UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 07-1634

In Re: STEFANIE A. RODEN; In Re: JAMES D. HABURN,

Petitioners.

On Petition for Writ of Mandamus.
(7:04-cv-00336-jct)

Submitted: August 30, 2007 Decided: September 5, 2007

Before MICHAEL, KING, and SHEDD, Circuit Judges.

Petition denied by unpublished per curiam opinion.

Stefanie A. Roden, James D. Haburn, Petitioners Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Stefanie Roden and James Haburn petition for writ of mandamus asking this court to resolve their civil action, which is currently pending in the district court. We conclude that Petitioners are not entitled to the requested relief.

Mandamus relief is available only when the petitioner has a clear right to the relief sought. In re First Fed. Sav. & Loan Ass'n, 860 F.2d 135, 138 (4th Cir. 1988). Further, mandamus is a drastic remedy and should only be used in extraordinary circumstances. Kerr v. United States Dist. Court, 426 U.S. 394, 402 (1976); In re Beard, 811 F.2d 818, 826 (4th Cir. 1987).

To obtain mandamus relief, a petitioner must show that: (1) he has a clear and indisputable right to the relief sought; (2) the responding party has a clear duty to do the specific act requested; (3) the act requested is an official act or duty; (4) there are no other adequate means to attain the relief he desires; and (5) the issuance of the writ will effect right and justice in the circumstances. In re Braxton, 258 F.3d 250, 261 (4th Cir. 2001) (quotations and citation omitted).

The relief sought by Roden and Haburn is not available by way of mandamus. Accordingly, although we grant leave to proceed in forma pauperis, we deny the motion for appointment of counsel, and we deny the petition for writ of mandamus. We dispense with oral argument because the facts and legal contentions are

adequately presented in the materials before the court and argument would not aid the decisional process.

PETITION DENIED