

**IN THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
GEAUGA COUNTY, OHIO**

CHARLES W. DAVIS,	:	PER CURIAM OPINION
Relator,	:	
- VS -	:	CASE NO. 2011-G-3009
HON. FORREST W. BURT, JUDGE,	:	
Respondent.	:	

Original Action for Writ of Procedendo.

Judgment: Petition dismissed.

Clifford A. Thornton, Jr., Peckinpaugh & Thornton, L.L.C., Three Commerce Park Square, Suite 605, 23230 Chagrin Boulevard, Cleveland, OH 44122 (For Relator).

Hon. Forrest W. Burt, Judge, pro se, Geauga County Courthouse, 100 Short Court Street, Chardon, OH 44024 (Respondent).

PER CURIAM.

{¶1} The instant original action in procedendo is presently before this court for final consideration of the motion to dismiss of respondent, Judge Forrest W. Burt of the Geauga County Court of Common Pleas. As the sole basis for the motion, respondent contends that the merits of the procedendo petition have become moot because he has already performed the judicial act which relator, Charles W. Davis, sought to compel. For the following reasons, we conclude that the dismissal of this matter is warranted.

{¶2} In bringing this original action, relator requested the issuance of a writ to

require respondent to render a final decree in a pending divorce proceeding. Relator's sole claim for relief was based upon the factual assertion that respondent had failed to proceed in a timely manner in ruling upon his objections to a magistrate's decision and making a final determination as to all issues pertaining to the divorce.

{¶3} In now moving to dismiss the entire petition, respondent states that, during the interim period in which this matter has been pending, he released a written decision and final judgment in the underlying divorce proceeding. Respondent also states that, in these two entries, he disposed of all pending issues regarding the divorce. Relator has not filed any type of response to the motion to dismiss.

{¶4} Under well-settled Ohio law, a writ of procedendo will only lie to compel a trial judge to proceed when he has refused to go forward and issue a final ruling on a pending matter. *Perry v. McKay*, 11th Dist. No. 2009-T-0023, 2009-Ohio-5767, at ¶18, citing *State ex rel. Agosto v. Cuyahoga Cty. Ct. of Common Pleas*, 119 Ohio St.3d 366, 2008-Ohio-4607, at ¶8. Given the basic purpose of the writ, this court has indicated that, once the trial judge has rendered the decision sought by the relator, the general substance of the procedendo claim will be deemed moot. *Davis v. Smalheer*, 11th Dist. No. 2010-G-2982, 2010-Ohio-6061, at ¶5.

{¶5} As to the procedure which must be followed in an original action to show that a claim for relief has become moot, this court has stated:

{¶6} "In regard to this point, this court would indicate that, in most instances in which a judge has moved to dismiss on the basis that a judgment on a pending matter has already been rendered, the judge has usually attached a certified copy of the judgment to his motion. *** However, although the submission of certified copies

maybe the best method for establishing the existence of such a judgment, we have also indicated that a finding of mootness can be made in an original action when the relator does not contest the respondent's contention. ***" (Citations omitted.) *State ex rel. Verbanik v. Bernard*, 11th Dist. No. 2006-T-0080, 2007-Ohio-1786, at ¶8.

{¶7} Unlike the instant case, *Verbanik* involved an original action for a writ of mandamus. Nevertheless, the essential relief sought in *Verbanik* was virtually identical to the requested relief in the present matter; i.e., the relator in *Verbanik* sought an order to require a trial judge to proceed and issue a final determination on a motion to vacate. Furthermore, this court has recently followed the *Verbanik* analysis in the context of a procedendo action. *Davis*, 2010-Ohio-6061, at ¶8-9.

{¶8} Despite the fact that the instant motion to dismiss was not accompanied by any evidentiary material, respondent did contend that he had released a final decree which disposed of all pending matters in the divorce proceeding. Even though relator had considerable opportunity to do so, he never filed a response in which he challenged respondent's "mootness" contention. Accordingly, the submissions before this court are sufficient to establish that the merits of relator's procedendo claim is now moot because respondent has completed the judicial act which relator intended to compel.

{¶9} Pursuant to the foregoing discussion, respondent's motion to dismiss has merit. It is the order of this court that relator's procedendo petition is hereby dismissed in its entirety.

DIANE V. GRENDALL, J., CYNTHIA WESTCOTT RICE, J., THOMAS R. WRIGHT, J.,
concur.