

**THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
TRUMBULL COUNTY, OHIO**

STATE OF OHIO ex rel.	:	PER CURIAM OPINION
JOHN J. HOHVART,	:	
	:	CASE NO. 2009-T-0123
Relator,	:	
	:	
- vs -	:	
	:	
JUDGE THOMAS W. TOWNLEY,	:	
NILES MUNICIPAL COURT,	:	
	:	
Respondent.	:	

Original Action for Writ of Mandamus.

Judgment: Petition dismissed.

John J. Hohvart, pro se, PID: A483-103, Grafton Correctional Institution, 2500 South Avon-Belden Road, Grafton, OH 44044 (Relator).

J. Terrence Dull, 52 East Park Avenue, Niles, OH 44446 (For Respondent).

PER CURIAM.

{¶1} This action in mandamus is presently before this court for consideration of the motion to dismiss of respondent, Judge Thomas W. Townley of the Niles Municipal Court. As the sole grounds for his motion, respondent maintains that the substance of the mandamus petition has now become moot because he has performed the exact act which relator, John J. Hohvart, sought to compel. For the following reasons, this court concludes that the dismissal of this matter is warranted.

{¶2} In bringing this action, relator requested the issuance of a writ to require respondent to render a ruling on a motion which he had filed before the municipal court in January 2006. In that motion, relator had sought the dismissal of certain charges that had been brought against him in three criminal cases. According to him, the dismissal of all pending charges was warranted because the prosecutor had failed to bring him to trial in a timely manner. In his mandamus claim before this court, relator asserted that the writ was necessary to ensure that the three criminal cases went forward without any further delay.

{¶3} In now moving to dismiss the instant action, respondent states that, upon receiving the mandamus petition, he reviewed the status of the criminal cases against relator. Respondent further submits that, in light of this review, he immediately issued a judgment in each criminal case which had the effect of dismissing all three proceedings in their entirety. Based upon this, he contends that there is no logical reason to proceed on the mandamus claim. In support of his contention, respondent has attached to his motion purported copies of the three dismissal judgments.

{¶4} In responding to the motion to dismiss, relator has not sought to challenge the authenticity of the copies of the new judgments. Furthermore, he does not dispute the fact that the issuance of the dismissal judgments has rendered the substance of his mandamus claim moot. Instead, he only maintains that, since it was necessary for him to initiate this action in order to induce the issuance of the judgments, he should not be ordered, as specifically requested by respondent in his motion to dismiss, to pay the remaining costs of this proceeding.

{¶5} As this court has noted on numerous occasions, when the sole purpose of

a mandamus action is to compel a trial judge to make a decision on a pending motion, the merits of the action will become moot if the judge performs his legal duty and issues a ruling. See, e.g., *State ex rel. Cecil v. Culotta*, 11th Dist. No. 2008-L-185, 2009-Ohio-2622, at ¶10. We have also indicated that, even though evidentiary materials typically cannot be considered in disposing of a motion to dismiss under Civ.R. 12(B)(6), such materials are permissible when the motion is predicated upon an assertion of mootness. *Penko v. Mitrovich*, 11th Dist. No. 2003-L-191, 2004-Ohio-6326, at ¶5.

{¶6} As was previously stated, relator has not contested respondent's assertion that the materials attached to the motion to dismiss are accurate copies of judgments which have been released in the underlying criminal cases. Moreover, our review of the judgments readily shows that respondent has dismissed all three cases which had been pending against relator. Thus, since respondent has performed the specific official act that relator sought to compel, the final merits of the mandamus claim have now become moot.

{¶7} In regard to the payment of the remaining costs of this action, Civ.R. 54(D) states that, in the absence of an express provision in a statute or other rule, "costs shall be allowed to the prevailing party unless the court otherwise directs." In applying this rule in the context of a mandamus action, the Seventh Appellate District has held that when a respondent renders the matter moot by performing the disputed act subsequent to the filing of the action, the relator must be deemed the prevailing party. *State ex rel. Mitchell v. Evans*, 7th Dist. No. 06 MA 118, 2007-Ohio-5055, at ¶4. Under that type of situation, the respondent would be responsible for costs unless the court decides, in its discretion, that other circumstances warrant a different result. *Id.*

{¶8} In the present case, respondent has admitted in his motion to dismiss that relator took the requisite steps to have the underlying criminal proceedings go forward in a timely fashion. Despite this, no action was taken regarding the charges or relator's pending motion until he instituted the instant action. Given these circumstances, this court holds that relator, as the prevailing party in this litigation, should not be required to cover the remaining costs of the action.

{¶9} Consistent with the foregoing discussion, respondent's motion to dismiss is granted. It is the order of this court that relator's entire mandamus petition is hereby dismissed as moot.

MARY JANE TRAPP, P.J., COLLEEN MARY O'TOOLE, J., TIMOTHY P. CANNON, J.,
concur.