

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

STEPHEN MADDRIE,

Petitioner,

v.

JAMES R. McDONOUGH, Secretary,
Department of Corrections,

Respondent.

NOT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED.

CASE NO. 1D06-3403

Opinion filed December 8, 2006.

Petition for Writ of Mandamus -- Original Jurisdiction.

Stephen Maddrie, pro se, Petitioner.

Charlie Crist, Attorney General, and Sean F. Callaghan, Assistant Attorney General,
Tallahassee, for Respondent.

PER CURIAM.

Stephen Maddrie seeks mandamus relief to compel the circuit court to render
a final order in the proceedings below. The circuit court previously granted

respondent's motion for judgment on the pleadings, but its order was not a final order because it did not expressly dispose of Maddrie's petition for declaratory judgment. See, e.g., Henry v. Finta, 559 So.2d 434 (Fla. 4th DCA 1990). Accordingly, Maddrie's appeal of the order granting the motion for judgment on the pleadings was dismissed by this court as premature. See Maddrie v. McDonough, 933 So. 2d 579 (Fla. 1st DCA 2006). By his present petition, Maddrie now seeks to compel the circuit court to render a final, appealable order.

Under appropriate circumstances, the remedy of mandamus is available to compel a lower tribunal to render an appealable order. See State v. Sullivan, 640 So. 2d 77 (Fla. 2d DCA 1994). Respondent nonetheless asserts that mandamus relief is unnecessary here because the circuit court has now rendered an order striking petitioner's filings made after entry of the order granting the motion for judgment on the pleadings, and this ruling "operatively" constitutes a final order. We decline to adopt respondent's position in this regard, since like the order granting the motion for judgment on the pleadings, the order striking petitioner's subsequent filings neither dismisses the proceeding below nor denies the request for declaratory relief. As such, it cannot fairly be viewed as representing the end of judicial labor in the matter.

However, we see no indication that petitioner has made a clear and express request of the trial court to render a final, appealable order, and in the absence of such

a showing, the granting of mandamus relief is unwarranted. See Medberry v. Circuit Court for Brevard County, 762 So. 2d 1037 (Fla. 5th DCA 2000). Accordingly, while we conclude that the circuit court has not yet rendered a final order disposing of Maddrie's petition for declaratory judgment, we further conclude that the request for mandamus relief is premature in that no showing has been made that the circuit court has neglected to address or refused to comply with an express and distinct demand to render a final order.

PETITION FOR WRIT OF MANDAMUS DENIED.

ERVIN, ALLEN, and WOLF, JJ., CONCUR.