Supreme Court of Ohio Clerk of Court - Filed September 28, 2015 - Case No. 2015-1253

IN THE SUPREME COURT OF OHIO

State of Ohio Ex Rel. Troy Henderson	)	Ohio Supreme Court CASE NO. 2015-1253
	)	
Relator/Appellant,	)	On Appeal from Cuyahoga County Eighth District Appellate District Case No. CA 15 102541
	)	
	)	Application for Writ of Procedendo; Arising From Juvenile Court Case No. PR 11 705281
v.	)	
	)	
Judge Kristin Sweeney, et al.	)	
	)	
Respondents/Appellees.	)	

MERIT BRIEF OF APPELLANT TROY HENDERSON

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Counsel Pro se

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STATEMENT OF FACTS

22. This case arises from a Cuyahoga County juvenile support case; *In Re J.H.* PR 11- 705281.

23. Troy Henderson (Appellant) is an indigent African American Father representing himself.

24. On September 6, 2013 Appellant filed a "Motion for Relief of Judgment, Civ.R. 60(B), Motion No. 0906101899 and Motion No. 0906213114.

25. On October 10, 2013 Appellant filed a "Motion for Discovery, Motion No. 09016222713. On July 10, 2014 Appellant filed a "Motion to Dismiss, Motion No. 09047113052.

26. On July 16, 2014 Appellant filed a "Motion for Modify, Motion No. 0907115436.

27. On July 24, 2014 Appellant filed a "motion to dismiss the support order, pursuant to Statutory Rights. Motion No. 0907141298.

28. On July 24, 2014, Appellant filed a "Motion to Strike Hearing" Motion No. 0907141238. The juvenile court records show that Appellees evaded and refused to rule on Relator's pending motions and over 16 months elapsed. Ex. A.

29. The juvenile court record shows Appellant was denied his due process rights to be present at a 2011 support order hearing due to the Juvenile Court changed Appellant's correct address of 11040 Clark Road, Chardon, Ohio to a wrongful address of 245 St. John St., Bedford Hts, Ohio and issued an inflated, unconstitutional support order and has been railroading Appellant since then by refusing and evading to rule upon Appellant's motions and denying service to Appellant. Ex. A.

30. The juvenile court record shows that Appellees issued a support order to the wrongful address and without notice, service and a hearing regarding Appellant. Ex. A.

31. The juvenile court record shows that Appellant never filed a change of address form. Ex. A.

32. The juvenile court record shows that the Juvenile Court without authority of law, had illegally, unlawfully, improperly, and fraudulently, changed Appellant's correct address of 11024 Clark Rd, Chardon, Ohio to a wrongful address of 245 St. John St., Bedford Hts, Ohio in both support

cases; Case No. PR 11700027 and PR 11705281, depriving Appellant of his due process and equal protect rights. Ex. A.

33. The juvenile court shows that Appellant never received notice, service of any Child Support order, denying Appellant's rights to notification, service and rights to be present at said hearing. Exhibit 4. See also *State ex rel. Henderson v. Judge Sweeney et al.* 8th Dist. No. CA 13-9905, 2013-Ohio-2919, ¶ 3.

34. The record shows that the juvenile court changed Appellant's correct address of 11040 Clark Rd, Chardon, Ohio to a wrongful address of 245 St. John St., Bedford Hts, Ohio in both of the support cases *In Re J.H.* PR 11- 700027 and PR 11- 705281, accordingly Appellant never received any notifications and service of the 2011 support hearing or support order. Ex. A.

35. Appellant never resided in Bedford Hts, Ohio.

36. This Eighth District and the juvenile court held that Appellant never received notification and service of the support order hearing or the Oct. 27, 2011 support order. See *State ex rel. Henderson v. Judge Sweeney*, 8th Dist. No. 99605, 2013-Ohio-2919, ¶ 3 and Exhibit 4.

37. The Eighth District seemed to be playing games with the facts and direct evidence. The juvenile court records shows that Appellant filed September 6, 2013, a Motion for relief, 60B and attempted to appeal the juvenile courts decision and the 8th District held that Appellant's motion for relief was not ruled upon by the Juvenile Court just delayed to the following hearing, Exhibit 8th Dist. Then the 8th District recently ruled that Appellant's motion for relief was ruled upon over a year later. It seems as though the 8th district is engaging in any ruling against a pro se litigant, which support the juvenile court attempts to railroad Appellant. See *State ex rel. Henderson v. Judge Sweeney, et al,* 8th Dist. No. 15- 102541, ¶ 7.

