

[Cite as *State ex rel. Chelala v. Cleveland Mun. Court Hous. Div.*, 2019-Ohio-1537.]

COURT OF APPEALS OF OHIO

EIGHTH APPELLATE DISTRICT

COUNTY OF CUYAHOGA

THE STATE OF OHIO, EX. REL.,
GEORGE CHELALA

:

Relator,

:

No. 107998

v.

:

CLEVELAND MUNICIPAL COURT,
HOUSING DIVISION

:

Respondent.

:

JOURNAL ENTRY AND OPINION

JUDGMENT: DENIED

DATED: April 23, 2019

Writ of Mandamus
Motion No. 524778
Order No. 527319

Appearances:

Christopher M. Corrigan, *for relator.*

Elizabeth M. Crook, Assistant Director of Law, *for respondent.*

LARRY A. JONES, SR., J.:

{¶ 1} George Chelala has filed a complaint for a writ of mandamus. Chelala seeks an order from this court that requires the Cleveland Municipal Court, Housing Division, Judge Ronald O’Leary, Chief Magistrate Barbara A. Reitzloff, and Magistrate Myra Torain Embry to immediately issue a writ of restitution within a forcible entry and detainer action that was filed in *Chelala v. Hoffman*, Cleveland M.C., Housing Division, No. 18-CVG-17200. In addition, Chelala seeks damages from the respondents based upon the failure of the respondents to timely issue a writ of restitution in the underlying forcible entry and detainer action. The respondents have filed a motion for summary judgment, which we grant for the following reasons.¹

{¶ 2} Attached to the motion for summary judgment is a copy of a judgment entry, journalized on December 21, 2018, that demonstrates that a writ of restitution was issued to Chelala and that “the bailiff move-out may occur on or after seven days from December 21, 2018.” Thus, Chelala’s request for a writ of mandamus is moot. “[R]elief is unwarranted because mandamus * * * will not compel the performance of a duty that has already been performed.” *State ex rel. Hopson v. Cuyahoga Cty. Court of Common Pleas*, 135 Ohio St.3d 456, 2013- Ohio-1911, 989 N.E.2d 49, ¶ 4. Also, mandamus may not be employed to control judicial discretion. *Thompson v. State*, 8th Dist. Cuyahoga No. 99265, 2013-Ohio-1907.

{¶ 3} In addition, we find that Chelala is not entitled to damages based upon the argument that the respondents did not timely issue a writ of restitution. The original complaint for a

¹ On January 15, 2019, the respondents filed a joint motion to dismiss the complaint for a writ of mandamus per Civ.R. 12(B)(6). On February 21, 2019, the motion to dismiss was converted into a Civ.R. 56(C) motion for summary judgment pursuant to Civ.R. 12(B). On March 14, 2019, Chelala filed his brief in opposition to the respondents’ joint motion for summary judgment.

writ of mandamus did not contain a claim for damages against the respondents. The claim for damages was brought against the respondents through an amended complaint filed by Chelala on March 14, 2019.

Civ.R. 15(A), which deals with the amendment of a complaint, provides that:

A party may amend its pleading once as a matter of course within twenty-eight days after serving it or, if the pleading is one to which a responsive pleading is required within twenty-eight days after service of a responsive pleading or twenty-eight days after service of a motion under Civ.R. 12(B), (E), or (F), whichever is earlier. In all other cases, *a party may amend its pleading only with the opposing party's written consent or the court's leave.*

{¶ 4} No leave of court or the opposing party's written consent were obtained by Chelala in order to amend his complaint to include a claim for damages against the respondents. Finally, courts, judges, and other court officers are absolutely immune from suit on damage claims that arise out of the performance of judicial or quasi-judicial functions. *Pierson v. Ray*, 386 U.S. 547, 87 S.Ct 1213, 18 L.Ed.2d 288 (1967); *Foster v. Walsh*, 864 F.2d 416 (6th Cir. 1988); *Denman v. Leedy*, 479 F.2d 1097 (6th Cir. 1973); *Kelly v. Whiting*, 17 Ohio St.3d 91, 477 N.E.2d 1123 (1985). Thus, any claim for damages against the respondents must fail.

{¶ 5} Accordingly, we grant the respondents' motion for summary judgment. All costs waived. The court directs the clerk of courts to serve all parties with notice of this judgment and the date of entry upon the journal as required by Civ.R. 58(B).

{¶ 6} Writ denied.

LARRY A. JONES, SR., JUDGE

MARY EILEEN KILBANE, A.J., and
SEAN C. GALLAGHER, J., CONCUR

