

IN THE SUPREME COURT OF THE STATE OF DELAWARE

IN THE MATTER OF THE §
PETITION OF DAVID J. § No. 530, 2007
BUCHANAN FOR A WRIT OF §
MANDAMUS §

Submitted: October 11, 2007
Decided: November 14, 2007

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

ORDER

This 14th day of November 2007, it appears to the Court that:

(1) The petitioner, David J. Buchanan, seeks to invoke this Court's original jurisdiction to issue an extraordinary writ of mandamus¹ to compel the Family Court to rescind its orders regarding the marital real estate. Barbara H. Buchanan has filed an answer requesting that Mr. Buchanan's petition be dismissed. We find that Mr. Buchanan's petition manifestly fails to invoke the original jurisdiction of this Court. Accordingly, the petition must be DISMISSED.

(2) The record reflects that the Family Court issued a property division order on February 5, 2007, which was affirmed by Order of this Court dated August 6, 2007.² It also appears that the Family Court issued an earlier order on April 4, 2006, which required that certain marital property

¹ Del. Const. art. IV, § 11(6); Supr. Ct. R. 43.

² *Bennett v. Bennett*, Del. Supr., No. 73, 2007, Ridgely, J. (Aug. 6, 2007).

be sold. Mr. Buchanan did not file an appeal from that order and it appears that he has not cooperated in carrying it out, since Mrs. Buchanan's motion to have the Family Court clerk execute the sales contract is currently pending in the Family Court.

(3) A writ of mandamus is an extraordinary remedy issued by this Court to compel a trial court to perform a duty.³ As a condition precedent to the issuance of the writ, Mr. Buchanan must demonstrate that: he has a clear right to the performance of the writ; no other adequate remedy is available; and the trial court has arbitrarily failed or refused to perform its duty.⁴

(4) There is no basis for the issuance of a writ of mandamus in this case. Mr. Buchanan has failed to demonstrate that the Family Court has arbitrarily failed or refused to perform a duty owed to him. Moreover, by way of this proceeding, Mr. Buchanan is seeking to avoid the risk of another unsuccessful appeal.⁵ This Court will not permit the extraordinary writ process to be distorted into a substitute for appellate review.⁶

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

⁴ *Id.*

⁵ He even captions his petition as "in lieu of a petition for an appeal de novo."

⁶ *Matushefske v. Herlihy*, 214 A.2d 883, 885 (Del. 1965).

NOW, THEREFORE, IT IS ORDERED that the petition for a writ of mandamus is DISMISSED.⁷

BY THE COURT:

/s/ Henry duPont Ridgely
Justice

⁷ The petitioner's "motion opposing intervention" is hereby denied as moot.