

IN THE SUPREME COURT OF THE STATE OF DELAWARE

IN THE MATTER OF THE §
PETITION OF GABRIEL G. § No. 125, 2006
ATAMIAN, MD, MSEE, JD FOR §
EXTRAORDINARY §
PROCEEDINGS: § C.A. No. 03C-12-038
MANDAMUS and PROHIBITION. §

Submitted: April 26, 2006

Decided: July 7, 2006

Before **STEELE**, Chief Justice, **HOLLAND** and **JACOBS**, Justices.

ORDER

This 7th day of July 2006, it appears to the Court that:

(1) Plaintiff-below, Gabriel G. Atamian, has filed a petition seeking a writ of mandamus and a writ of prohibition. He has also moved to supplement and correct the petition. Defendants-below, Michael J. Ryan, DDS (Ryan), and Becden Dental Laboratory (Becden), have each filed a motion to dismiss.

(2) In December 2003, Atamian filed a complaint in the Superior Court against Ryan and Becden. In his petition for a writ of mandamus and prohibition, Atamian requests that the Court review a Superior Court order that denied his motion for an evidentiary hearing and a letter that the court sent to the parties regarding the posture of the litigation.

(3) A writ of mandamus and a writ of prohibition are “coercive orders [that are] used to grant relief when the traditional appeal route is unavailable or will not provide an adequate remedy at law.”¹ When seeking a writ of mandamus, the petitioner must demonstrate that the trial court has arbitrarily failed or refused to perform a duty.² When seeking a writ of prohibition, the petitioner must demonstrate that the trial court is without jurisdiction or is attempting to exceed its jurisdiction.³

(4) Neither mandamus nor prohibition relief is warranted in this case. Atamian has not demonstrated that the Superior Court has failed or refused to perform a duty owed to him or that the court has exceeded its jurisdiction.

(5) Furthermore, an extraordinary writ is inappropriate in this case because Atamian has an adequate remedy at law,⁴ *i.e.*, appellate review, should Atamian choose to appeal the Superior Court’s final decision.⁵ It is

¹*Rogers v. State*, 457 A.2d 727, 731 (Del. 1983).

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

³*In re Hovey*, 545 A.2d 626, 628 (Del. 1988).

⁴*In re Safford*, 2005 WL 1654016 (Del. Supr.) (citing *Matushefske v. Herlihy*, 214 A.2d 883, 885 (Del. 1965)).

⁵It appears from the docket that the Superior Court issued an order on June 9, 2006, that granted motions for summary judgment filed by Ryan and Becden and denied a motion for summary judgment filed by Atamian.

fundamental that the appellate jurisdiction of this Court rests upon the perfecting of an appeal within the time period fixed by law.⁶

NOW, THEREFORE, IT IS ORDERED that Atamian's motions to supplement and correct are GRANTED. The motions to dismiss filed by Ryan and Becden are GRANTED. Atamian's petition for a writ of mandamus and prohibition is DISMISSED.

BY THE COURT:

/s/ Myron T. Steele
Chief Justice

⁶*In re Dupras*, 1995 WL 449323, *1 (Del. Supr.) (quoting *Fisher v. Biggs*, 284 A.2d 117, 118 (Del. 1971)).