

IN THE SUPREME COURT OF OHIO

STATE EX REL. TROY HENDERSON,	)	Case No. 2015-1253
	)	
Relator/Appellant,	)	On Appeal from the
	)	Cuyahoga County Court of Appeals,
vs.	)	Eighth Judicial District
	)	
JUDGE KRISTIN SWEENEY and	)	Court of Appeals Case No. 15-CA-102541
CUYAHOGA COUNTY JUVENILE	)	
COURT,	)	
	)	
Respondents/Appellees.	)	

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**MERIT BRIEF OF APPELLEES JUDGE KRISTIN SWEENEY, JUDGE  
JERRY HAYES, AND CUYAHOGA COUNTY JUVENILE COURT**

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## STATEMENT OF THE FACTS

### Introduction

This is an appeal by Relator/Appellant Troy Henderson (“Appellant”) from the judgment of the Eighth District Court of Appeals that granted Respondents/Appellees Judge Kristin Sweeney, Judge Jerry Hayes and the Cuyahoga County Juvenile Court’s (“Appellees”) Motion for Summary Judgment and dismissed Appellant’s complaint for a writ of procedendo. Appellant’s complaint for writ of procedendo, filed on January 26, 2015, sought to compel rulings on multiple motions that Appellant had filed and alleged were outstanding in an underlying Juvenile Court Case, *In re: J. H.*, Cuyahoga County Juvenile Court Case Number PR11705281, filed on March 23, 2011, in which Appellant is the defendant See Compl. ¶ 1.

On March 24, 2015, Appellees filed a motion for summary judgment in the procedendo action based on several grounds including the action being moot because all motions at issue had already been ruled upon, res judicata because Appellant had already filed a writ of procedendo regarding one of the motions which was denied, and based on Appellant’s failure to show an unnecessary delay in proceeding to judgment. On April 23, 2015, Appellant filed a combined “Motion for Summary Judgment and Motion in Opposition” in response to Appellees’ motion for summary judgment. On May 12, 2015 Appellees filed a Reply Brief.

On April 21, 2015, in Cuyahoga County Common Pleas Court Case No. CV-13-803590, *Henderson, et al. v. Allamby, et al.*, Appellant was declared to be a vexatious litigator and prohibited from instituting and/or continuing any legal proceedings pursuant to R.C. 2323.52. On June 15, 2015, the Eighth District issued an Opinion in which it granted Appellees’ motion for summary judgment, denied Appellant’s cross-motion for summary judgment and dismissed Appellant’s application for a writ of procedendo.

The Eighth District's decision granting Appellees' summary judgment and dismissing Appellant's complaint for a writ of procedendo provides several grounds for the dismissal. First, the Eighth District dismissed the writ pursuant to R.C. 2323.52(I) based on Appellant's failure to make an application to proceed with the writ action after being declared a vexatious litigator. See Eighth Dist. No. 102541, 2015-Ohio-2412, ¶ 2-5. The Eighth District further held that, notwithstanding the failure to obtain leave to proceed, it was also appropriate to dismiss the action based on mootness and the merits. *Id.* at ¶ 6. Further, the Eighth District also held that res judicata barred Appellant's writ of procedendo action as to one of the motions at issue based on the denial of his prior complaint for a writ on the same issues in *State ex rel. Henderson v. Sweeney, et al.*, 8th Dist. No. 99605, 2013-Ohio-2919. Because the arguments presented by Appellant on appeal do not provide any grounds to disturb the Eighth District's judgment, Appellees respectfully urge this Court to affirm the judgment of the Court of Appeals dismissing the writ action.

### **Background and Procedural History**

The Appellant's action in procedendo arises out of an underlying matter in the Cuyahoga County Juvenile Court, *In Re: J. H.*, case number PR11705281, filed on March 23, 2011 in which Relator is the defendant. See Respondents' MSJ, Ex. A. On October 12, 2011, a Magistrate's Decision was entered in the matter establishing an order of child support, which was adopted by the Court on October 27, 2011. See Ex. A. In the years that have followed, Appellant has repeatedly attempted to challenge this Magistrate's Decision by filing multiple, repetitive motions under a variety of titles and captions seeking to invalidate the child support order. Whether captioned as a motion to vacate, an objection to, a motion to dismiss, or a motion

to modify the support order, the underlying basis of all these filings challenging the support order is the same and they have all been rejected by the Court.