38. According Appellant should have been entitled to the petition for Writ of Procedendo.

ARGUMENT

Proposition of Law I:

> The Eighth Appellate District abused its discretion and denied Appellant's Constitutional due process and equal protection rights by denying Appellant's petition for a Writ of Procedendo regarding Appellant's Motion to Modify, Motion to Dismiss, Motion for Discovery, Motion to Dismiss and Motion to Strike and denying Appellant request to waiver cost.

39. The United States Supreme Court held in *Downs v. Bidwell*, 182 U.S. 244 (1901) that, "No higher duty rests upon this Court than to exert its full authority to prevent all violations of the principles of the Constitution." Moreover, where fundamental rights are involved personal liberties cannot be broadly stifled "when the end can be more narrowly achieved." *Shelton v. Tucker,* 364 U.S. 479 (1960). And the "Courts, must indulge every reasonable presumption against waiver of fundamental constitutional rights, and.....not presume acquiescence in the loss of fundamental rights." *Dimmock v. Scalded*, 293 US 474(1935) 304 US at 464.

40. The "Courts, must indulge every reasonable presumption against waiver of fundamental constitutional rights, and.....not presume acquiescence in the loss of fundamental rights." *Dimmock v. Scalded*, 293 US 474(1935) 304 US at 464.

41. "The Fourteenth Amendment to the United States Constitution prohibits any state from depriving any person of life, liberty, or property, *without due process of law*.' "*State ex rel. Haylett v. Ohio Bur. of Workers' Comp.* (1999), 87 Ohio St.3d 325, 331.

42. It is undisputed and the juvenile record shows that Appellant had motions that had been pending for over a year; Appellant's "Motion for Discovery, filed October 10, 2013. Motion No. 09016222713. Appellant's "Motion to dismiss, filed July 10, 2014, Motion No. 09047113052. Appellant's "Motion for Modify, filed July 16, 2014, Motion No. 0907115436. Appellant's "Motion to Dismiss the support order, pursuant to Statutory Rights filed July 24, 2014. Motion

No. 0907141298. Appellant's "Motion to Strike Hearing" filed July 24, 2014. Motion No. 0907141238.

43. It is undisputed that a judge has a duty to rule upon Relator's motions, Jud. Cond. R. 2.7, 2.5, Canon 1, Canon 2.

44. The Eighth District seemed to ignore the facts and undeniable evidence from the juvenile court record with respect to Appellant's above pending motions; Motions for Relief, Motion to Modify, Motion for Discovery, Motion to Dismiss, Motion to Strike hearing, etc...

45. A judge has a duty, not discretion, to comply with the law, Jud.Cond.R. 1.1, and moreover avoid the appearance of impropriety, Jud.Cond.R. Canon 1, and do not Interfering with Citizens' Civil Rights, R.C. 2921.45.

46. This Ohio Supreme Court has held, "although mandamus will lie in cases of a court's undue delay in entering judgment, procedendo is more appropriate since an inferior court's refusal or failure to timely dispose of a pending action is the ill a writ of procedendo is designed to remedy." *State ex rel. Dehler v. Sutula* (1995), 74 Ohio St.3d 33,656 N.E.2d 332,333, quoting *State ex rel. Levin v. Sheffield Lake* (1994), 70 Ohio St.3d 104, 110, 637 N.E.2d 319, 324. In *State ex rel. Davey* v. *Owen* (1937), 133 Ohio St. 96, at 106, 10 O.O. 102, at 106, 12 N.E.2d 144, at 149, we stated: "The Writ of Procedendo is merely an order from a court of superior jurisdiction to one of inferior jurisdiction to proceed to judgment. It does not in any case attempt to control the inferior court as to what that judgment should be." See also *State of Ohio, ex rel. Wiley Davis, Relator v. Cuyahoga County Court of Common Pleas, et. al., Respondents,* Slip Copy, 2011 WL 1589873 (Ohio App. 8th Dist.), 2011-Ohio-1966.

