

IN THE SUPREME COURT OF THE STATE OF DELAWARE

IN THE MATTER OF THE §
PETITION OF CECIL BROWNE §
FOR A WRIT OF MANDAMUS § No. 184, 2000
 §

Submitted: May 15, 2000
Decided: May 23, 2000

Before **VEASEY**, Chief Justice, **HOLLAND** and **HARTNETT**, Justices

ORDER

This 23rd day of May 2000, upon consideration of the petition for a writ of mandamus filed by the petitioner, Cecil Browne, and the answer and motion to dismiss filed by the State of Delaware, it appears to the Court that:

(1) The petitioner, Cecil Browne, filed a petition for a writ of mandamus requesting this Court to issue an Order compelling the Prothonotary's office to issue service of process for a Superior Court complaint and compelling the Attorney General to check the Superior Court docket to insure that service of process has been issued.

(2) Browne claims that the Prothonotary has arbitrarily failed or refused to perform its duty to issue service of process for his complaint. As grounds, he contends that he mailed his complaint to the Prothonotary on March 28, 2000 and timely submitted the appropriate forms to proceed in forma pauperis, but has heard nothing from the Prothonotary since then. (3)

A writ of mandamus is an extraordinary remedy issued by this Court to compel a trial court to perform a duty.¹ As a condition precedent to the issuance of the writ, Browne must demonstrate that: he has a clear right to the performance of the duty; no other adequate remedy is available; and the trial court has arbitrarily failed or refused to perform its duty.² This Court will not issue a writ of mandamus to control a trial court's docket, except upon a clear showing of an arbitrary refusal to act.³

(4) In all cases in which leave is requested to proceed in forma pauperis the Superior Court first must issue an order authorizing the filing of the complaint and establishing the amount of court costs and filing fees to be paid.⁴ The Superior Court then must review the complaint to insure that it is not factually frivolous, legally frivolous and/or malicious.⁵ Service of process does not issue unless and until the Superior Court permits the case to proceed following its review.⁶ Because the Superior Court has not yet been afforded a reasonable amount of time to carry out these statutory obligations and there is

¹*In re Hyson*, Del. Supr., 649 A.2d 807, 808 (1994).

²*Id.*

³*In re Bordley*, Del. Supr., 545 A.2d 619, 620 (1988).

⁴10 Del. C. § 8803(a).

⁵10 Del. C. § 8803(b).

⁶*Id.*

no evidence that the Prothonotary has arbitrarily failed or refused to carry out its duty to issue service of process, Browne has failed to invoke the original jurisdiction of this Court.

(4) Browne's request to have this Court compel the Attorney General to review the Superior Court docket to insure that service of process has been issued is also unavailing. The original jurisdiction of this Court to issue a writ of mandamus extends only to judicial officers or courts.⁷

NOW, THEREFORE, IT IS ORDERED that the State's motion to dismiss is GRANTED. Browne's petition for a writ of mandamus is DISMISSED.

BY THE COURT:

/s/Maurice A. Hartnett, III

Justice

⁷*In re Brookins*, Del. Supr., 736 A.2d 204, 206-07 (1999).