In Appellant's complaint for a writ of procedendo he alleged that Appellees refused to issue rulings on a list of ten different motions filed by Appellant as follows:

- i. Motion for Relief of Judgment, Civ.R. 60(B) filed September 6, 2013.
- ii. Motion for Discovery and inspection filed on October 10, 2013.
- iii. Motion to Compel Discovery filed on July 3, 2014.
- iv. Motion to Dismiss support order, pursuant to Civ.R. 12(B)(2)(4)(5) filed on July 10, 2014.
- v. Motion to take judicial notice of case decisions and indigent status in *State v. Henderson* filed on July 14, 2014.
- vi. Motion for Transcript, April 4, 2014 Hearing filed on July 16, 2014.
- vii. Motion to Modify the support order filed on July 16, 2014.
- viii. Motion to Dismiss the support order, pursuant to Statutory Rights filed on July 24, 2014.
- ix. Motion to Strike Hearing filed on July 24, 2014.
- x. Motion to dismiss all order due to lack of service and on Constitutional grounds filed on December 16, 2011.

See Compl., ¶ 1, i-x. However, in his Merit Brief, Appellant did not even cite to all of these allegedly outstanding motions and only included six of these motions in his Statement of Facts.

See *Henderson* Merit Brief, p. 6, ¶ 24-28. It is unclear if Appellant is now conceding that the other motions were ruled upon.

Appellant had already filed a writ action in relation to PR11705281.<sup>1</sup> In 2013, Appellant filed a complaint for a writ of mandamus against Appellee Judge Sweeney in the Eighth District, *State ex rel. Henderson v. Sweeney*, Eighth Dist. No. 99605, 2013-Ohio-2919, seeking an order

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<sup>1</sup> In addition to this writ, and the 2013 writ which was denied, Appellant has also filed multiple other writ actions related to the Juvenile Court matter and the Common Pleas Court matter declaring him to be a vexatious litigator, which have all been denied including, *State ex rel. Henderson v. Sweeney*, 8th Dist. No. 102681, 2015-Ohio-1745; *State ex rel. Henderson v. Sweeney*, 8th Dist. No. 102784, 2015-Ohio-2282; *State ex rel. Henderson v. Sutula*, 8th Dist. No. 102120, 2015-Ohio-322, and *State ex rel. Henderson v. Sutula*, 8th Dist. No. 102840, 2015-Ohio-2710.

compelling Appellee Judge Sweeney to rule on Relator's "Motion to dismiss all order due to lack of service and on Constitutional grounds filed on December 16, 2011." See Respondents' MSJ, Ex. B. On July 1, 2013, The Eighth District issued a decision denying the writ because the court had already ruled upon the motion holding that:

Finally, the visiting judge ruled "that all pending motions are dismissed for want of prosecution."

This March 21, 2012 order resolved the subject motion. "[A]ll pending motions" necessarily included the subject motion, even if the visiting judge did not explicitly rule on the subject motion. Thus, although Henderson may not find the language satisfying, he has received his requested relief, a ruling on the subject motion. This matter is moot.

Eighth Dist. No. 99605, 2013-Ohio-2919, at ¶ 3, 4. This is the very same motion which Appellant again claims was not ruled upon in this matter, including this motion as number "x" in his list of allegedly outstanding motions. Once again, Appellant is filing a meritless writ and erroneously claiming that motions filed by him have not been ruled on by Appellees.

Appellees' in their motions for summary judgment provided documentation showing that rulings were made on all of the motions Appellant alleged were outstanding. After Appellant failed to comply with the Court's order of child support, a Motion to Show Cause was filed by the Cuyahoga Support Enforcement Agency ("CSEA") against Appellant on August 27, 2012. In response, Appellant sought to have the child support order vacated and filed a Motion for Relief from Judgment on September 6, 2013. See Respondents' MSJ, Ex. A. On October 10, 2013, a pre-trial was held with a magistrate regarding the motion to show cause, at which time **Appellant requested the court continue the matter** and set it for Trial. See Respondents' MSJ, Ex. C. The court ordered the matter rescheduled for a Trial hearing on May 6, 2014 at 10:00 a.m. See Ex. C.