47. Simply put, the above pending motions filed by Appellant were clearly not ruled upon prior to the petition for the Writ of Precedence and over a year elapsed regarding Appellant's pending motions. Accordingly Appellant was entitled to a Writ for Procedendo to order the juvenile court to rule upon Appellant's pending motions and waiver the cost.

Proposition of Law II:

> The Eighth District abuse its discretion and denied Appellant his Due process right in declaring that Relator's pending Motion for Relief was ruled upon after the Eighth District held that Appellant's Pending Motion for Relief was not determined in 2014 on appeal.

48. Appellant's "Motion for Relief of Judgment, Civ.R. 60(B), filed September 6, 2013 Motion No. 0906101899 and Motion No. 0906213114 is still pending.
49. The juvenile court records show that over a year elapsed and Appellant's pending motion for relief was not ruled upon.
50. The Eighth district held in 2014 that the juvenile court did not ruled upon Appellant's pending motion for relief but delay the ruling. Ex. 8th Dist.
51. Now the Eighth District held it was ruled upon, denying Appellant's right to an immediate appeal to judges that were not predisposed to rule against Appellant allegedly and not trying to conceal the juvenile court's illegal acts of changing Appellant's correct address to a wrongful address which changed the dynamics of the support case and tribunals being fair and impartial.
52. It seems as if the 8th District and the Juvenile Court have double standards and turn a blind eye regarding an African American Pro Se litigant. First the juvenile court changed Appellant's correct address to a wrongful address and issues an inflamed support order in violation of due process and equal protection rights to a 2011 hearing prior to the order. Ex. change. The Eighth District held that the juvenile court did not rule upon and now the Eighth district held the court did rule upon it, depriving Appellant his due process rights to an immediate appeal. It seems like gamesmanship of judges trying to railroad innocence African American Father.

Proposition of Law III:

> The Eighth Appellate District abused its discretion by permitting false Representation and by not report the juvenile court fraudulent acts and for interfering with Appellant's Civil and Parental Rights.

53. R.C. 124.58 states in pertinent part, "**No person** or officer shall willfully or corruptly, by himself or in co-operation with one or more persons, defeat, deceive, or obstruct any person in respect of his right of examination, appointment…" the juvenile court record shows that the juvenile court unlawfully changed Appellant's correct address of 11040 Clark Rd, Chardon, Ohio to a wrongful address of 245 St. John St, Bedford Hts, Ohio 44146. Exhibit change.
54. False representation and fraud upon the Court regarding changing Appellant's correct address of 11040 Clark Rd, Chardon Ohio to the wrongful address of 245 St. John St. Bedford, Ohio. Exhibit change. Appellees failed to be fair and impartial by changing Appellant's correct address of 11040 Clark Rd, Chardon Ohio to the wrongful address of 245 St. John St. Bedford, Ohio. Seems to be obstructing official business, R.C. 2921.31, and obstructing justice, R.C. 2921.32, interfering with Parental and Civil Rights, R.C. 2921.45.
55. R.C. 2921.45(A) states, "No public servant, under color of his office, employment, or authority, shall knowingly deprive, or conspire or attempt to deprive any person of a constitutional or statutory right."
56. R.C. 2921.31(A)(B), Obstructing official business states in pertinent part, "No person, without privilege to do so and with purpose to prevent, obstruct, or delay the performance by a public official of any authorized act within the public official's official capacity, shall do any act that hampers or impedes a public official in the performance of the public official's lawful duties."
57. R.C. 2921.31(A)(5)(6) Obstructing justice states in pertinent part, "No person, with purpose to hinder the discovery, apprehension, prosecution, conviction, or punishment of another for crime or to assist another to benefit from the commission of a crime…."(5) Communicate false information to any person; (6) Prevent or obstruct any person, by means of force, intimidation,

or deception, from performing any act to aid in the discovery, apprehension, or prosecution of the other person or child.

58. R.C. 2921.44(B) states in pertinent part, "No law enforcement, ministerial, or judicial officer shall negligently fail to perform a lawful duty…."

