

[Cite as *State ex rel. Ford Motor Co. v. Corrigan*, 2011-Ohio-354.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 96287

**STATE OF OHIO, EX REL.
FORD MOTOR COMPANY**

RELATOR

vs.

JUDGE PETER J. CORRIGAN

RESPONDENT

**JUDGMENT:
WRIT DISMISSED**

Writ of Mandamus
Motion Nos. 440908 and 441186
Order No. 441206

RELEASE DATE: January 21, 2011

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COLLEEN CONWAY COONEY, J.:

{¶ 1} On January 11, 2011, the relator, Ford Motor Company, commenced this mandamus actions against the respondent, Judge Peter Corrigan, to compel the judge to vacate his order adjudicating class liability, to vacate the trial date of January 24, 2011, and to resolve Ford's motions for decertifying the class in the

underlying case, *Westgate Ford Truck Sales, Inc. v. Ford Motor Company*, Cuyahoga Cty. Common Pleas Court Case No. CV 02 483526. On January 20, 2011, the respondent judge moved to dismiss. For the following reasons, this court grants the motion to dismiss.

{¶ 2} The underlying case is a class action alleging that Ford breached its standard franchise agreement with its medium and heavy truck dealers.¹ In October 2010, Ford moved to decertify the class and filed a supplemental motion to decertify in November. On December 30, 2010, the respondent judge granted Westgate's motion for summary judgment on liability, but denied Westgate's motion for summary judgment on damages. He denied Ford's motions for summary judgment on various defenses. The judge further ruled that the motions to decertify the class would be held in abeyance until the conclusion of trial. He then set January 24, 2011, as the trial date for determining Westgate's damages only. This mandamus action followed.

{¶ 3} The requisites for mandamus are well established: (1) the relator must have a clear legal right to the requested relief, (2) the respondent must have a clear legal duty to perform the requested relief and (3) there must be no adequate remedy at law. Additionally, although mandamus may be used to

¹ Westgate commenced the underlying case in 2002. The trial court certified the class in 2005, and this court affirmed that decision in *Westgate Ford Truck Sales, Inc. v. Ford Motor Company*, Cuyahoga App. No. 86596, 2007-Ohio-4013. The Supreme Court of Ohio declined discretionary review. *Westgate Ford Truck Sales, Inc. v. Ford Motor Company*, 117 Ohio St.3d 1442, 2008-Ohio-1279, 883 N.E.2d 459.

compel a court to exercise judgment or to discharge a function, it may not control judicial discretion, even if that discretion is grossly abused. *State ex rel. Ney v. Niehaus* (1987), 33 Ohio St.3d 118, 515 N.E.2d 914. Furthermore, mandamus is not a substitute for appeal. *State ex rel. Keenan v. Calabrese* (1994), 69 Ohio St.3d 176, 631 N.E.2d 119; *State ex rel. Daggett v. Gessaman* (1973), 34 Ohio St.2d 55, 295 N.E.2d 659; and *State ex rel. Pressley v. Industrial Commission of Ohio* (1967), 11 Ohio St.2d 141, 228 N.E.2d 631, paragraph three of the syllabus.

Thus, mandamus does not lie to correct errors and procedural irregularities in the course of a case. *State ex rel. Tommie Jerningham v. Judge Patricia Gaughan* (Sept. 26, 1994), Cuyahoga App. No. 67787. “The writ will not issue to direct in what particular way the court shall proceed or shall decide a particular matter, or to correct or reverse a decision already made.” *State ex rel. DeVille Photography, Inc. v. McCarroll* (1958), 167 Ohio St. 210, 211, 147 N.E.2d 254. Moreover, mandamus is an extraordinary remedy which is to be exercised with caution and only when the right is clear. It should not issue in doubtful cases. *State ex rel. Taylor v. Glasser* (1977), 50 Ohio St.2d 165, 364 N.E.2d 1; *State ex rel. Shafer v. Ohio Turnpike Commission* (1953), 159 Ohio St. 581, 113 N.E.2d 14; *State ex rel. Conrole v. Cleveland Board of Education* (1993), 87 Ohio App.3d 43, 621 N.E.2d 850; and *State ex rel. Dayton-Oakwood Press v. Dissinger* (1940), 32 Ohio Law Abs. 308.

{¶ 4} Ford argues several issues to establish its right to mandamus relief. First, it seizes upon language from this court's opinion affirming the certification of the class - "In the event that additional discovery causes Ford to believe that class damages cannot be calculated to a reasonable degree of certainty, it may ask the court to decertify the class." ¶95 - to assert that under law of the case principles the judge has a clear legal duty to rule upon the motion to decertify before conducting a trial on damages. However, this language only admits the possibility of Ford filing a motion to decertify; it does not command the respondent judge to resolve the motion at any particular point during litigation.

{¶ 5} Civ.R. 23(C)(1) provides in pertinent part as follows: "An order [certifying a class] may be conditional and may be altered or amended before the decision on the merits." Ford argues that this rule demands that a motion to decertify a class be resolved before a trial on damages and that the failure to do so creates a denial of due process remediable in mandamus. This argument is unpersuasive. The rule does not prohibit a trial judge from conducting a trial on a necessary matter before reaching a decision on a motion to decertify. Indeed, the facts developed at a trial may help a judge reach the proper decision on the matter.

{¶ 6} Finally, Ford argues that exigent circumstances require the intervention of mandamus. Ford insinuates that the respondent judge has improperly manipulated trial proceedings to coerce a "blackmail settlement" and

to deprive it of a ruling on a threshold issue, the decertification of the class. However, as the Supreme Court of Ohio stated in *DeVilleville*, mandamus will not issue to direct in what particular way the court shall proceed.

{¶ 7} In summary, this mandamus action is an effort to control judicial discretion on how to manage the underlying case. Mandamus does not issue to control judicial discretion, even if that discretion is grossly abused. *Ney*.

{¶ 8} Additionally, the relator failed to support his complaint with an affidavit “specifying the details of the claim” as required by Local Rule 45(B)(1)(a).

State ex rel. Leon v. Cuyahoga Cty. Court of Common Pleas, 123 Ohio St.3d 124, 2009-Ohio-4688, 914 N.E.2d 402; *State ex rel. Wilson v. Calabrese* (Jan. 18, 1996), Cuyahoga App. No. 70077; and *State ex rel. Smith v. McMonagle* (July 17, 1996), Cuyahoga App. No. 70899. In *Leon* the Supreme Court of Ohio upheld this court’s ruling that merely stating in an affidavit that the complaint was true and correct was insufficient to comply with the local rule. In the instant case the “affiant” admitted that the matters in the complaint were “not within the personal knowledge of the deponent,” but that everyone else told him that the facts were true.

{¶ 9} Accordingly, the court grants the respondent’s motion to dismiss and dismisses the application for a writ of mandamus. Relator to pay costs. The court directs the Clerk of Court for the Eighth District Court of Appeals to serve notice of this judgment and its date of entry upon the journal. Civ.R. 58(B).

COLLEEN CONWAY COONEY, JUDGE

MARY EILEEN KILBANE, A.J., and
LARRY A. JONES, J., CONCUR