

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
WILLIAMS COUNTY

State of Ohio, ex rel. Ralph D. Hayward

Court of Appeals No. WM-09-008

Relator

v.

Judge Craig L. Roth, Williams
County Court of Common Pleas

DECISION AND JUDGMENT

Respondent

Decided: August 25, 2009

* * * * *

Ralph D. Hayward, pro se.

Thomas A. Thompson, Williams County Prosecuting Attorney,
for respondent.

* * * * *

SINGER, J.

{¶ 1} This matter is before the court on relator Ralph D. Hayward's petition for a writ of mandamus. Relator seeks an order from this court directing respondent, the Honorable Craig L. Roth, to approve relator's statement of the evidence pursuant to

App.R. 9(C). Respondent has filed a motion for summary judgment asserting that relator has an adequate remedy at law.

{¶ 2} The relevant facts of this case are as follows. On April 15, 2009, in a civil trial, a jury awarded statutory damages in the amount of \$400 to relator. Respondent, noting that relator "did not prevail as to the substantial part of the litigation," then ordered costs in the amount of \$804 to be assessed to relator.

{¶ 3} On May 29, 2009, relator filed a notice of appeal with this court. Relator has attempted to submit an App.R. 9(C) statement of the evidence in lieu of a transcript. Relator claims he is indigent and cannot afford the cost of a transcript. Respondent disagrees and cites the record of relator's jury trial wherein it was determined that the value of his automobile, a Porsche, was approximately \$15,000.

{¶ 4} Pursuant to Civ.R. 56, summary judgment will be granted only when there remains no genuine issue of material fact and, when construing the evidence most strongly in favor of the non-moving party, reasonable minds can only conclude that the moving party is entitled to the requested relief as a matter of law.

{¶ 5} In order for a writ of mandamus to issue, the relator must demonstrate that: "(1) there is no plain and adequate remedy in the ordinary course of law; (2) the respondent is under a clear duty to perform some act or acts; and (3) the relator has a clear right to the relief prayed for." *State ex rel. Durkin v. Mahoning Co. Bd. of Elections* (1996), 115 Ohio App.3d 180, 183.

{¶ 6} A writ of mandamus is an extraordinary remedy. To be entitled to a writ of mandamus, a relator must establish a clear legal right to the relief requested, a clear legal duty to perform the requested act on the part of the respondent, and that the relator has no plain and adequate remedy at law. *State ex rel. Crabtree v. Ohio Bur. of Workers' Comp.* (1994), 71 Ohio St.3d 504, 510. See R.C. 2731.05.

{¶ 7} Upon review, relator is not entitled to mandamus relief in that he has an adequate remedy at law as he can raise this issue as an assignment of error on appeal. Accordingly, we find that respondent's motion for summary judgment is well-taken and granted. Relator's complaint for a writ of mandamus is dismissed. All other pending motions in this matter are rendered moot. Relator is ordered to pay the costs in this matter.

WRIT DENIED.

Peter M. Handwork, P.J.

JUDGE

Mark L. Pietrykowski, J.

JUDGE

Arlene Singer, J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
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