

IN THE SUPREME COURT OF OHIO

The State of Ohio ex rel.	:	
DOUGLAS C. BARTON,	:	Case No. 2014-2241
	:	
Relator,	:	Original Action in Mandamus
	:	
v.	:	
	:	
KEESHA A. BARTON, et al.,	:	
	:	
Respondents.	:	

MOTION TO DISMISS OF RESPONDENTS
J. TIMOTHY CAMPBELL,
STEPHEN L. HURLEY, AND
GREENE COUNTY DOMESTIC RELATIONS COURT

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Relator Pro Se

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Judge Campbell, Judge Hurley, &
Greene County Court of Common Pleas,
Domestic Relations Division*

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Now come Respondents Campbell, Hurley, and Greene County Common Pleas Court, Domestic Relations Division, by and through counsel, and hereby moves this Court to dismiss Relator’s motion for relief from judgment under Civ. R. 60(B). A memorandum in support is attached.

Respectfully submitted,
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MOTION TO DISMISS

I. INTRODUCTION

Relator Douglas Barton is a party to a divorce action (Case No. 2013 DR 0207) and domestic violence protection order actions (Case Nos. 2013 DV 0193 & 2013 DV 0196) in the Respondent Greene County Common Pleas Court, Domestic Relations Division. Relator and Respondent Keesha Barton were married in July 2012. Ms. Barton filed a petition for domestic violence protection order on November 27, 2013.

The Greene County Common Pleas Court, Domestic Relation Division is duly authorized to preside over all divorce, dissolution of marriage, legal separation, annulment, uniform reciprocal support enforcement, and domestic violence cases and all other cases relation to domestic relation in Greene County, Ohio pursuant to R.C. 2301.03(O)(1). Respondent Judge Stephen L. Hurley is the duly elected Judge for the Greene County Common Pleas Court, Domestic Relations Division. Respondent Judge J. Timothy Campbell, retired from the Greene County Court of Common Pleas General Division, is sitting by assignment Judge over Relator's cases after Relator sued Judge Hurley in the United States District Court for the Southern District of Ohio, Case No 3:14-cv-001. The federal case was dismissed with prejudice on 4/10/2014 for failure to state a claim upon which relief could be granted. Relator initiated this mandamus action to Compel Respondent "to void all judgments issued;" prepare transcripts at State's expense, an order granting a change of venue, an order of disbarment for named attorneys, and order for a public disciplinary hearing for Respondents and other named attorneys, and an

order to the Second District Court of Appeals reminding them of their duties. Contained within the petition is also a request for a writ of prohibition, to stop the issuance of mutual restraining orders automatically upon filing of actions, and to stop the issuance of any type of civil protection order.

Relator filed a Petition for Writs of Mandamus and Prohibition in December of 2014. The County Respondents filed a motion to dismiss for failing to state a claim upon which relief could be granted, which this Court granted in March of 2015.

II. Standard of Review

A party moving for relief from judgment under **Civ. R. 60(B)** has the burden of demonstrating (1) that the motion was timely filed; (2) that the movant is entitled to relief under one of the grounds stated in **Civ. R. 60(B)(1)** through (5); and (3) that the movant has a meritorious claim or defense to present if relief is granted. *GTE Automatic Electric v. ARC Industries* (1976), 47 Ohio St. 2d 146, 150-51. Further, a movant's failure to demonstrate any of the three requirements of *GTE* is fatal to the claim for relief from judgment. *Mount Olive Baptist Church v. Pipkins Paints* (1979), 64 Ohio App. 2d 285

III. Relator is not entitled to relief from judgment.

As an initial matter, the County Respondents note that they will only address Respondent's claims under the Ohio Rules of Civil Procedure, as the underlying mandamus/prohibition action are constructs of Ohio State law, and the Federal Rules of Civil Procedure have no applicability.

The Relator's motion must fail on its merits. The Relator has failed to establish any of the aforementioned elements dictated by *GTE v. ARC Industries*, supra. He cites to Civ. R. 60(B)(1)- mistake, inadvertence, surprise or excusable neglect; (B)(3)- fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation or other misconduct of an adverse party; (B)(4)-the judgment has been satisfied, release or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application, and (B)(5)-any other reason justifying relief from the judgment. His basis for this claim is an unsupported and rambling diatribe that this Court, the Second District Court of Appeals, and the Greene County Respondents engaged in fraud by failing to give due consideration to Relator's claims. He simply asserts no new information or issues that give rise to the relief he requests.

The record demonstrates that this Court gave full and due consideration to Relator's claims, but that Relator failed to state a claim upon which relief could be granted. This Court took more than a month to issue its decision. As stated in the County Respondents' previous motion to dismiss, the Relator clearly has an adequate remedy in the ordinary course of law by way of appeal. Further, he has failed to demonstrate that he has a clear legal right to the relief requested and the Greene County Respondents have failed to provide that clear legal right. Relator is seeking this mandamus to control discretion. It is well settled in Ohio that mandamus will not lie to control judicial discretion, even if that discretion is abused. See, e.g., *State ex rel. Natl. City Bank v. Maloney*, 103 Ohio St.3d 93, 2004-Ohio-4437, 814 N.E.2d 58, ¶ 11; R.C. 2731.03.

Based upon the foregoing, the Relator has again failed to state any claim upon which relief can be granted. Accordingly, Respondents Campbell, Hurley, and the Greene County Domestic Relations Court ask this honorable Court to dismiss the instant matter.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that a copy of the foregoing Notice of Appearance was served via U.S. Mail upon the following:

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____ s/ *Elizabeth A. Ellis* _____