

IN THE SUPREME COURT OF THE STATE OF DELAWARE

IN THE MATTER OF THE	§	
PETITION OF AUGUSTUS	§	No. 586, 2008
HEBREW EVANS, JR. FOR A	§	
WRIT OF MANDAMUS/	§	C.A. No. 07C-03-009
CERTIORARI	§	

Submitted: January 21, 2009

Decided: March 27, 2009

Before **BERGER, JACOBS** and **RIDGELY**, Justices.

**ORDER**

This 27<sup>th</sup> day of March 2009, upon consideration of the petition for a writ of mandamus/certiorari filed by the petitioner, Augustus Hebrew Evans, Jr., and the response filed by Sgt. Tommy Lee, it appears to the Court that:

(1) Augustus Hebrew Evans, Jr. seeks to invoke this Court's original jurisdiction to issue an extraordinary writ of mandamus and/or certiorari to the Superior Court. Under Article IV, § 11(5) of the Delaware Constitution and Supreme Court Rule 43, the Court has limited jurisdiction to issue extraordinary writs. In this case, we conclude that Evans' petition manifestly fails to invoke the original jurisdiction of the Court.

(2) Evans is an inmate at the James T. Vaughn Correctional Center located in Smyrna, Delaware. In March 2007, Evans brought a wrongful death

action in the Superior Court against members of the Seaford Police Department.<sup>1</sup> By order dated April 12, 2007, the Superior Court granted Evans' request to proceed *in forma pauperis*.<sup>2</sup>

(3) Sgt. Tommy Lee is a Seaford police officer and a defendant in Evans' Superior Court action. On November 10, 2008, Evans deposed Lee and two other Seaford police officers. The depositions took place in the Superior Court. The cost of the court reporter was covered by the defense.

(4) During the depositions of the three Seaford police officers on November 10, 2008, Evans requested leave to depose third parties at a later date and at State expense. By letter dated November 13, 2008, the Superior Court denied Evans' request. In his petition for a writ of mandamus/certiorari in this Court, Evans contends that the Superior Court's denial of his request for discovery at State expense is contrary to the Superior Court's prior order that had granted him leave to proceed *in forma pauperis*.

(5) A writ of certiorari is an extraordinary remedy that is used to correct irregularities in the proceedings of a trial court.<sup>3</sup> A writ of mandamus is an extraordinary remedy that is used to compel a trial court to perform a duty.<sup>4</sup>

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<sup>1</sup> Evans alleged that members of the Seaford Police Department were responsible for his father's death.

<sup>2</sup> *Evans v. Seaford Police Dept.*, Del. Super., C.A. No. 07C-03-009, Graves, J. (April 12, 2007) (granting motion to proceed *in forma pauperis*).

<sup>3</sup> *In re Butler*, 609 A.2d 1080, 1081 (Del. 1992).

<sup>4</sup> *In re Bordley*, 545 A.2d 619, 620 (Del. 1988).

(6) Certiorari is available to challenge only a final order of a trial court where the right of appeal is denied, a grave question of public policy and interest is involved, and no other basis for review is available.<sup>5</sup> Mandamus relief is available only when a petitioner has demonstrated that he has a clear right to the performance of a duty owed by the trial court, and that no other adequate remedy is available.<sup>6</sup>

(7) Evans has not stated a cognizable claim invoking this Court's original jurisdiction to issue a writ of certiorari or a writ of mandamus. Evans has not demonstrated that he is challenging a final order of a trial court, that his right of appeal is denied, and that the denial of discovery at State expense presents a grave question of public policy and interest. Moreover, Evans has not demonstrated that he has a clear right to discovery at State expense, and that he is without an appellate remedy to review the issue.

NOW, THEREFORE, IT IS ORDERED that Evans' petition for a writ of mandamus/certiorari is DISMISSED.

BY THE COURT:

/s/ Jack B. Jacobs  
Justice

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<sup>5</sup> *In re Butler*, 609 A.2d 1080, 1081 (Del. 1992).

<sup>6</sup> *In re Bordley*, 545 A.2d 619, 620 (Del. 1988).