59. Jud. Cond. R. 1.1 must comply with the law.

60. The juvenile court record shows that the Juvenile Court without authority of law, had illegally, unlawfully, improperly, and fraudulently, changed Appellant's correct address of 11024 Clark Rd, Chardon, Ohio to a wrongful address of 245 St. John St., Bedford Hts, Ohio in both support cases; Case No. PR 11700027 and PR 11705281, depriving Appellant of his due process and equal protect rights. Exhibit docs, and change of address form.

61. The juvenile court record shows that Appellant never filed a change of address form. Ex. A.

62. The juvenile court record shows Appellant was denied his due process rights of notice, hearing and to be present at the 2011 support order hearing due to the Juvenile Court changed Appellant's correct address of 11040 Clark Road, Chardon, Ohio to a wrongful address of 245 St. John St., Bedford Hts, Ohio, Exhibit change, and issued an inflated, unconstitutional support order and trying to railroad Appellant and refusing and evading to rule upon Appellant's motions.

63. The juvenile court record shows that Appellees issued a support order to the wrongful address and without notice and a hearing regarding Appellant.

64. The juvenile court record shows that Appellees denied Appellant his due process rights to discovery and immediate appeal.

65. Appellees' unlawful actions and delays have caused, and will continue to cause irreparable injuries to Appellant, including but not limit to; subject Appellant to incarceration and criminal charges regarding and unjust and unconstitutional inflamed support order based upon fraud and hearsay.

Proposition of Law IV:

> The Eighth District abuse its discretion in assuming that Appellant a vexatious litigator.

66. In *Henderson v. Allamby*, Cuy. C.P. CV 13- 803590 there were a father and son named Troy Henderson involved in the above said case. Exhibit Troys. In addition there is four Troy Hendersons residing at the Chardon residence. Simply put the Eighth District holding all Troy Hendersons residing at the Chardon residence as a vexatious litigator, which is contrary to the judgment and seems to be in violation of Civil Rights.

STANDARD REVIEW

67. A Writ of Mandamus or Procedendo is appropriate when a court has either refused to render a judgment or has unnecessarily delayed proceeding to judgment. Although mandamus will lie in cases of a courts undue delay in entering judgment, Procedendo is more appropriate, since an inferior court refusal or failure to timely dispose of a pending action is the ill a writ of procedendo is designed to remedy. *State ex rel. Watkins v. Eighth Dist. Court of Appeals,* (1998), 82 Ohio St.3d. 532, 535, 696 N.E.2d 1079. *State ex rel., CNG Fin. Corp. v. Nadel,* 111 Ohio St.3d 149, 2006-Ohio-5344, 855 N.E.2d 473, quoting Weiss, 84 Ohio St.3d, at 532, 705 N.E.2d 1227.

68. The Ohio Supreme Court has held, "although mandamus will lie in cases of a court's undue delay in entering judgment, procedendo is more appropriate since an inferior court's refusal or failure to timely dispose of a pending action is the ill a writ of procedendo is designed to remedy." *State ex rel. Dehler v. Sutula* (1995), 74 Ohio St.3d 33,656 N.E.2d 332,333, quoting *State ex rel. Levin v. Sheffield Lake* (1994), 70 Ohio St.3d 104, 110, 637 N.E.2d 319, 324. In *State ex rel. Davey* v. *Owen* (1937), 133 Ohio St. 96, at 106, 10 O.O. 102, at 106, 12 N.E.2d 144, at 149, we stated: "The Writ of Procedendo is merely an order from a court of superior jurisdiction to one

of inferior jurisdiction to proceed to judgment. It does not in any case attempt to control the inferior court as to what that judgment should be." See also *State of Ohio, ex rel. Wiley Davis, Relator v. Cuyahoga County Court of Common Pleas, et. al., Respondents,* Slip Copy, 2011 WL 1589873 (Ohio App. 8th Dist.), 2011-Ohio-1966.

69. "The Writ of Procedendo is merely an order from a court of superior jurisdiction to one of inferior jurisdiction to proceed to judgment. Procedendo is appropriate when a court has either refused to render a judgment or has unnecessarily delayed proceeding to judgment. "*State ex rel. Bradley v. Jones,* 2001-Ohio-4141 (Ohio App. 8th Dist. 2001). See also, *State ex rel. St. Stava v. Riley* (1976), 36 Ohio St.2d 171, 174; *State ex rel. Ratliff v. Marshall* (1972), 30 Ohio St.2d 101, 102.

