

FILED

United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

July 8, 2015

FOR THE TENTH CIRCUIT

Elisabeth A. Shumaker
Clerk of Court

In re: MICHAEL Y. BIRMAN,

Petitioner.

No. 15-1133
(D.C. No. 1:14-CV-00376-KLM)
(D. Colo.)

ORDER

Before **KELLY, EBEL**, and **O'BRIEN**, Circuit Judges.

Michael Y. Birman, a federal prisoner appearing pro se, has filed a petition for writ of mandamus, seeking an order from this court directing the district court to consider and decide his civil action, D.C. No. 1:14-CV-00376-KLM, which is pending in the district court.

Mandamus is a drastic remedy “to be invoked only in extraordinary situations.” *Allied Chem. Corp. v. Daiflon, Inc.*, 449 U.S. 33, 34 (1980) (per curiam). “For mandamus to issue, there must be a clear right to the relief sought, a plainly defined and peremptory duty on the part of respondent to do the action in question, and no other adequate remedy available.” *Johnson v. Rogers*, 917 F.2d 1283, 1285 (10th Cir. 1990).

The district court docket sheet shows that the defendants’ motion for summary judgment has been at issue since September 29, 2014. Since then, however, Mr. Birman has filed several motions, including, but not limited to, a motion to amend the complaint filed on October 20, which he renewed on December 1. He also filed a cross-motion for

summary judgment on October 23. Proceedings have continued in the district court. On June 19, 2015, the district court entered an order stating that it will decide Mr. Birman's pending motions in due course. There has been no undue delay in the district court. We take the district court at its word and fully expect that a decision will be entered in prompt fashion.

Mr. Birman also filed a motion in this court for immediate injunction, seeking an order from this court directing prison officials to stop interfering with his incoming legal mail and to forward to this court the filing fee for his mandamus proceeding. Our docket sheet shows that the filing fee for this mandamus proceeding was paid on June 29, so that aspect of his motion is moot. Otherwise, the motion is conclusory and does not warrant relief.

The petition for writ of mandamus and motion for immediate injunction are denied.

Entered for the Court

A handwritten signature in cursive script that reads "Elisabeth A. Shumaker". The signature is written in black ink and includes a long, sweeping horizontal flourish at the end.

ELISABETH A. SHUMAKER, Clerk