[Cite as *State ex rel. Reid v. Altenburger*, 2025-Ohio-1207.]

IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
MIAMI COUNTY

STATE EX REL WORRELL A. REID, ADMINISTRATOR OF THE ESTATE OF GERALD A. DAVIS, DECEASED Relator v. HONORABLE SCOTT ALTENBURGER Respondent	C.A. No. 2025-CA-9 **DECISION AND FINAL JUDGMENT ENTRY**

PER CURIAM:

{¶ 1} This matter is before the court on the motion of the respondent, Judge Scott Altenburger of the Miami County Common Pleas Court, Probate Division. Judge Altenburger seeks judgment on the pleadings pursuant to Civ.R. 12(C). The relator, Worrell Reid, Administrator of the Estate of Gerald A. Davis, Deceased, has filed a memorandum in opposition. For the reasons set forth in this Decision and Final Judgment Entry, we will sustain Judge Altenburger's motion, dismiss this action as moot, and deny the writ.

I. Facts and Procedural History

{¶ 2} According to the complaint, on January 7, 2023, Gerald A. Davis died intestate in Miami County, Ohio. On December 23, 2024, Reid, a licensed attorney, filed an application for authority to administer Davis's estate in the Miami County Common Pleas Court, Probate Division. On January 13, 2025, D. Andrew Venters, a magistrate of the probate court, issued a magistrate's order appointing Reid as the administrator of Davis's estate.

{¶ 3} After reviewing the magistrate's order, Reid became concerned that the appointment order was not lawful because Judge Altenburger had not signed it. Reid emailed the clerk of the probate court regarding the matter. Subsequently, on January 23, 2025, Judge Altenburger and Reid discussed the magistrate's order. The judge informed Reid that Magistrate Venters was authorized to make the appointment by order of reference and invited Reid to "file a 60(B) motion if deemed appropriate."

{¶ 4} On February 5, 2025, Reid filed this mandamus action to compel Judge Altenburger to sign an order appointing him as the administrator of Davis's estate.[1] The complaint cites Civ.R. 53, pertaining generally to the authority of magistrates, and R.C. 2101.24(A)(1)(b), pertaining to the exclusive jurisdiction of probate courts to grant letters of administration, as the sources of Reid's legal entitlement to the writ.

{¶ 5} On February 14, 2025, Judge Altenburger filed his answer. Judge Altenburger admits nearly all the facts pleaded in the complaint but denies that he invited Reid to file a motion for relief from judgment. Instead, the judge indicates that he told Reid

[1] Reid's complaint was initially filed in Montgomery County. Because venue was improper, we transferred the matter to Miami County sua sponte. *See State ex rel. Reid v. Altenburger*, Montgomery No. 30388 (2d Dist. Feb. 6, 2025).

that he could file a motion to set aside the magistrate's order pursuant to Civ.R. 53(D)(2)(b). The judge denies that any writ should issue.

{¶ 6} On February 27, 2025, Judge Altenburger filed his motion for judgment on the pleadings. The judge's motion argues that Reid's mandamus claim must fail as a matter of law because, among other reasons, he has issued an order appointing Reid as administrator of Davis's estate – the same relief requested in the complaint. In other words, the judge argues that the issue is moot. On February 28, 2025, Reid filed his memorandum in opposition. This matter is now ripe for our determination.

II. Law & Analysis

A. Elements of Mandamus and the Civ.R. 12(C) Standard

{¶ 7} "A relator seeking a writ of mandamus must establish (1) a clear legal right to the requested relief, (2) a clear legal duty on the part of the respondent official or governmental unit to provide it, and (3) the lack of an adequate remedy in the ordinary course of the law." *State ex rel. Manley v. Walsh*, 2014-Ohio-4563, ¶ 18, citing *State ex rel. Waters v. Spaeth*, 2012-Ohio-69, ¶ 6.

{¶ 8} "In a civil action originating in a court of appeals, '[a]fter the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings.'" *State ex rel. McCarley v. Dept. of Rehab. & Corr*., 2024-Ohio-2747, ¶ 11, quoting Civ.R. 12(C). "Judgment on the pleadings is appropriate when no material factual issues exist and the movant is entitled to judgment as a matter of law." *Id*., citing *State ex rel. Midwest Pride IV, Inc. v. Pontious,* 75 Ohio St.3d 565, 570 (1996).