70. A writ of procedendo "is proper where a court has either refused to render or has unnecessarily delayed proceeding to judgment." *State ex rel. Doe v. Tracy* (1988), 51 Ohio St.3d 198, 200; *State ex rel. Levin Sheffield Lake* (1994), 70 Ohio St.3d 104; *State ex rel. Wallace v. Tyaek* (1984), 13 Ohio St.3d 4.

71. Sup.R.40(A)(3), states that, "all motions shall be ruled upon within one hundred twenty days from the date the motion was filed." In *State, ex ret. Culgan v. Collier,* 135 Ohio St.3d 436; 988 N.E.2d 564.

72. The Ohio Supreme Court held, "Sup.R.40(A)(3) imposes on trial courts a duty to rule on motions within 120 days. See *State ex rel. Brown v. Luebbers,* 2013-Ohio-5062.

73. Respondent has a clear legal duty to render a ruling on Relator's Motion for Relief and other referenced motions cited herein and pending before the trial court.

74. The trial court has a legal duty to proceed on the matters, pursuant to the Ohio Supreme Court's legal analysis in, *State ex rel Culgan v. Cottier,* 135 Ohio St.3d 436; 988 N.E.2d 564; 2013 Ohio LEXIS 1115.

CONCLUSION

75. Relator had shown a clear legal right to require the court to proceed *in* ruling on Relator's Motion for Relief and other referenced motions cited herein and pending before the trial court.
76. Relator had no plain and adequate remedy in the ordinary course of the law, due to the fact that the trial court is refusing to render a judgment and is unnecessarily delaying in proceeding to judgment, which has denied Relator's due process and equal protection rights. Rights secured and mandated by the Due Process Clause of the Ohio and United States Constitutions, Rules of Court Procedures.

WHEREFORE for reasons herein, Appellant respectfully moves this Honorable Court to enter an Order granting Appellant's petition for a Writ of Procedendo and waiving cost to Appellant. Further grant any other relief, which this Honorable Court should find necessary, in order to ensure the sure administration of justice. Further, Appellant requests this Court to enter Orders:

(A) Order the juvenile court to vacate all hearing and provide Appellant his due process and equal protection rights to discoveries, time to review and hold another hearing before a fair and impartial tribunal from a different county that is not predisposed to rule against Pro se father/litigant.

(B) Order Cuy Cty Juvenile Court to not engage in any conversation with said assigned tribunal.

(C) Order the dismissal of the October 27, 2011 support order due to due process and equal protection rights violations and fraud upon the Court by the juvenile court regarding the unlawful act of changing correct address.

(D) Order the dismissal of any orders deriving from the Oct. 27, 2011 support order.

(E) Preclude Appellees from continuing to adjudicate Appellant's custody as well as juvenile support cases: 1) *In rel. J.H.* CU 14- 104638 and 2) *In rel. J.H.* PR 11- 705281.

Due to the fraud upon the Court against Appellant. In addition, Appellee is preventing and denying Appellant his Civil Rights, Parental Rights and God Given Rights to be a parent to his child without interference of biased government officials. Appellees is denying Appellant's parents, my child's siblings and other relatives their rights to be involve in my child's live without unduly prejudice government interference.

Respectfully submitted,

/s/ Troy Henderson
Troy Henderson, pro se
11040 Clark Rd.
Chardon, Ohio 44024

CERTIFICATE OF SERVICE

A copy of the foregoing complaint was served on September 28th, 2015 by ordinary mail, hand-delivery and/or e-mail upon partys' counsel(s):

Nora Graham
The Justice Center, 8th Floor
1200 Ontario Street
Cleveland, Ohio 44113
Counsel for Appellees

Respectfully submitted,

/s/ Troy Henderson
Troy Henderson, *pro se*
11040 Clark Rd.
Chardon, Ohio 44024

IN THE SUPREME COURT OF OHIO
65 S. FRONT STREET, 8th FLOOR
COLUMBUS, OHIO 43215-3431

15-1253

State of Ohio Ex Rel. Troy Henderson	)	EIGHTH DISTRICT CASE NO. CA 15 102541
	)	
Relator,	)	JUVENILE COURT CASE NO. PR 11 705281
	)	
v.	)	
	)	
Judge Kristin Sweeney, et al.	)	
	)	
Respondents.	)	

