

ARKANSAS SUPREME COURT

No. 07-06

NOT DESIGNATED FOR PUBLICATION

WALTER McCULLOUGH
Petitioner

v.

HON. ROBERT H. WYATT, JR.,
CIRCUIT JUDGE
Respondent

Opinion Delivered February 1, 2007

PRO SE PETITION AND
SUPPLEMENTAL PETITION FOR
WRIT OF MANDAMUS [CIRCUIT
COURT OF LINCOLN COUNTY, LCV
2006-74]

PETITION AND SUPPLEMENTAL
PETITION DENIED.

PER CURIAM

On January 2, 2007, petitioner Walter McCullough filed the *pro se* petition for writ of mandamus that is now before us. In the petition he asked this court to issue a writ to compel the Honorable Robert H. Wyatt, Jr., Circuit Judge, to enter a “default judgment” or hold a hearing on a *pro se* civil action filed by him in the Circuit Court of Lincoln County on August 3, 2006. On January 12, 2007, Judge Wyatt’s office forwarded to this court a copy of an order that had been entered on December 6, 2006, in which Judge Wyatt had dismissed the civil action without prejudice for failure to obtain proper service. On January 16, 2007, petitioner filed a supplemental petition for writ of mandamus, contending that Judge Wyatt erred in dismissing the action.

The purpose of a writ of mandamus in a civil or a criminal case is to enforce an established right or to enforce the performance of a duty. *Smith v. Fox*, 358 Ark. 388, 193 S.W.3d 238 (2004). When requesting a writ of mandamus, a petitioner must show a clear and certain right to the relief

sought and the absence of any other adequate remedy. *Manila School Dist. No. 15 v. Wagner*, 357 Ark. 20, 159 S.W.3d 285 (2004). If petitioner wished to challenge the order of December 6, 2006, dismissing the civil action, his remedy was an appeal from the order, not a mandamus action in this court. A mandamus action is not a substitute for an appeal. *Gran v. Hale*, 294 Ark. 563, 745 S.W.2d 129 (1988).

Petition and supplemental petition denied.