

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

Kime Design, Ltd.

Court of Appeals No. L-10-1300

Appellee

Trial Court No. CVI-09-13756

v.

Moustafa M. Aouthmany

DECISION AND JUDGMENT

Appellant

Decided: April 22, 2011

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Moustafa M. Aouthmany, pro se.

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PER CURIAM.

{¶ 1} This matter is before the court sua sponte. On April 11, 2011, defendant-appellant, Moustafa M. Aouthmany, filed a "Notice of Original Action: writ of mandamus." Although Aouthmany's pleading states that it is an original action, Aouthmany captioned his "writ" in the Toledo Municipal Court. The "writ" was also

filed in appellate case No. L-10-1300, pursuant to the caption on the document, not as a new case.¹ Thus, the clerk of court treated Aouthmany's filing as a motion.

{¶ 2} Aouthmany cannot seek a writ of mandamus via motion in a direct appeal that is already pending, but must institute a new lawsuit. See, e.g., *State v. Carter* (Aug. 29, 2001), 9th Dist. No. 20572. (Original actions for extraordinary relief like a writ of mandamus, prohibition, or procedendo must be commenced in a separate, new case by filing a complaint or petition, not by filing a motion or an application.)

{¶ 3} Based upon the foregoing, appellant's motion for a writ of mandamus is denied. The clerk of the Lucas County Court of Appeals shall refund Aouthmany's \$100 filing fee tendered in conjunction with this motion. It is so ordered.

WRIT DENIED.

Peter M. Handwork, J.

JUDGE

Arlene Singer, J.

JUDGE

Thomas J. Osowik, P.J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
<http://www.sconet.state.oh.us/rod/newpdf/?source=6>.

¹On November 24, 2010, the court dismissed appeal No. L-10-1300 for lack of a final appealable order.