Following the case being reset for trial, Appellee Judge Sweeney entered an Order in which she addressed Appellant's September 6, 2013 Motion for Relief from Judgment in which she found that "this Motion has not been filed within a reasonable time. Nor does the Court find the father's listed reasons to be the proper subject of Civ.R.60(B) Motion. . . . Defendant can present his case at the Trial in this matter which is set before Magistrate Wochna on May 6, 2014 at 10:00 a.m." See Respondents' MSJ, Ex. D. On November 4, 2013, the magistrate recommended that the matter be transferred to the docket of the visiting judge for further hearing, which was granted by the court on November 5, 2013. See Respondents' MSJ, Ex. E.

On April 4, 2014 a hearing was held with Appellee Visiting Judge Hayes, who continued the matter based again on **Appellant's request** to object to the Magistrate's Decision, stating that:

This matter is continued for the following reasons: Defendant wishes to object to the Magistrate's Decision of October 12, 2011, regarding establishment of child support. The Court finds that service was not perfected and Defendant had no opportunity to object. Therefore, a hearing on Defendant's Objections will be set by the Court.

Now, therefore, the Objection hearing is hereby rescheduled for July 10, 2014 at 1:00 P.M.

See Respondents' MSJ, Ex. G. A review of the docket, however, shows that Appellant never filed any document expressly captioned as an "Objection" after this order but rather filed a "Motion to Dismiss Support Order, Pursuant to Civil Rule 12(B)(2)(4)(5)" on the day of the hearing, July 10, 2014, as well as a motions to Compel Discovery and Take Judicial Notice on July 3, 2014. See Respondents' MSJ, Ex. A.

On July 11, 2014, the day after the July 10th hearing, Appellee Judge Hayes issued two separate orders. In the first order which was entered in both PR11705281 and the related custody matter CU14104638, he stated that:

This matter came before the Court on the 10th day of July, 2014. The hearing was on Father's Objections to the Magistrate's Child Support Order and also on Father's Motion for Visitation.

The Father, Troy Henderson, was present Pro Se and Melanie Allamby, Mother, was present and represented by Attorney Jeffery Froude. Assistant Prosecutor Anthony Beery represented Job and Family Services and Thomas Kozel GAL was also present.

During the course of the hearing, Attorney Jeffery Froude, on behalf of Mother, made an oral Motion for a Court Diagnostic psychiatric evaluation to assist the Court in deciding the visitation issue.

The Court finds that Motion well taken and the Motion is Granted. The parties will be contacted by the Court Diagnostic Clinic to make the necessary arrangements for evaluation.

It is so Ordered!

See Respondents' MSJ, Ex. H.

The second order on July 11, 2014 made by Appellee Judge Hayes after the July 10th hearing was entered in PR11705281 and held that:

This matter came on for consideration this 11<sup>th</sup> day of July, 2014 before Judge Jerry L. Hayes **regarding a all of Father's motions.**

The Court finds that the Father filed 11 motions.

The Court takes judicial notices of the order.

**Therefore, Father's motions are dismissed without prejudice.**

See Respondents' MSJ, Ex. I. Consequently, all motions that were pending before the Court at that time were ruled upon and dismissed without prejudice.

This did not stop Appellant from continuing to challenge the Court's order of child support, however, and Appellant proceeded to file an entire new series of motions again challenging the support order. This included a Motion to take judicial notice of case decisions and indigent status in State v. Henderson filed on July 14, 2014, a Motion for Transcript, April 4, 2014 Hearing filed on July 16, 2014, a Motion to Modify the support order filed on July 16,

2014, a Motion to Dismiss the support order, pursuant to Statutory Rights filed on July 24, 2014, and a Motion to Strike Hearing filed on July 24, 2014.

On July 28, 2014, Appellee Judge Hayes issued an order granting Appellant's Motion for Transcript of the April 4, 2014 hearing. See Respondents' MSJ, Ex. J. Then on October 14, 2014, another pre-trial in the matter was held by Appellee Judge Hayes and he again issued two orders. The first order documented that the Diagnostic Report for the psychiatric evaluations was not completed and that the Results would not be available until February, 2015, thus the Court scheduled a final pre-trial for March 3, 2015 at 1:00 P.M. and a trial date for April 20, 2015 at 9:00 A.M. See Respondents' MSJ, Ex. K.

The second order issued on October 17, 2014 entered a judgment on Appellant's objections to the Magistrate's decision establishing the Order of Child Support. After conducting a full hearing on the issue, the Court's order concluded that:

Accordingly, the Court can find no reason to change the Decision of the Magistrate made at the October 12, 2011 hearing.

