

IN THE SUPREME COURT OF THE STATE OF DELAWARE

STEVEN McLEOD,	§
	§ No. 233, 2011
Plaintiff Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for New Castle County
HUGHEY F. McLEOD,	§ C.A. No. N11L-03-111
	§
Defendant Below-	§
Appellee.	§

Submitted: May 26, 2011

Decided: June 2, 2011

Before **HOLLAND, BERGER** and **JACOBS**, Justices

**ORDER**

This 2<sup>nd</sup> day of June 2011, it appears to the Court that:

(1) On May 9, 2011, the plaintiff-appellant, Steven McLeod, an inmate incarcerated in Florida, filed what appeared to be an appeal from the Superior Court's April 11, 2011 order dismissing his complaint as barred by the statute of limitations.<sup>1</sup> Following the dismissal of his complaint, McLeod filed a motion for reargument in the Superior Court, which remains pending.<sup>2</sup>

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<sup>1</sup> Del. Code Ann. tit. 10, §8145.

<sup>2</sup> By letter dated May 12, 2011, the Superior Court informed McLeod that his motion would be considered in due course.

(2) On May 13, 2011, the Clerk issued a notice directing McLeod to show cause why his appeal should not be dismissed for his failure to comply with Supreme Court Rule 42 when taking an appeal from an apparent interlocutory order. On May 26, 2011, McLeod filed a response to the notice to show cause.

(3) In his response, McLeod contends that his filing is not an appeal, but, rather, a petition for a writ of mandamus requesting that this Court compel the Superior Court to provide him with copies of the Superior Court Civil Rules and the Delaware Rules of Evidence and to vacate its order dismissing his complaint as barred by the statute of limitations.

(4) If construed as an appeal from an interlocutory order, McLeod's filing must be dismissed for his failure to comply with the requirements of Supreme Court Rule 42.<sup>3</sup> If construed as a petition for a writ of mandamus, McLeod's filing must adhere to the provisions of Delaware law governing petitions for extraordinary writs.

(5) A writ of mandamus is an extraordinary remedy issued by this Court to compel a trial court to perform a duty.<sup>4</sup> As a condition precedent to the issuance of the writ, the petitioner must demonstrate that a) he has a clear

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<sup>3</sup> *Showell Poultry v. Delmarva Poultry Corp.*, 146 A.2d 794, 795-96 (Del. 1958); *Stroud v. Milliken Enterprises, Inc.* 552 A.2d 476, 481-82 (Del. 1989).

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

right to the performance of the duty; b) no other adequate remedy is available; and c) the trial court has arbitrarily failed or refused to perform its duty.<sup>5</sup> A writ of mandamus will not issue to compel a trial court to perform a particular function or to decide a matter in a particular way.<sup>6</sup>

(6) There is no basis for the issuance of a writ of mandamus in this case. McLeod has failed to demonstrate that the Superior Court has a duty that it has arbitrarily failed or refused to perform. Moreover, this Court will not direct the Superior Court to decide a matter in a particular way. Thus, whether construed as an appeal from an interlocutory order or as a petition for mandamus relief, this matter must be dismissed.

NOW, THEREFORE, IT IS ORDERED that this matter is DISMISSED.

BY THE COURT:

/s/ Carolyn Berger  
Justice

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<sup>5</sup> Id.

<sup>6</sup> Id.