. Relator now seeks reconsideration of the Court’s decision on all motions on the grounds that: 1) he did not have an opportunity to be heard on the motions to dismiss; and 2) a writ of mandamus should issue.

Relator’s Motion for Reconsideration should be denied for two reasons. First, pursuant to S.Ct.Prac.R. 18.02(B), a motion for reconsideration may not be filed with respect to the Court’s decisions on the motions to strike. Second, the Court correctly dismissed Relator’s petition for a writ mandamus as he does not meet the requirements for a writ to issue.

II. LEGAL ARGUMENT

A. Relator's Motion is not proper under S.Ct.Prac.R. 18.02(B).

As a general rule, this Court grants motions for reconsideration when persuaded, upon reflection, that its prior decision was made in error. *State ex rel. Huebner v. W. Jefferson Village Council*, 75 Ohio St.3d 381, 383, 662 N.E.2d 339 (1996). Such motions are governed by S.Ct.Prac.R. 18.02(B) which provides in relevant part:

A motion for reconsideration shall not constitute a reargument of the case and may be filed only with respect to the following Supreme Court decisions:

- (1) Refusal to accept a jurisdictional appeal;
- (2) The sua sponte dismissal of a case;
- (3) The granting of a motion to dismiss;
- (4) A decision on the merits of a case.

Decisions by this Court on a motion to strike may not be reconsidered under this rule. Thus, to the extent Relator's Motion for Reconsideration restates his arguments made in the motions to strike, Relator's request for reconsideration must be denied pursuant to S.Ct.Prac.R. 18.02(B).

B. The Court correctly dismissed Relator's petition for a writ of mandamus.

In dismissing Relator's petition for a writ of mandamus, the Court correctly concluded that Relator did not meet the requirements for a writ to issue. As discussed in Respondent the Eighth District's Motion to Dismiss, Relator cannot meet any of the requirements for a writ of mandamus: (1) Relator does not have a clear legal right to the requested relief of vacating a judgment; (2) Respondent the Eighth District does not have a clear legal duty to vacate a judgment; and (3) Relator has an adequate remedy at law. *See 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 sought a writ of mandamus directing the Eighth District to vacate its decision, adverse to Relator, in an appeal from a custody dispute. A writ of mandamus, however, will not issue to control judicial discretion. *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; R.C. 2731.03. Further, Relator has exercised his adequate remedy at law, an appeal, barring 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). For these reasons, Relator's complaint failed to state a claim for which the Court could grant him relief and was properly dismissed. Because this decision was not made in error, Relator's Motion for Reconsideration should be denied. *See Huebner*, 75 Ohio St.3d at 383.

III. CONCLUSION

For the above reasons, Respondent the Eighth District Court of Appeals respectfully asks this Court to deny Relator's Motion for Reconsideration.

Respectfully submitted,

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CERTIFICATE OF SERVICE

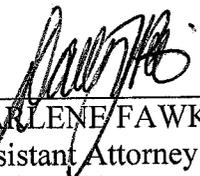
I hereby certify that a true copy of the foregoing *Memorandum in Response of Respondent the Eighth District Court of Appeals to Relator's Motion for Reconsideration* was served by regular U.S. mail, postage prepaid, on May 15th, 2013 upon the following:

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