

COURT OF APPEALS OF OHIO
EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

ERIC C.K. FORTNER,	:	
	:	
Relator,	:	No. 114322
	:	
v.	:	
	:	
JUDGE FRANCINE GOLDBERG,	:	
	:	
Respondent.	:	

JOURNAL ENTRY AND OPINION

JUDGMENT: DISMISSED
RELEASED AND JOURNALIZED: November 13, 2024

Writ of Mandamus
Motion No. 578756
Order No. 579099

Appearances:

Eric C.K. Fortner, *pro se*.

Michael C. O'Malley, Cuyahoga County Prosecuting Attorney, and Regina A. Russo, Assistant Prosecuting Attorney, *for respondent*.

ANITA LASTER MAYS, J.:

{¶ 1} On September 3, 2024, the relator, Eric C.K. Fortner, commenced this mandamus action against Judge Francine Goldberg to compel the judge to “take

action on the Emergency Motions pertaining to [the son],” “to re-evaluate the Motion for Temporary Custody in light of new evidence,” and to correct the “abuse of discretion and legal errors in ignoring and refusing to rule on Relator’s Emergency Motions” regarding the son in the underlying case, *A.F. v. E.F.*, Cuyahoga Dom. Rel. No. DR-23-295909. (Prayer of relator’s petition and first paragraph.) On October 17, 2024, the respondent judge moved to dismiss because of lack of clear legal duty, lack of clear legal right, and pleading defects. On October 21, 2024, the relator filed a response in which he agreed to the dismissal. For the following reasons, this court grants the respondent’s motion to dismiss.

{¶ 2} The relator is the father in the underlying case, which is a contentious child-custody dispute. On June 21, 2024, the magistrate granted the mother’s motion to modify child custody and awarded immediate possession of the son to the mother.

{¶ 3} The relator in response has filed approximately 20 motions in the underlying case, including motions for reconsideration, to interview the child, for stay of the order, to modify parental rights, for the immediate return of the son, and for a new trial. The gravamen of the relator’s position is that because of the mother’s violent tendencies the son’s safety is at risk and the domestic relations court needs to examine the relator’s evidence. After overruling objections to the magistrate’s report, the trial judge on September 4, 2024, issued a final, appealable order adopting the magistrate’s decision. Judge Goldberg then recused herself from this case, and the Chief Justice of the Supreme Court of Ohio assigned Judge Debra

Boros to the case. Judge Boros has scheduled hearings on relator's motions for early January. The relator also appealed the final order on October 4, 2024, *A.F. v. E.F.*, 8th Dist. Cuyahoga No. 114425.

{¶ 4} The respondent judge moved to dismiss on the grounds that mandamus may not control judicial discretion, that the relator is pursuing his adequate remedy at law, and that he improperly captioned his mandamus action. The relator replied that he is not trying to control judicial discretion, only to compel the court to examine his evidence and rule on his emergency motions, and that the overriding best interests of the child would allow this court to issue the mandamus to rule on the emergency motions. However, the relator is now satisfied Judge Boros is timely scheduling a hearing on the emergency motions and agrees to the dismissal of the mandamus action.

{¶ 5} Accordingly, this court grants the respondent judge's motion to dismiss and dismisses this mandamus action. Relator to pay costs; costs waived. This court directs the clerk of courts to serve all parties notice of the judgment and its date of entry upon the journal as required by Civ.R. 58(B).

{¶ 6} Writ dismissed.

ANITA LASTER MAYS, JUDGE

KATHLEEN ANN KEOUGH, A.J., and
LISA B. FORBES, J., CONCUR