Father's Objections are Overruled.

It is so Ordered!

See Respondents' MSJ, Ex. L.

Following this hearing, Appellant again filed even more motions on the same issue including another motion to compel discovery and another motion to dismiss. Appellee Judge Hayes issued an order denying the fourth motion to compel discovery and an order denying the motion to compel dismissal as moot finding that the hearing on objections was already held. See Respondents' MSJ, Ex. M & Ex. N.

As is clear from the docket and journal entries in this matter, Appellees have not refused to render a judgment in this matter, nor have they unnecessarily delayed proceeding to judgment

in this matter. The court in this matter had the case set for trial, but it was Appellant who requested two continuances so that he could again attempt to challenge the magistrate's decision establishing the order of child support. Appellees have continued to rule on Appellant's repeated filings regarding the Order of Child Support in the underlying matter.

The Eighth District, in dismissing the application for a writ of procedendo correctly held that the majority of the complaint was moot or barred by res judicata, and that there was no unnecessary delay in any motions that may be outstanding. Moreover, the Appellate Court correctly held that the complaint should be dismissed based on Appellant's failure to seek leave to proceed under R.C. 2323.52. Therefore, there are no grounds to support granting a Writ of Procedendo in this matter and the Eighth District's decision granting Appellees' motion for summary judgment and dismissing the writ should be affirmed.

On July 30, 2015, Appellant filed a notice of appeal in the Supreme Court of Ohio from the Eighth District June 15, 2015 decision dismissing the complaint. The matter is now before this Court on Appellant's appeal as of right pursuant to S.Ct.Prac.R. 5.01(A)(3).

### **ARGUMENT**

Appellant's Propositions of Law fail to show any error by the Eighth District in granting Appellees' summary judgment motion and dismissing Appellant's complaint for a writ of procedendo. Appellant's Merit Brief contains propositions of law that are in large part irrelevant to the writ of procedendo and instead relate to Appellant's claims that his constitutional and civil rights are being violated and that courts below are "trying to railroad innocence [sic] African American Father." See Henderson Merit Brief, p. 10, ¶ 52. Appellant's manufactured conspiracy theories against him are completely false and have no bearing on the procedendo action. Moreover, the relief sought by Appellant, including an order from this Court vacating all

the Juvenile Court orders and precluding Appellees from adjudicating Appellant's cases, cannot be granted in a procedendo action. See Henderson Merit Brief, p. 15-16. There is simply no basis for the relief requested by Appellant and it is irrelevant to the Eighth District's June 15, 2015 decision dismissing Appellant's writ of procedendo action which is the matter on appeal.

A review of the Eighth District's decision shows that it properly dismissed Appellant's appeal based on his failure to seek leave to proceed after being declared a vexatious litigator under R.C. 2323.52(I). The Court of Appeals also correctly determined that, notwithstanding the failure to obtain leave to proceed, it was also appropriate to dismiss the action based on mootness and the merits. Further, the Eighth District also held that res judicata barred Appellant's writ of procedendo action as to one of the motions at issue based the denial of his prior complaint for a writ of procedendo on the same issues in *State ex rel. Henderson v. Sweeney, et al.*, 8th Dist. No. 99605, 2013-Ohio-2919. Therefore, the complaint failed to state a claim for relief in procedendo and the Eighth District properly dismissed Appellant's complaint.

**I. APPELLEES' RESPONSE TO APPELLANT'S PROPOSITIONS OF LAW I, II AND III: THE EIGHTH DISTRICT PROPERLY DISMISSED APPELLANT'S COMPLAINT FOR A WRIT OF PROCEDENDO BASED ON MOOTNESS, RES JUDICATA, AND LACK OF UNNECESSARY DELAY**

In his first three propositions of law, Appellant attempts to challenge the Eighth District's decision by claiming that his rights were violated and that there were fraudulent acts against him. All of these claims are erroneous and completely unsupported by Appellant, and moreover, do not save his claim for a writ of procedendo as they fail to show that Appellees unnecessarily delayed in proceeding to judgment, which is the only determination to be made in a procedendo action. All of Appellant's other allegations are irrelevant to the issue of whether Appellees refused or unnecessarily delayed in ruling on the ten motions asserted in Appellant's complaint.

