

[Cite as *Ponzi v. Christian*, 2016-Ohio-5228.]

STATE OF OHIO, MAHONING COUNTY

IN THE COURT OF APPEALS

SEVENTH DISTRICT

LOUIS D. PONZI, JR.

RELATOR

VS.

MAHONING COUNTY COMMON
PLEAS, JUDGE
SHIRLEY J. CHRISTIAN

RESPONDENT

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CASE NO. 16 MA 0054

OPINION AND
JUDGMENT ENTRY

CHARACTER OF PROCEEDINGS:

Relator's Petition for Writ of
Procedendo

JUDGMENT:

Petition Dismissed.

APPEARANCES:

For Relator:

Louis D. Ponzi, Jr., *Pro se*
Inmate No. 544332 2B-226
Correctional Behavioral Institution
2338 N. West Street
Lima, Ohio 45802

For Respondent:

Atty. Paul J. Gains
Mahoning County Prosecutor
Atty. Gina DeGenova Zawrotuk
Assistant Prosecuting Attorney
Civil Division
21 West Boardman Street, 5th Floor
Youngstown, Ohio 44503

JUDGES:

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

Dated: July 22, 2016

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PER CURIAM.

{¶1} Relator Louis D. Ponzi, currently incarcerated at the Allen Oakwood Correctional Facility, has filed a pro se complaint for a writ of procedendo asking this Court to compel Respondent Judge Shirley J. Christian of the Mahoning County Common Pleas Court to rule on a motion for garnishment he filed in that court on April 7, 2015. Counsel for Respondent has filed a motion to dismiss suggesting that Respondent has already ruled upon the motion. Motion to dismiss is sustained and the complaint is hereby dismissed.

{¶2} Entitlement to a writ of procedendo requires the relator 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 the law. *State ex rel. Culgan v. Collier*, 135 Ohio St.3d 436, 2013-Ohio-1762, 988 N.E.2d 564, ¶ 7.

{¶3} Relator sued Dominic Trimboli in Mahoning County Common Pleas Court for claims including breach of fiduciary duty and conversion in case no. 2009 CV 04169. Relator obtained a money judgment against Trimboli and an order requiring Trimboli to return Relator's vehicle to him. The case was appealed and the judgment was modified. Thereafter, Relator filed various documents in the trial court in an attempt to collect on that judgment. In his complaint for writ of procedendo before this Court, Relator seeks to compel Respondent to rule on a "motion" for garnishment which was filed on April 7, 2015.

{¶4} Respondent contends that Relator's motion has been ruled upon by a magistrate's decision filed on September 8, 2015 and an October 15, 2015 judgment

entry in which Respondent adopted the magistrate's decision. (Respondent's Exhibits A & B.)

{¶15} First of all, we must dismiss this complaint because Relator has not complied with R.C. 2969.25, which contains requirements for inmates who file civil actions against the government or its employees. Relator is an inmate and he has filed his complaint against a sitting judge of the court of common pleas. R.C. 2969.25(A) requires an inmate to file with his complaint an affidavit listing all civil actions or appeals filed in the previous five years. Relator did not file this affidavit with his complaint. If he had, he would have alerted us to the fact that the trial court case that is the subject of Relator's complaint for writ of procedendo is currently on appeal to this Court. See Appeal No. 15 MA 0205. Relator's failure to follow R.C. 2969.25(A) is sufficient grounds for us to *sua sponte* dismiss this appeal. *Clark v. Miller*, 7th Dist. No. 13 BE 13, 2013-Ohio-2958, ¶ 2. Relator has also failed to comply with R.C. 2969.25(C) in that he filed an affidavit of indigency but did not file a statement that sets forth the balance in his inmate account for each of the preceding six months, nor has he filed a statement that sets forth all other cash and things of value he owns. Failure to comply with R.C. 2969.25(C) is another reason to *sua sponte* dismiss the complaint. *State ex rel. Young v. Clipper*, 142 Ohio St.3d 318, 2015-Ohio-1351, 29 N.E.3d 977, ¶ 9.

{¶16} Second, the fact that the very judgment entries relied upon by Respondent are the subject of an active appeal means that Relator has an adequate remedy at law in the direct appeal to litigate the matter raised in his complaint. The

issue of whether the motion he alleges has or has not been ruled on, or whether it should have been ruled on, can be resolved on direct appeal. Relator had various options available to him in the direct appeal to obtain clarification or resolution of the motion. Furthermore, since the case is on direct appeal, there is no clear legal duty for the trial court to proceed on a pending motion since the case is currently under the jurisdiction of this Court.

{¶7} Finally, Relator has not provided anything in his complaint or attached to it indicating that the trial court was required to act upon the "motion" for garnishment. Garnishment of personal earnings is a purely statutory procedure that is not initiated by motion, and Relator has not indicated the legal basis for filing such a motion or for the trial court to act on such a motion. R.C. 2716.03; *Hadassah v. Schwartz*, 1st Dist. No. C-110046, 197 Ohio App.3d 94, 2011-Ohio-5247, 966 N.E.2d 298, ¶ 12. The motion that was filed does not ask the trial court to take any action, but merely states that it is an amendment to an affidavit he filed. Once again, Relator has not pointed to any clear legal duty for the trial court to act, and thus, there would be no reason for issuing a writ of procedendo to compel the trial court to do something that is not a clear legal duty.

{¶8} For all the reasons stated above, Respondent's motion to dismiss is sustained. Relator's complaint is dismissed.

{¶9} Costs taxed to Relator.

Waite, J., concurs.

Donofrio, P.J., concurs.

Robb, J., concurs.