NOTICE OF APPEAL

Troy Henderson, pro se
11040 Clark Rd.
Chardon, Ohio 44024
Pro se

Nora Graham, Asst. Prosecutor
The Justice Center, Courts Tower, 8th Floor
1200 Ontario St.
Cleveland, Ohio 44113
Counsel for Respondents

FILED
JUL 30 2015
CLERK OF COURT
SUPREME COURT OF OHIO

IN THE SUPREME COURT OF OHIO
65 S. FRONT STREET, 8th FLOOR
COLUMBUS, OHIO 43215-3431

State of Ohio Ex Rel. Troy Henderson	)	EIGHTH DISTRICT CASE NO. CA 15 102541
	)	
Relator,	)	JUVENILE COURT CASE NO. PR 11 705281
	)	
v.	)	
	)	**NOTICE OF APPEAL**
Judge Kristin Sweeney, et al.	)	
	)	
Respondents.	)	

Now comes Relator Troy Henderson hereby gives notice of appeal to the Supreme Court of Ohio from the judgment of the Cuyahoga County Court of Appeals, Eighth Appellate District, entered in Court of Appeals Case No. 15- 102541 filed June 15, 2015. This case is an appeal of right.

Respectfully submitted,

Troy Henderson, pro se
11040 Clark Rd.
Chardon, Ohio 44024

CERTIFICATE OF SERVICE

A copy of the foregoing notice was sent on 29th day of July 2015 via regular Mail and/or emailed upon parties' counsel:

Nora Graham, Asst. Prosecutor
The Justice Center, Courts Tower, 8th Floor
1200 Ontario St.
Cleveland, Ohio 44113

Counsel for Respondents

Court of Appeals of Ohio, Eighth District

County of Cuyahoga
Nailah K. Byrd, Clerk of Courts

STATE OF OHIO EX REL., TROY HENDERSON

Relator

COA NO.
102541

ORIGINAL ACTION

-vs-

JUDGE KRISTEN SWEENEY, ET AL.

Respondent

MOTION NO. 485836

Date 06/15/15

Journal Entry

Complaint dismissed. See journal entry and opinion of same date.

FILED AND JOURNALIZED
PER APP.R. 22(C)

JUN 15 2015

CUYAHOGA COUNTY CLERK
OF THE COURT OF APPEALS
By N. Jones Deputy

Presiding Judge LARRY A. JONES, SR.,
Concurs

Judge MARY EILEEN KILBANE, Concurs

Kathleen Ann Keough
KATHLEEN ANN KEOUGH
Judge

CA15102541

89743090

Court of Appeals of Ohio, Eighth District

County of Cuyahoga
Nailah K. Byrd, Clerk of Courts

STATE OF OHIO EX REL., TROY HENDERSON

Relator

COA NO.
102541

ORIGINAL ACTION

-vs-

JUDGE KRISTEN SWEENEY, ET AL.

Respondent

MOTION NO. 483971

Date 06/15/15

Journal Entry

Motion by respondents Judge Kristen Sweeney, Judge Jerry Hayes and Cuyahoga County Juvenile Courts for summary judgment is granted. See journal entry and opinion of same date.

RECEIVED FOR FILING

JUN 15 2015

CUYAHOGA COUNTY CLERK
OF THE COURT OF APPEALS
By _____ Deputy

Presiding Judge LARRY A. JONES, SR.,
Concurs

Judge MARY EILEEN KILBANE, Concurs

KATHLEEN ANN KEOUGH
Judge

CA15102541

89743088

Court of Appeals of Ohio, Eighth District

County of Cuyahoga
Nailah K. Byrd, Clerk of Courts

STATE OF OHIO EX REL., TROY HENDERSON

Relator

COA NO.
102541

ORIGINAL ACTION

-vs-

JUDGE KRISTEN SWEENEY, ET AL.

Respondent

MOTION NO. 484925

Date 06/15/15

Journal Entry

Motion by relator for summary judgment and motion in opposition is denied. See journal entry and opinion of same date.