In addition to finding that Appellant had failed to comply with the requirements of R.C. 2323.52 to seek leave to proceed which supported dismissal of the action under R.C. 2323.52(I), the Eighth District proceeded to consider Appellant's underlying complaint and found that it would also be appropriate to dismiss the action on mootness and the merits. Eighth Dist. No. 102541, 2015-Ohio-2412, ¶ 6. Appellant's complaint stated that he sought a writ to compel Appellees to render rulings on ten different motions that he alleged were outstanding. See Compl. ¶ 1. The Court of Appeals correctly held that there is no legal basis to issue a writ of procedendo because for the majority of the motions there was no doubt that they had been resolved. Res judicata barred Appellant's claim as to one of the motions based on the Eighth District's dismissal of Appellant's prior complaint in *State ex rel. Henderson v. Sweeney, et al.*, 8th Dist. No. 99605, 2013-Ohio-2919, as the same exact issues raised in this matter had already been adjudicated. Further, for two motions for which there might not have been rulings, the Eighth District failed to find any unnecessary delay by Appellees and declined to usurp the underlying court's discretion in the matter. There are simply no grounds presented by Appellant to disturb the Eighth District's decision and it should be affirmed.

**A. Requirements for Issuing a Writ of Procedendo**

The Eighth District correctly held that there was no basis for the granting of a writ of procedendo against Appellees in this matter because Appellant failed to show that Appellees refused to render a judgment or unnecessarily delayed in proceeding to judgment. A review of the requirements for a writ of procedendo establishes that the Eighth District correctly determined that Appellant was not entitled to a writ of procedendo.

A 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.” *State ex rel. Utley v. Abruzzo*, 17 Ohio St.3d 203, 204, 478 N.E.2d 789 (1985) (quoting *State ex rel. Davey v. Owen*, 133 Ohio St. 96, 106, 12 N.E.2d 144 (1937)). “Procedendo will not issue unless a clear right to relief exists... and no adequate remedy at law is available.” *State ex rel. Levin v. City of Sheffield Lake*, 70 Ohio St.3d 104, 106, 637 N.E.2d 319 (1994). The Supreme Court has “disapproved of litigants who request extraordinary writs to gain immediate review of and interfere with court procedure.” *Id.* at 110.

A writ of procedendo is appropriate when a court has either refused to render a judgment or has unnecessarily delayed proceeding to judgment. *See State ex rel. Charvat v. Frye*, 114 Ohio St.3d 76, 2007-Ohio-2882, 868 N.E.2d 270, ¶ 14. “A lower court’s refusal or failure to timely resolve a pending case is the error that procedendo was created to rectify.” *Id.* In order to be entitled to this writ, the relator must establish (1) a clear legal right to require the respondent to proceed, (2) a clear legal duty by the respondent judge to proceed, and (3) the lack of an adequate remedy in the ordinary course of law. *State ex rel. Weiss v. Hoover*, 84 Ohio St.3d 530, 531, 705 N.E.2d 1227 (1999).

“It is well-settled that the writ of procedendo will not issue for the purpose of controlling or interfering with ordinary court procedure, nor will the writ issue where an adequate remedy exists in the ordinary course of the law. . . Moreover, it is axiomatic that a direct appeal as of right constitutes a plain and adequate remedy in the ordinary cause of the law, the existence of which is fatal to a request for the extraordinary remedy of procedendo.” *State ex rel. Utley, supra*, at 204-05 (internal citations omitted).

Furthermore, it is well-established that “[p]rocedendo will not compel the performance of a duty that has already been performed.” *State ex rel. Walker v. Koch*, 98 Ohio St. 3d 295, 296, 2003-Ohio-856, 784 N.E.2d 96, ¶ 4 (citing *State ex rel. Grove v. Nadel*, 84 Ohio St.3d 252, 253,

703 N.E.2d 304 (1998); *Martin v. Judges of Lucas Cty. Court of Common Pleas*, 50 Ohio St.3d 71, 72, 552 N.E.2d 906 (1990)). “A judge’s performance of the requested act makes the complaint in procedendo moot.” *State ex rel. Brown v. Henson*, 5th Dist. No. 13CA82, 2014-Ohio-194, ¶ 3 (citing *State ex rel. Hazel v. Bender*, 129 Ohio St.3d 496, 2011-Ohio-4197, 954 N.E.2d 114). The Eighth District properly applied these standards in determining that Appellant’s application for a writ of procedendo failed based on mootness, res judicata and Appellees’ discretion to delay ruling on the motions.

