

[Cite as *Howard v. Cuyahoga Cty. Probate Court*, 2004-Ohio-4621.]

COURT OF APPEALS OF OHIO, EIGHTH DISTRICT

COUNTY OF CUYAHOGA

No. 84702

LEROY HOWARD	:	ORIGINAL ACTION
	:	
	:	JOURNAL ENTRY
Relator	:	AND
	:	OPINION
vs.	:	
	:	
CUYAHOGA COUNTY PROBATE COURT	:	
	:	
Respondent	:	

DATE OF JOURNALIZATION: AUGUST 30, 2004

CHARACTER OF PROCEEDINGS: WRIT OF PROCEDENDO

JUDGMENT: Dismissed.
Motion No. 361114

APPEARANCES:

For Relator: LEROY HOWARD, pro se
9510 Kinsman Road
Cleveland, Ohio 44104

For Respondent: WILLIAM D. MASON
Cuyahoga County Prosecutor
BY: CHARLES E. HANNAN, JR.
Assistant County Prosecutor
Justice Center - 9th Floor
1200 Ontario Street
Cleveland, Ohio 44113

KENNETH A. ROCCO, J.:

{¶1} Leroy Howard has filed a complaint for a writ of

procedendo through which he seeks an order from this court which requires the Cuyahoga County Probate Court to "award and adjudicate relief by issueing (sic) forth an order for the court below to review the enitirity (sic) of petitioner's claims since there is nothing in the record to suggest that said claims are fruadelent (sic) or frivilously (sic) made and if the claims were well taken, then the court below would have to make a judgement anew and different". The Cuyahoga County Probate Court has filed a motion to dismiss which we grant for the following reasons.

{¶2} Initially, we find that Howard's complaint for a writ of procedendo is procedurally defective since it fails to contain a sworn affidavit as mandated by Loc.App.R. 45(B)(1)(a). The failure of Howard to comply with the supporting affidavit requirement of Loc.App.R. 45(B)(1)(a) warrants dismissal of the complaint for a writ of procedendo. *State ex rel. Smith v. McMonagle* (July 17, 1996), Cuyahoga App. No. 70899; *State ex rel. Wilson v. Calabrese* (Jan. 18, 1996), Cuyahoga App. No. 70077.

{¶3} In addition, Howard's complaint for a writ of procedendo fails to state a claim upon which relief can be granted. See Civ.R. 12(B)(6). Procedendo is an extraordinary remedy issued by a court of superior jurisdiction which orders an inferior court to proceed to judgment. *State ex rel. Miley v. Parrott*, 77 Ohio St.3d 64, 1996-Ohio-350, 671 N.E.2d 24; *State ex rel. Sherrills v. Cuyahoga Cty. Court of Common Pleas*, 72 Ohio St.3d 461, 1995-Ohio-26, 650 N.E.2d 899. In order for this court to issue a writ of

procedendo, Howard must establish that: (1) Howard possesses a clear legal right which requires the Cuyahoga County Probate Court to proceed to judgment in Cuyahoga County Probate Case No. 1999-EST-16852; (2) the Cuyahoga County Probate Court possesses a clear legal duty to proceed to judgment; and (3) there exists no other adequate remedy in the ordinary course of the law. *State ex rel. Grove v. Nadel*, 81 Ohio St.3d 325, 1998-Ohio-624, 691 N.E.2d 275; *State ex rel. Crandall, Pheils & Wisniewski v. DeCessna*, 73 Ohio St.3d 180, 1995-Ohio-98, 652 N.E.2d 742.

{¶4} Herein, Howard has failed to establish the first and second prongs of the aforesaid three-part test. The Cuyahoga County Probate Court has issued rulings with regard to every motion that was filed by Howard in Cuyahoga County Probate Case No. 1999-EST-16852. The Cuyahoga County Probate Court possesses no additional duty to render any further rulings with regard to any motion as previously filed in the underlying action. *Walker v. Karp* (March 19, 2002), Cuyahoga App. No. 80773. Finally, Howard has failed to avail himself of an existing remedy at law vis-a-vis a direct appeal to this court from any judgment as previously issued by the Cuyahoga County Probate Court. *State ex rel. Hastings Mut. Ins. Co. V. Merillat* (1990), 50 Ohio St.3d 152, 553 N.E.2d 646; *State ex rel. Rhodes v. Van Brocklin* (1988), 36 Ohio St.3d 236, 522 N.E.2d 1088.

{¶5} Accordingly, we grant the motion to dismiss as filed by the Cuyahoga County Probate Court. Costs to Howard. It is further

ordered that the Clerk of the Eighth District Court of Appeals
serve notice of this judgment upon all parties as required by
Civ.R. 58(B).

Complaint dismissed.

KENNETH A. ROCCO
JUDGE

PATRICIA A. BLACKMON, P.J., CONCURS

ANTHONY O. CALABRESE, JR., J., CONCURS