

**IN THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
LAKE COUNTY, OHIO**

STEPHANIE Y. CLOUGH	:	PER CURIAM OPINION
Relator,	:	CASE NO. 2012-L-118
- vs -	:	
HONORABLE JUDGE KAREN D. LAWSON	:	
Respondent.	:	

Original Action for Writ of Mandamus.

Judgment: Petition dismissed.

Stephanie Clough, pro se, 8060 Wright Road, Broadview Heights, OH 44147 (Relator).

Charles E. Coulson, Lake County Prosecutor, and *Joshua S. Horacek*, Assistant Prosecutor, 105 Main Street, P.O. Box 490, Painesville, OH 44077 (For Respondent).

PER CURIAM

{¶1} Before this court is relator, Stephanie Y. Clough’s, “Petition for Writ of Mandamus Motion to Recuse Judge Karen D. Lawson.” Respondent, Judge Karen Lawson, has filed a Motion to Dismiss, pursuant to Ohio Civ.R. 12(B)(6), claiming that relator has “failed to state a claim upon which relief can be granted.” For the following reasons, the respondent’s Motion has merit and, accordingly, relator’s Petition is dismissed for failure to state a claim upon which relief can be granted.

{¶2} On October 2, 2012, relator filed her “Petition for Writ of Mandamus Motion to Recuse Judge Karen D. Lawson.” In her Petition, she requests that this court

issue a writ of mandamus, ordering respondent to rule on her Motion to Recuse, filed in the Lake County Court of Common Pleas, Juvenile Division, on August 27, 2012. Relator also asserts that on the same date, she also filed a Motion for Reconsideration and a Motion for Clarification, which also had not been ruled upon by the lower court. Attached to her Petition is an “Affidavit of Extreme Prejudice and Bias,” describing the various reasons she believes that respondent should recuse herself.

{¶3} Respondent filed a Motion to Dismiss on October 19, 2012, asserting that relator’s Petition is now moot, since the motions before the lower court were ruled upon on October 3, 2012. Attached to the Motion to Dismiss is a copy of the October 3 Judgment Entry, filed in the Lake County Court of Common Pleas, Juvenile Division, which ruled that “the Motion to Reconsider Judgment Entries, Motion for Clarification of Judgment Entries, and Motion to Recuse Judge Karen Lawson, filed August 27, 2012 are not well taken and are hereby denied.” The copy of the Judgment Entry was also stamped with a certification, dated October 19, 2012, that it is “a true copy of a paper on file in Case No. 2008CV2029” in the lower court, and was signed by the deputy clerk.¹

{¶4} Respondent also argues that “[t]o the extent that [relator seeks] a writ of mandamus removing respondent from the underlying case,” the appellate court has no authority to order such removal, since authority to disqualify a judge is vested in the Chief Justice of the Ohio Supreme Court or his designee. *Beer v. Griffith*, 54 Ohio St.2d 440, 441-442, 377 N.E.2d 775 (1978) (“[s]ince only the Chief Justice or his designee may hear disqualification matters, the Court of Appeals was without authority to pass upon disqualification” of the trial court judge). Respondent further argues that relator

1. The Judgment Entry provided by respondent appears to be a copy of the certified copy.

had a plain and adequate remedy at law to disqualify her, through the procedures set forth to seek disqualification, as stated above.

{¶5} In relator's Amended Memorandum in Response, filed on October 29, 2012, she asserted that she "never requested" that this court remove Judge Lawson from the case. She argues that although a judgment was entered on her motions in the lower court, the Motion to Recuse was "not ruled on in accordance with the law," and respondent did not perform a review of the evidence or give an explanation of her ruling, and evidence supported the conclusion that respondent should have recused herself. Relator further argues that since she has a pending motion in the trial court to reconsider the October 3, 2012 Judgment Entry, she is still entitled to a writ of mandamus.

{¶6} "Mandamus is a writ, issued in the name of the state to an inferior tribunal, a corporation, board, or person, commanding the performance of an act which the law specially enjoins as a duty resulting from an office, trust, or station." R.C. 2731.01. The basic purpose of a writ of mandamus is to require a public official to complete a specific act which he has a legal obligation to perform. *Cunningham v. Lucci*, 11th Dist. No. 2006-L-052, 2006-Ohio-4666, ¶ 9.

{¶7} A writ of mandamus "will not issue to compel a public official to perform a legal duty which has been completed." (Citations omitted.) *State ex rel. Gantt v. Coleman*, 6 Ohio St.3d 5, 450 N.E.2d 1163 (1983). "In light of the limited purpose of the writ, this court has held that if the trial judge has already performed the particular act which the relator seeks to compel, the merits of the mandamus claim will be considered

moot and the entire action will be subject to dismissal.” *State ex rel. Verbanik v. Girard Mun. Court Judge Bernard*, 11th Dist. No. 2006-T-0080, 2007-Ohio-1786, ¶ 7.