RECEIVED FOR FILING

JUN 15 2015

CUYAHOGA COUNTY CLERK
OF THE COURT OF APPEALS
By M. Jones Deputy

Presiding Judge LARRY A. JONES, SR.,
Concurs

Judge MARY EILEEN KILBANE, Concurs

KATHLEEN ANN KEOUGH
Judge

CA15102541

89743089

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 102541

STATE EX REL., TROY HENDERSON

RELATOR

vs.

JUDGE KRISTEN SWEENEY, ET AL.

RESPONDENTS

JUDGMENT:
COMPLAINT DISMISSED

Writ of Procedendo
Motion Nos. 483971 and 484925
Order No. 485836

RELEASE DATE: June 15, 2015

RELATOR

Troy Henderson, pro se
11040 Clark Road
Chardon, Ohio 44024

ATTORNEYS FOR RESPONDENTS

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Cleveland, Ohio 44113

KATHLEEN ANN KEOUGH, J.:

{¶1} On January 26, 2015, the relator, Troy Henderson, commenced this procedendo action against the respondents, Judge Kristen Sweeney, Judge Jerry Hayes, and the Cuyahoga County Juvenile Court, to compel rulings on the following motions in the underlying case, *In re J.H.*, Cuyahoga J.C. No. PR-11-705281: (1) September 6, 2013 motion for relief from judgment per Civ.R. 60(B); (2) October 10, 2013 motion for discovery; (3) July 3, 2014 motion to compel discovery; (4) July 10, 2014 motion to dismiss support order; (5) July 14, 2014 motion to take judicial notice of case decisions and Henderson's indigent status from his criminal case; (6) July 16, 2014 motion for transcript; (7) July 16, 2014 motion to modify support order; (8) July 24, 2014 motion to dismiss support order; (9) July 24, 2014 motion to strike the July 10, 2014 hearing; and (10) December 16, 2011 motion to dismiss all orders. In the underlying case, the respondent court in October 2011, issued a child support order, which Henderson maintains is too much, and since that time he has engaged in extensive litigation to vacate or reduce the order. On March 24, 2015, the respondents moved for summary judgment on the grounds of mootness, res judicata, and the failure to show an unnecessary delay in proceeding to judgment. On April 23, 2015, Henderson filed his combined brief in opposition and cross-motion for summary judgment. The respondents filed a reply brief on May 12, 2015. For the following reasons, this court grants the respondents' motion for summary

judgment, denies Henderson's cross-motion for summary judgment, and dismisses the application for a writ of procedendo.

{¶2} On April 21, 2015, in *Henderson v. Allamby*, Cuyahoga C.P. No. CV-803590, the court declared Troy Henderson to be a vexatious litigator pursuant to R.C. 2323.52. Division (D)(3) of that statute provides in pertinent part:

> A person who is subject to an order [finding the person to be a vexatious litigator] may not * * * continue any legal proceedings that the vexatious litigator had instituted in a court of appeals prior to entry of the order, or make any application, other than the application for leave to proceed allowed by division (F)(2) of this section in any legal proceedings * * * in a court of appeals without first obtaining leave of the court of appeals to proceed pursuant to division (F)(2) of this section.

{¶3} R.C. 2323.52(F)(2) provides in pertinent part that a vexatious litigator

> who seeks to * * * continue any legal proceeding in a court appeals * * * shall file an application for leave to proceed in the court of appeals in which the legal proceedings * * * are pending. * * * The court of appeals may grant the application only after being satisfied that the proceedings or application are not an abuse of process of the court and that there are reasonable grounds to the proceedings or application. * * *

{¶4} Moreover, R.C. 2323.52(I) states:

> Whenever it appears by suggestion of the parties or otherwise that a person found to be a vexatious litigator under this section had instituted, continued, or made an application in legal proceedings without obtaining leave to proceed from the appropriate * * * court of appeals to do so under division (F) of this section, the court in which the legal proceedings are pending shall dismiss the proceedings or application of the vexatious litigator.

{¶5} Although being declared a vexatious litigator, Henderson has not sought leave of this court to continue with this writ action. Accordingly, pursuant to R.C. 2323.52(I), this court dismisses this procedendo action. *Grundstein v. Carroll*, 8th Dist. Cuyahoga No. 86604, 2006-Ohio-2215.