**B. The Eighth District Correctly Held that Dismissal of Appellee’s Writ of Procedendo Action was Appropriate Based on Mootness and the Merits**

The Eighth District correctly held that Appellant’s writ of procedendo action should be dismissed based on mootness and the merits of the action. The Eighth District went through each of the motions that Appellant claimed were outstanding and held that the majority these motions had already been resolved. See 8th Dist. No. 102541, 2015-Ohio-2412, ¶ 7-9. Appellees, in their motion for summary judgment attached the journal entries and docket from the court below documenting the court’s rulings on the various motions filed by Appellant. Thus, the application for a writ was moot, and the Eighth District properly dismissed the action because it is well-settled that “[n]either procedendo nor mandamus may compel [Respondents] to perform a duty already performed.” *State ex rel. Breaux v. Court of Common Pleas*, 50 Ohio St. 2d 164, 363 N.E.2d 743 (1977); see also, *State ex rel. Nelson v. Russo*, 89 Ohio St. 2d 227, 729 N.E. 2d 1181 (2000) (holding that neither mandamus nor procedendo will compel the performance of a duty that has already been performed).

Appellees further attached the decision of the Eighth District in *State ex rel. Henderson v. Sweeney, et al.*, 8th Dist. No. 99605, 2013-Ohio-2919, which clearly showed that Appellant’s December 16, 2011 “Motion to dismiss all order due to lack of service and on Constitutional

grounds” had already been held ruled upon by the Court of Appeals thus barring this claim under res judicata. A writ of procedendo is properly denied when it is barred by res judicata. *See State ex rel. Gregley v. Friedman*, 8th Dist. No. 100601, 2014-Ohio-218, *affirmed by* 2014-Ohio-4796 (Nov. 4, 2014).

Lastly, the Eighth District properly held that it would not usurp Appellees’ discretion regarding two motions for which there might not be rulings. See 8th Dist. No. 102541, 2015-Ohio-2412, ¶ 10. The court recognized that variables can cause a trial court to exercise its discretion to delay in ruling on any given motion. *Id.* (citing *State ex rel. Rodgers v. Cuyahoga Cty. Court of Common Pleas*, 88 Ohio App.3d 684, 615 N.E.2d 689 (8th Dist.1992)). Further, the Eighth District recognized that writ actions should not be used for gamesmanship in litigation, which is exactly what Appellant has done in this matter by continually filing frivolous writ actions to stall the underlying proceedings. See 8th Dist. No. 102541, 2015-Ohio-2412, ¶ 10; *see also, State ex rel. Levin v. City of Sheffield Lake*, 70 Ohio St.3d 104, 106, 637 N.E.2d 319 (1994)(recognizing that a relator cannot unnecessary claim delay when he is responsible for the delay).

The only response by Appellant to the undeniable evidence of the attachments of the Juvenile Court’s order was to take the reprehensible action of accusing Appellees and counsel for Appellees of falsifying documents without any support for such spurious claims. Again in this appeal, Appellant presents propositions of law that are not based in law or fact, and proceeds to improperly accuse Appellees of a conspiracy against him and falsification of documents. Such baseless accusations should not be tolerated by this Court and Appellant’s frivolous conduct should be sanctioned by this Court under S.Ct.Prac.R. 4.03. None of Appellant’s propositions of law have any legal or factual support and should be rejected by this Court.

Appellant for his Proposition of Law I states:

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 costs.

See Henderson Merit Brief, p. 8. First, Appellant's claims of violations of his constitutional rights are not applicable in a writ of procedendo action, which is "merely an order from a court of superior jurisdiction to one of inferior jurisdiction to proceed to judgment." *See Utley, supra*, at 204. Thus, the only issue for consideration is whether Appellees have unnecessarily delayed in proceeding to judgment and Appellant's claims regarding alleged violations of his rights are not relevant to this matter.

Moreover, Appellant does not provide any basis for his claims that the motions at issue were not ruled upon and merely includes unsupported allegations. The Motion for Summary Judgment filed by Appellees, which attached journal entries from the court establishing that these motions have been ruled upon provided the Eighth District sufficient grounds to grant summary judgment in their favor. Appellant failed to create any genuine issue of material fact which would have precluded summary judgment in Appellees' favor.

Appellant's Proposition of Law II states:

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 Motion for Relief was not determined in 2014 on appeal.

