

IN THE COURT OF APPEALS OF OHIO

SEVENTH APPELLATE DISTRICT
MAHONING COUNTY

STATE OF OHIO EX REL. MICHELLE NAVARRO,

Relator,

v.

JUDGE MOLLY JOHNSON,

Respondent.

OPINION AND JUDGMENT ENTRY
Case No. 23 MA 0046

Writ of Mandamus

BEFORE:

David A. D'Apolito, Carol Ann Robb, Mark A. Hanni, Judges.

JUDGMENT:

Dismissed.

Atty. Jennifer J. Ciccone, The Ciccone Law Firm, LLC., 3685 Stutz Drive, Suite 100,
Canfield, Ohio 44406, for Relator and

Judge Molly K. Johnson, Mahoning County Court No. 5, 72 North Broad Street,
Canfield, Ohio 44406, Respondent (No Response Filed).

Dated: July 27, 2023

PER CURIAM.

{¶1} Relator, Michelle Navarro, brings this original action in mandamus against Respondent, the Honorable Molly K. Johnson, judge of the Mahoning County Court No. 5 (Canfield, Ohio). Relator seeks an order from this Court compelling Respondent to continue a previously scheduled bench trial based upon Relator's counsel's scheduled appearance in another case assigned for trial on the same date in another trial court.

{¶2} The case giving rise to the bench trial in Respondent's court began as a small-claims action involving the purported sale of an All-Terrain Vehicle (ATV) wherein Relator was named as a defendant. Relator filed a counterclaim and the matter proceeded to discovery and other pretrial matters, including Relator twice needing to substitute counsel. In a February 27, 2023 entry addressing a motion in limine, Respondent set the case for trial on April 5, 2023, specifically cautioning "No continuance shall be granted." Nonetheless, Relator's counsel filed a motion for continuance on March 17, 2023, based on her scheduled appearance in another case assigned for trial on the same date in another trial court. Respondent denied the motion and Relator's counsel filed a motion for reconsideration a few days later.

{¶3} On April 4, 2023, the day before the scheduled bench trial in Respondent's court, Relator filed this original action in mandamus seeking to have this Court compel Respondent to continue the trial. Respondent commenced the trial as scheduled the next day on April 5, 2023, and dismissed the case upon the determination that her court did not have subject matter jurisdiction over certain claims because of the nature of the claims and because the damages sought exceeded the court's monetary jurisdiction.

{¶4} In order to be entitled to a writ of mandamus, the relator must demonstrate the following: (1) they have a clear legal right to the relief, (2) the respondent has a clear legal duty to provide that relief, and (3) they have no adequate remedy at law. *State ex rel. Taxpayers for Westerville Schools v. Franklin Cty. Bd. of Elections*, 133 Ohio St.3d 153, 2012-Ohio-4267, 976 N.E.2d 890, ¶ 12. Upon review, after presuming the truth of all material factual allegations of Relator's complaint and making all reasonable inferences in her favor, it is beyond doubt that she could prove no set of facts entitling her

to a writ of mandamus. *State ex rel. Neal v. Mandros*, 162 Ohio St.3d 154, 2020-Ohio-4866, 164 N.E.3d 418, ¶ 8.

{¶5} Mandamus is a court order given to a public official, compelling them to carry out an action that their role legally obligates them to perform. R.C. 2731.01. In this instance, Relator cites Sup.R. 41(B)(1) as the basis for Respondent's duty to continue the trial. Sup.R. 41(B)(1) states:

When a continuance is requested for the reasons that counsel is scheduled to appear in another case assigned for trial on the same date in the same or another trial court of this state, the case which was first set for trial shall have priority and shall be tried on the date assigned. Criminal cases assigned for trial have priority over civil cases assigned for trial. The court should not consider any motion for a continuance due to a conflict of trial assignment dates unless a copy of the conflicting assignment is attached to the motion and the motion is filed not less than thirty days prior to trial.

{¶6} The Rules of Superintendence do not, absent a specific mandate, create substantive rights in individuals or procedural law. *See State ex rel. Culgan v. Collier*, 135 Ohio St.3d 436, 2013-Ohio-1762, 988 N.E.2d 564, ¶ 8-9. For example, Sup.R. 47(B) gives an aggrieved party a right to a writ of mandamus for a violation of Sup.R. 44 through 47: "A person aggrieved by the failure of a court or clerk of court to comply with the requirements of Sup.R. 44 through 47 may pursue an action in mandamus pursuant to Chapter 2731. of the Revised Code."

{¶7} As indicated, Relator here seeks to enforce Sup.R. 41, a rule not within the range specified. No other rule gives a person a right to pursue an action to enforce Sup.R. 41. Therefore, even though Respondent denied Relator's motion for a continuance, Sup.R. 41(B)(1) does not entitle Relator to an extraordinary writ in mandamus to compel Respondent to grant it. *See Culgan*.

{¶8} Aside from the absence of a clear legal duty on Respondent's part to provide the relief Relator is seeking, the nature of that relief is expressly proscribed by R.C. 2731.03, entitled "Writ does not control judicial discretion." R.C. 2731.03 states: "The writ of mandamus may require an inferior tribunal to exercise its judgment, or

proceed to the discharge of any of its functions, but *it cannot control judicial discretion.*” (Emphasis added.) By asking this Court to compel Respondent to rule in her favor by granting the motion for continuance, Relator is asking us to do the very thing R.C. 2731.03 prohibits.

{¶9} Because Relator has neither demonstrated that she possesses a clear right to have her motion for continuance granted in her favor nor shown Respondent is under a clear legal duty to do so, IT IS ORDERED that Relator’s petition for a writ of mandamus is hereby DISMISSED. As a result, Relator’s request for stay is hereby dismissed as moot.

{¶10} IT IS FURTHER ORDERED, pursuant to Civ.R. 58, that the Clerk of the Mahoning County Court of Appeals shall immediately serve upon all parties (including unrepresented or self-represented parties) notice of this judgment and its date of entry upon the journal. Costs taxed to Relator.

JUDGE DAVID A. D’APOLITO

JUDGE CAROL ANN ROBB

JUDGE MARK A. HANNI

NOTICE TO COUNSEL

This document constitutes a final judgment entry.