{¶6} Notwithstanding Henderson's failure to obtain leave to proceed in this writ action, it would also be appropriate to dismiss the action on mootness and the merits. The writ of procedendo is merely an order from a court of superior jurisdiction to one of inferior jurisdiction to proceed to judgment. *Yee v. Erie Cty. Sheriff's Dept.*, 51 Ohio St.3d 43, 553 N.E.2d 1354 (1990). Procedendo is appropriate when a court has either refused to render a judgment or has unnecessarily delayed proceeding to judgment. *State ex rel. Watkins v. Eighth Dist. Court of Appeals*, 82 Ohio St.3d 532, 1998-Ohio-190, 696 N.E.2d 1079. However, the writ will not issue to control what the judgment should be, nor will it issue for the purpose of controlling or interfering with ordinary court procedure. Thus, procedendo will not lie to control the exercise of judicial discretion. Moreover, it will not issue when there is an adequate remedy at law. *State ex rel. Utley v. Abruzzo*, 17 Ohio St.3d 202, 478 N.E.2d 789 (1985); *State ex rel. Hansen v. Reed*, 63 Ohio St.3d 597, 589 N.E.2d 1324 (1992).

{¶7} For most of the ten motions, there is no doubt that the respondents have resolved them. The court rejected Henderson's September 6, 2013 motion to vacate (motion No.1) in its October 21, 2013 order by ruling that the 60(B) motion was not filed within a reasonable time and that the listed reasons were

not the proper subject of a Civ.R. 60(B) motion. On July 11, 2014, respondent Judge Hayes noted Henderson's outstanding motions and dismissed them all without prejudice. This order included the October 10, 2013 motion for discovery (motion No. 2), the July 3, 2014 motion to compel discovery(motion No. 3), and the July 10, 2014 motion to dismiss the support order (motion No. 4). On July 28, 2014, the court granted the July 16, 2014 motion for a transcript (motion No. 6).

{¶8} The court conducted a hearing on Henderson's objections to the magistrate's decision that established the child support order. In an October 17, 2014 order the court overruled the objections. The court noted that Henderson's testimony and lack of exhibits rendered his arguments incredible and unpersuasive. Thus, the court concluded that there was no reason to change the magistrate's decision. This ruling resolved the July 10, 2014 motion to dismiss the support order (motion No. 4), the July 16, 2014 motion to modify the support order (motion No. 7), and the July 24, 2014 motion to dismiss the support order (motion No. 8).

{¶9} Henderson's December 16, 2011 motion to dismiss all orders for lack of service (motion No. 10) has already been the subject of a mandamus action, *State ex rel. Henderson v. Sweeney,* 8th Dist. Cuyahoga No. 99605, 2013-Ohio-2919, in which this court ruled that the trial court had resolved that motion by dismissing all pending motions for want of prosecution. Thus, the trial court did resolve that motion, and res judicata bars further litigation concerning it.

{¶10} That leaves only the July 14, 2014 motion to take judicial notice of case decisions and Henderson's indigent status from his criminal case (motion No. 5) and the July 24, 2014 motion to strike the July 10, 2014 hearing (motion No. 9) as the two motions for which there might not be rulings. In *State ex rel. Rodgers v. Cuyahoga Cty. Court of Common Pleas*, 88 Ohio App.3d 684, 615 N.E.2d 689 (8th Dist.1992), this court noted some of the variables that could cause a trial court in the exercise of its discretion to delay in ruling on any given motion. These included the procedural posture of the case, the need for discovery, the issues presented, the possibility of settlement, other pending motions, and other pending matters before the court. This court also noted the risk of usurping a judge's discretion in resolving a case and encouraging gamesmanship in litigation by granting a writ of procedendo. Thus, in this contentious litigation, this court in the exercise of its discretion declines to issue the writ of procedendo to compel rulings on any of the listed motions that may still be outstanding. Relator to pay costs. This court directs the clerk of courts to serve all parties notice of this judgment and its date of entry upon the journal as required by Civ.R. 58(B).

{¶11} Complaint dismissed.

KATHLEEN ANN KEOUGH, JUDGE

LARRY A. JONES, SR., P.J., and
MARY EILEEN KILBANE, J., CONCUR

FILED AND JOURNALIZED
PER APP.R. 22(C)

JUN 15 2015

CUYAHOGA COUNTY CLERK
OF THE COURT OF APPEALS
By _____ Deputy