B. Mootness

{¶ 9} With respect to mootness, the Supreme Court of Ohio has explained that:

> It is the duty of every judicial tribunal to decide actual controversies and withhold advice upon moot questions. When an actual controversy ceases to exist, this court must dismiss the case as moot. Mandamus will not issue to compel a vain act. An act is in vain when the underlying dispute has become moot, such that relief in the pending lawsuit would not affect the outcome.

State ex rel. Grendell v. Geauga Cty. Bd. of Commrs., 2022-Ohio-2833, ¶ 9 (cleaned up). Thus, if Judge Altenburger has provided the relief sought in Reid's complaint, then the judge is entitled to judgment as a matter of law because granting the writ would be a vain act – there is no actual controversy between the parties. Under such circumstances, we need not address any of the other legal issues raised in the complaint.

{¶ 10} Reid's complaint sought the following relief: (1) that "a writ of mandamus be issued to the Respondent directing him to sign a proper Entry Appointing Fiduciary; Letters of Authority" and (2) that the "Entry be effective, Nunc Pro Tunc, back to January 13, 2025." Here, on February 6, 2025, Judge Altenburger issued an entry appointing Reid as the administrator of Davis's estate. However, the entry is not retroactive to January 13, 2025, as Reid requested.

{¶ 11} Notwithstanding the slight divergence between the relief sought in Reid's complaint and the relief that Judge Altenburger has provided, we find the matter moot. Reid's "objective in bringing this action has been effectively achieved." *Id.* at ¶ 10, citing *State ex rel. Sawyer v. Cendroski*, 2008-Ohio-1771, ¶ 8. At this point, there is no dispute regarding Reid's lawful authority to administer Davis's estate. Therefore, we cannot discern any actual controversy between the parties. The matter is moot.

C. The "Capable of Repetition, Yet Evading Review" Exception

{¶ 12} Nevertheless, Reid argues that an exception applies. An issue that is "capable of repetition, yet evading review" is not moot. *State ex rel. Calvary v. Upper Arlington*, 89 Ohio St.3d 229, 231 (2000). To establish this exception, Reid must demonstrate that "(1) the challenged action is too short in its duration to be fully litigated before its cessation or expiration, and (2) there is a reasonable expectation that the same complaining party will be subject to the same action again." *Id*.

{¶ 13} Reid states that he intends to seek an appointment as a fiduciary in Judge Altenburger's court in a future estate administration case. Reid argues that, absent a decision on the merits of his mandamus claim, the magistrates of Judge Altenburger's court will continue to issue orders appointing fiduciaries. Further, Reid argues that he will lack any opportunity to litigate the matter if, as was done in this case, Judge Altenburger appoints him as a fiduciary after seeking extraordinary relief in this court.

{¶ 14} We are not persuaded by Reid's argument. To satisfy the capable of repetition, yet evading review exception, "there must be more than a theoretical possibility that the action will arise again." *State v. Hendon*, 2017-Ohio-352, ¶ 16 (9th Dist.), quoting *James A. Keller, Inc. v. Flaherty*, 74 Ohio App.3d 788, 792 (10th Dist. 1991). While it is true that Judge Altenburger appointed Reid to serve as an administrator after his magistrate's order was challenged in an original action, it is unclear whether the judge would take the same action in the future. Reid's argument invites us to speculate too much about the judge's hypothetical actions in a future case. Thus, we lack sufficient facts to determine that there is anything more than a theoretical possibility that the fact pattern in the instant case will repeat itself. Therefore, we determine that the capable of repetition,

yet evading review exception to the mootness doctrine does not apply under the circumstances of this case.

III. **Conclusion**

{¶ 15} For all the foregoing reasons, this action is moot. Judge Altenburger is entitled to judgment as a matter of law. Judge Altenburger's February 27, 2025 motion for judgment on the pleadings is SUSTAINED. Accordingly, this action, Miami County Appellate Case No. 2025-CA-9, is DISMISSED. Writ of mandamus DENIED. Costs taxed to the relator.

{¶ 16} SO ORDERED.

CHRISTOPHER B. EPLEY, PRESIDING JUDGE

MICHAEL L. TUCKER, JUDGE

MARY K. HUFFMAN, JUDGE

To The Clerk: Within three (3) days of entering this judgment on the journal, you are directed to serve on all parties not in default for failure to appear notice of the judgment and the date of its entry upon the journal, pursuant to Civ.R. 58(B).

CHRISTOPHER B. EPLEY, PRESIDING JUDGE