

**COURT OF APPEALS OF OHIO**

**EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA**

STATE OF OHIO EX REL. :  
MARY FRANCIS SHAW, :  
 :  
 Relator, : No. 108816  
 :  
 v. :  
 :  
 CLERK OF CUYAHOGA COUNTY :  
 PROBATE COURT, :  
 :  
 Respondent. :

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**JOURNAL ENTRY AND OPINION**

**JUDGMENT: COMPLAINT DISMISSED**  
**DATED: September 18, 2019**

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Writ of Mandamus  
Motion No. 530608  
Order No. 530913

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***Appearances:***

Mary Francis Shaw, *pro se*.

Michael C. O'Malley, Cuyahoga County Prosecuting Attorney, and Nora E. Poore, Assistant Prosecuting Attorney, *for respondent*.

FRANK D. CELEBREZZE, JR., J.:

{¶ 1} Relator, Mary Francis Shaw, seeks a writ of mandamus directing respondent, the Clerk of Courts for the Cuyahoga County Probate Court, to accept a

notice of appeal that relator attempted to file on June 20, 2019. Because respondent has docketed and transmitted the notice of appeal to this court, the action is moot. Therefore, respondent's motion to dismiss is granted and the request for a writ of mandamus is dismissed as moot.

### **I. Factual and Procedural History**

{¶ 2} Relator filed a complaint for writ of mandamus on July 17, 2019. There, she asserted that in an underlying case pending in the Cuyahoga County Probate Court, *In re Guardianship of Mary Francis Shaw*, Cuyahoga P.C. No. 2017GRD229594, she, through a representative, attempted to file a notice of appeal with respondent on June 20, 2019. She asserts, and the representative avers that, initially, respondent accepted the filing, but a few minutes later, returned the notice of appeal to the representative, stating "the judge still has time to decide on the filed objections." Complaint at ¶ 5; affidavit of Willie May, Jr. at ¶ 2.

{¶ 3} On July 24, 2019, this court set an abbreviated briefing schedule, directing respondent to reply to the complaint by July 29, 2019.<sup>1</sup> Respondent timely filed a motion to dismiss, indicating that the complaint was moot because the notice of appeal was docketed in the underlying case. Relator was given until August 5, 2019, to file a brief in opposition, which she failed to do.

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<sup>1</sup> This court also directed the parties to address whether R.C. 2701.20(B) constitutes an adequate remedy at law, precluding relief in mandamus. However, because the action is now moot as explained below, this issue will not be addressed. *See State ex rel. Todd v. Felger*, 116 Ohio St.3d 207, 2007-Ohio-6053, 877 N.E.2d 673, ¶ 13.

## II. Law and Analysis

{¶ 4} This action is before the court on respondent's motion to dismiss pursuant to Civ.R. 12(B)(6). A motion to dismiss is appropriate when, construing all factual allegations of the complaint as true and all reasonable inferences drawn in favor of the nonmoving party, it appears beyond doubt that the nonmoving party is not entitled to relief. *Tuleta v. Med. Mut. of Ohio*, 2014-Ohio-396, 6 N.E.3d 106 (8th Dist.).

{¶ 5} Generally, a court may not consider materials outside the complaint when ruling on a motion to dismiss for failure to state a claim, but this court may take judicial notice of information that causes an action to become moot. *State ex rel. Nelson v. Russo*, 89 Ohio St.3d 227, 228, 729 N.E.2d 1181 (2000), citing *State ex rel. Findlay Publishing Co. v. Schroeder*, 76 Ohio St.3d 580, 581, 669 N.E.2d 835 (1996), citing *State ex rel. Neff v. Corrigan*, 75 Ohio St.3d 12, 16, 661 N.E.2d 170 (1996).

{¶ 6} A writ of mandamus is appropriate when (1) the relator has a clear legal right to the requested relief, (2) the respondent has a clear legal duty to perform the requested relief, and (3) relator has no other adequate remedy at law. *State ex rel. Davis v. Cuyahoga Cty. Court of Common Pleas*, 8th Dist. Cuyahoga No. 95777, 2011-Ohio-1966, ¶ 6, citing *State ex rel. Ney v. Niehaus*, 33 Ohio St.3d 118, 515 N.E.2d 914 (1987).

{¶ 7} This court has previously established that a litigant has a right to file a notice of appeal from a proceeding to which a right to appeal applies, and the clerk

of courts has a clear legal duty to accept the filing of a notice of appeal. *State ex rel Tisdale v. A. Tech Autos. Mobile Serv. & Garage*, 8th Dist. Cuyahoga No. 92825, 2009-Ohio-5382. As we previously stated there, “App.R. 3(A) clearly states that: an appeal to the court of appeals is an appeal as of right; the filing of a timely notice of appeal is the sole requirement for invoking the jurisdiction of the court of appeals; *and only the court of appeals may determine whether other procedural defects require ‘action.’*” (Emphasis added and emphasis in original deleted.) *Id.* at ¶ 13.

{¶ 8} A review of relator’s complaint indicates that she has a strong argument in favor of the issuance of a writ. However, respondent has demonstrated that the issuance of a writ in this case would be a vain act because relator has been afforded all the relief to which she is entitled. “A writ of mandamus will not issue to compel an act already performed.” *Jerningham v. Cuyahoga Cty. Court of Common Pleas*, 74 Ohio St.3d 278, 279, 658 N.E.2d 723 (1996). Further, an action for a writ of mandamus becomes moot when the requested relief is attained. *State ex rel. Jerningham v. Court of Common Pleas*, 74 Ohio St.3d 278, 658 N.E.2d 723 (1996).

{¶ 9} Respondent has provided this court with a certified copy of the docket from the underlying probate court case indicating that the notice of appeal was docketed on June 20, 2019. Relator’s notice of appeal has also caused the docketing of her appeal before this court in *In re Guardianship of Mary Francis Shaw*, 8th Dist. Cuyahoga No. 108867. This is the relief that relator sought through the present action, which is therefore moot.

**{¶ 10}** Respondent's motion to dismiss is granted. Costs to respondent; costs waived. It is further ordered that the clerk of the Eighth District Court of Appeals serve notice of this judgment upon all parties as required by Civ.R. 58(B).

**{¶ 11}** Complaint dismissed.

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**FRANK D. CELEBREZZE, JR., JUDGE**

**EILEEN T. GALLAGHER, P.J., and  
LARRY A. JONES, SR., J., CONCUR**