See Henderson Merit Brief, p. 10. Again, this assignment of error reiterates the claims in Appellant's first proposition of law that his constitutional rights were violated, which are not appropriate grounds for a writ of procedendo. This proposition of law seems to focus specifically on Appellant's September 6, 2013 "Motion for Relief of Judgment, Civ.R. 60(B) and

claims that this motion is still pending. As correctly recognized by the Eighth District, this motion was ruled upon by Appellee Judge Hayes in his July 11, 2014 journal entry, which dismissed all of Appellant's motions without prejudice. See 8th Dist. No. 102541, 2015-Ohio-2412, ¶ 7; Respondents' MSJ, Ex. I. Appellant's unsupported allegation that the motion is still pending does not create any issue of fact that would preclude summary judgment and the Eighth District properly granted Appellee's motion and dismissed the writ of procedendo.

Appellant's Proposition of Law III states:

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

See Henderson Merit Brief, p. 11.

Appellant's claims relating to fraud and false representation under R.C. 124.58 and criminal statutes are utterly nonsensical and again have no relevance to this appeal of the denial of a writ of procedendo. Chapter 124 of the Ohio Revised Code, entitled "Department of Administrative Services – Personnel," applies to civil service law and R.C. 124.58, applies to Municipal and Township Civil Service Commissions. These code sections relied upon by Appellant are plainly inapplicable to his case. Appellant also cites to multiple criminal code sections, such as R.C. 2921.45, R.C. 2921.31 and R.C. 2921.44, which again are also irrelevant to a writ of prohibition action and merely attempt to argue the merits of his claim that he was not properly served in the juvenile proceedings. See Henderson Merit Brief, p. 11-12. Consideration of the merits of the underlying case is inappropriate in a procedendo action. See *Utlej, supra*, at 204-205. None of these assertions have any bearing on the sole issue in a writ of procedendo action of whether a respondent court has refused to render or unnecessarily delayed in proceeding to judgment. The Eighth District correctly determined that Appellees had not

unnecessarily delayed in ruling on motions in the underlying matter and that the action was moot and failed on the merits. Therefore, is decision should be affirmed.

**II. APPELLEES' RESPONSE TO APPELLANT'S PROPOSITION OF LAW IV: THE EIGHTH DISTRICT PROPERLY DISMISSED APPELLANT'S COMPLAINT PURSUANT TO R.C. 2323.52(I)**

Appellant asserts for his fourth proposition of law that:

The Eighth District abuse [sic] its discretion in assuming that Appellant [sic] a vexatious litigator.

See Henderson Merit Brief, p. 13. This proposition of law is entirely frivolous and epitomizes why Appellant has been declared a vexatious litigator for his repeated legally groundless and factually baseless claims. Appellant does not dispute that he failed to seek leave to proceed in his writ action as required under R.C. 2323.52(F)(2) after being declared a vexatious litigator, and instead makes the preposterous claim that because there are other people named Troy Henderson who live at his address, that the Eighth District was “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.” See Henderson Merit Brief, p. 13, ¶ 66. This nonsensical, outright ridiculous, argument fails to show any error by the Eighth District in dismissing Appellant’s action when he failed to seek leave to proceed after being declared a vexatious litigator in Cuyahoga County Common Pleas Court Case No. CV-13-803590, *Henderson, et al. v. Allamby, et al.* Appellant does not dispute that this order was rendered against him and he is, in fact, attempting to challenge this order through a jurisdictional appeal to this Court in Ohio Supreme Court Case No. 2015-1258. Such claims by Appellant should be sanctioned by this Court, who should also declare Appellant to be a vexatious litigator pursuant to S.Ct.Prac.R. 4.03(A) & (B).

A review the Eighth District’s dismissal pursuant to R.C. 2323.52(I) shows that the Eighth District properly dismissed Appellant’s appeal for his failure to obtain leave to proceed under the vexatious litigator statute and its decision should be affirmed. R.C. 2323.52(D)(3) provides that a person ordered to be a vexatious litigator may not “continue any legal proceedings that the vexatious litigator had instituted in a court of appeals prior to the entry of the order.” Further, R.C. 2323.52(F)(2), expressly provides that:

