

[Cite as *State ex rel. Bush v. Smith*, 2016-Ohio-3018.]

STATE OF OHIO, MAHONING COUNTY

IN THE COURT OF APPEALS

SEVENTH DISTRICT

STATE EX REL. ZARYL G. BUSH,)	CASE NO. 16 MA 0031
)	
PETITIONER,)	
)	
VS.)	OPINION AND
)	JUDGMENT ENTRY
JUDGE BETH A. SMITH, et al.,)	
)	
RESPONDENT.)	

CHARACTER OF PROCEEDINGS: Petition for Writ of Procedendo

JUDGMENT: Dismissed.

APPEARANCES:

For Petitioner:	Zaryl G. Bush <i>pro se</i> A643-199 P.O. Box 8000 Conneaut, Ohio 44030
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For Respondent:	Atty. Paul J. Gains Mahoning County Prosecutor Atty. Gina DeGenova Bricker Assistant Prosecuting Attorney Civil Division 21 West Boardman Street, 5 th Floor Youngstown, Ohio 44503
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JUDGES:

Hon. Carol Ann Robb
Hon. Gene Donofrio
Hon. Cheryl L. Waite

Dated: April 27, 2016

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PER CURIAM.

{¶1} Petitioner Zaryl Bush has filed a pro se petition for a writ of procedendo asking this court to compel Respondent Judge Beth Smith of the Mahoning County Common Pleas Court, Domestic Relations Division, to rule on a motion he filed in that court on July 22, 2015 entitled, “REQUEST FOR DOMESTIC VIOLENCE CIVIL PROTECTION ORDER (CPO) MODIFICATION OF FORM 10-01-1 Page 4, ¶12 Entered Mar. 16, 2015.” Counsel for Respondent has filed a motion to dismiss indicating the motion has been ruled upon.

{¶2} Entitlement to a writ of mandamus requires the petitioner to demonstrate: (1) they have a clear legal right to the relief; (2) the respondent has a clear legal duty to provide that relief; and (3) they have no adequate remedy at law. *State ex rel. Taxpayers for Westerville Schools v. Franklin Cty. Bd. of Elections*, 133 Ohio St.3d 153, 2012-Ohio-4267, 976 N.E.2d 890, ¶ 12. Entitlement to a writ of procedendo requires the petitioner to demonstrate: (1) a clear legal right to require the court to proceed; (2) a clear legal duty on the part of the court to proceed; and (3) the lack of an adequate remedy in the ordinary course of law. *State ex rel. Sherrills v. Cuyahoga Cty. Court of Common Pleas*, 72 Ohio St.3d 461, 462, 650 N.E.2d 899 (1995). A writ of procedendo is proper when a court has refused to enter judgment or has unnecessarily delayed proceeding to judgment. *State ex rel. Crandall, Pheils & Wisniewski v. DeCessna*, 73 Ohio St.3d 180, 184, 652 N.E.2d 742 (1995).

{¶3} However, as counsel for Respondent points out in their motion to dismiss, Respondent ruled on Petitioner’s motion during the pendency of this matter on March 23, 2016. Respondent has attached as an exhibit to the motion to dismiss, a copy of the trial court’s March 23, 2016 judgment entry in which it dismissed Petitioner’s July 23, 2015 request.

{¶4} Since the trial court has ruled on his motion, his petition for a writ of procedendo before this court is moot. “Neither procedendo nor mandamus will compel the performance of a duty that has already been performed.” *Martin v. Judges of the Lucas Cty. Court of Common Pleas*, 50 Ohio St.3d 71, 72, 552 N.E.2d 906 (1990). As such, Petitioner’s petition for writ of procedendo is hereby dismissed

as moot.

{¶5} Costs taxed against Petitioner. Final order. Clerk to serve notice as provided by the Civil Rules.

Robb, J., concurs.

Donofrio, P.J., concurs.

Waite, J., concurs.