A person who is subject to an order entered pursuant to division (D)(1) of this section and who seeks to institute or **continue any legal proceedings in a court of appeals** or to make an application, other than an application for leave to proceed under division (F)(2) of this section, in any legal proceedings in a court of appeals **shall file an application for leave to proceed in the court of appeals in which the legal proceedings would be instituted or are pending.** The court of appeals shall not grant a person found to be a vexatious litigator leave for the institution or continuance of, or the making of an application in, legal proceedings in the court of appeals unless the court of appeals is satisfied that the proceedings or application are not an abuse of process of the court and that there are reasonable grounds for the proceedings or application. If a person who has been found to be a vexatious litigator under this section requests the court of appeals to grant the person leave to proceed as described in division (F)(2) of this section, the period of time commencing with the filing with the court of an application for the issuance of an order granting leave to proceed and ending with the issuance of an order of that nature shall not be computed as a part of an applicable period of limitations within which the legal proceedings or application involved generally must be instituted or made.

R.C. 2323.52(F)(2) (emphasis added). Additionally, R.C. 2323.52(I) provides that:

Whenever it appears by suggestion of the parties or otherwise that a person found to be a vexatious litigator under this section has instituted, continued, or made an application in legal proceedings without obtaining leave to proceed from the appropriate court of common pleas or 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.**

R.C. 2323.52(I) (emphasis added).

On April 21, 2015, in Cuyahoga County Common Pleas Court Case No. CV-13-803590, *Henderson, et al. v. Allamby, et al.*, Appellant was declared to be a vexatious litigator and prohibited from instituting and/or continuing any legal proceedings pursuant to R.C. 2323.52.

Eighth Dist. No. 102541, 2015-Ohio-2412, ¶ 2. Thus, Appellant was required to file an application for leave to proceed in the court of appeals regarding his pending writ action under R.C. 2323.52(F)(2), which he failed to do. *See Gains v. Harman*, 148 Ohio App.3d 357, 2002-Ohio-2793, 773 N.E.2d 583 (7th Dist.); *Howard v. Admr. Bur. of Workers' Comp.*, 6th Dist. Lucas No. L-05-1055, 2005-Ohio-3598; *Farley v. Farley*, 10th Dist. Nos. 99AP-1282, 99AP-419, 03AP-226, 2005-Ohio-3994. Appellant never made the mandatory application for leave to proceed and the Eighth District held that accordingly, “pursuant to R.C. 2323.52(I), this court dismisses this procedendo action.” Eighth Dist. No. 102541, 2015-Ohio-2412, ¶ 5 (citing *Grundstein v. Carroll*, 8th Dist. No. 86604, 2006-Ohio-2215).

Appellant failed to challenge the Eighth District’s dismissal of his complaint for a writ of prohibition under R.C. 2323.52(I). He does not attempt to argue that he submitted the mandatory leave to proceed or that the appellate court improperly applied the provisions of R.C. 2323.52(I) when dismissing his complaint, rather, he merely makes the meritless argument that there is more than one Troy Henderson so the order is violating his civil rights. Therefore, the Eighth District’s dismissal based on R.C. 2323.52(I) should be affirmed by this Court.

### **CONCLUSION**

The Eighth District correctly dismissed Appellant’s Complaint seeking a writ of procedendo for multiple reasons including: Appellant failed to make an application for leave to proceed in the writ action before the Eighth District after being declared a vexatious litigator as required pursuant to R.C. 2323.52; the action was moot and was barred in part by res judicata as he had already filed a writ on the same exact issue in *State ex rel. Henderson v. Sweeney, et al.*, 8th Dist. No. 99605, 2013-Ohio-2919, which was previously dismissed; and Appellees did not unnecessarily delay in proceeding to judgment in the underlying matter.

None of the largely nonsensical propositions of law asserted by Appellant show any error in the Eighth District's decision. Rather, Appellant is improperly asking this Court to dismiss the juvenile court orders against him and treating this appeal as yet another application for a writ of prohibition by his request that this Court preclude Appellees from adjudicating his Juvenile Court cases. Therefore, Appellees Judge Kristin Sweeney, Judge Jerry Hayes and Cuyahoga County Juvenile Court request that this Court affirm the judgment of the Court of Appeals' which granted summary judgment in favor of Appellees and dismissed Appellant's writ of procedendo.

Respectfully submitted,

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of Cuyahoga County

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**CERTIFICATE OF SERVICE**

Pursuant to S.Ct.Prac.R. 3.11, a true copy of the foregoing Merit Brief of Appellees Judge Kristin Sweeney, Judge Jerry Hayes and Cuyahoga County Juvenile Court, was served this 28th day of October, 2015 by email, upon:

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