{¶8} In the present matter, respondent argues that the requested act has already been performed. As this court has held, when a respondent moves to dismiss on the basis that a judgment has already been rendered, the entry of that judgment may be proven by either a certified copy of the judgment or when the relator does not contest that the motion has been ruled upon. *Id.* at ¶ 8 (“a finding of mootness can be made in an original action when the relator does not contest the respondent’s contention”). In the present matter, respondent has submitted a copy of the October 3, 2012 Judgment Entry, which contains an October 19, 2012 certification that the copy is a true copy made by the deputy clerk of the lower court. This document appears to be a copy of the certified copy provided to respondent. The Judgment Entry rules on each of the three motions on which relator requested a ruling, which included the August 27, 2012 Motion to Recuse Judge Karen Lawson, the Motion for Reconsideration, and the Motion for Clarification. Relator does not dispute that the court did issue the October 3 Judgment Entry ruling on those matters. Therefore, there is adequate proof that the lower court issued a judgment on the foregoing motions. Since the requested action has already been taken, relator’s claim in mandamus requesting rulings must be considered moot. *Cunningham* at ¶ 9 (“if the public official has already performed the requested act, the mandamus action is moot”) (citations omitted).

{¶9} In her Memorandum in Response, relator argues that, even if her Petition is moot because the motions were ruled upon, the lower court did not properly consider the merits of her Motion to Recuse and should have given specific reasons for its

decision and ruled in her favor based on the evidence and facts before the court. However, this court cannot grant a writ of mandamus ordering the lower court to either rule in a certain manner or to grant relator's motions. "[I]n the context of cases involving a judge's duty to rule upon pending motions, this court has emphasized that the writ cannot be used as a means of mandating a trial judge's holding on a particular matter; that is, while the writ will lie to require a judge to dispose of a pending motion, it will not lie to require a specific ruling." *Verbanik* at ¶ 6; *State ex rel. Waites v. Mitrovich*, 11th Dist. No. 97-L-066, 1997 Ohio App. LEXIS 3776, *2-3 (Aug. 21, 1997). "In recognizing the foregoing distinction, the Supreme Court of Ohio has stated that, although the writ can be employed to force a judge to go forward and exercise his discretion, it cannot be used to actually control the judge's discretion." *Id.* at ¶ 6, citing *State ex rel. Keenan v. Calabrese*, 69 Ohio St.3d 176, 180, 631 N.E.2d 119 (1994).

{¶10} Further, relator has an adequate remedy at law to the issue of the alleged bias of respondent by way of filing an affidavit of disqualification with the Chief Justice of the Supreme Court, pursuant to R.C. 2701.03, to challenge any alleged prejudice. *State ex rel. Hach v. Summit Cty. Court of Common Pleas*, 102 Ohio St.3d 75, 2004-Ohio-1800, 806 N.E.2d 554, ¶ 7; *State ex rel. Pisani v. Cirigliano*, 133 Ohio App.3d 622, 626, 729 N.E.2d 452 (8th Dist.1999) ("if relator has questions about the impartiality of the judge and seeks his disqualification * * *, R.C. 2701.03 provides an adequate remedy in the ordinary course of law").

{¶11} Respondent argues in her Motion to Dismiss that this court cannot independently rule that she must be disqualified from the case below, since this court does not have the authority to do so. However, relator never requested that this court

issue a ruling determining whether respondent should be removed from the action in the lower court, and specifically states in her response that she did not request such a ruling. As noted above, this court does not have the authority to disqualify a lower court judge. *Beer*, 54 Ohio St.2d at 441-442, 377 N.E.2d 775; *State v. Smith*, 168 Ohio App.3d 141, 2006-Ohio-3720, 858 N.E.2d 1222, ¶ 117 (1st Dist.) (“[t]he Ohio Constitution provides the Chief Justice or his assignee with the sole power to disqualify a trial * * * judge on the basis of bias and prejudice”).

{¶12} Finally, relator asserts that her Petition should not be dismissed as moot because she still has “a pending motion with the trial court to reconsider its judgment entry dated October 3, 2012.” However, relator did not request relief from this court in the form of a writ ordering the trial court to rule on that motion. We cannot grant relief to relator that she has not properly requested from this court. *State ex rel. Gibbs v. Concord Twp. Trustees*, 152 Ohio App.3d 387, 2003-Ohio-1586, 787 N.E.2d 1248, ¶ 37 (11th Dist.); *State ex rel. Union Metal Corp. v. Indus. Comm. of Ohio*, 10th Dist. No. 03AP-1247, 2005-Ohio-847, ¶ 3 (the appellate court cannot grant relief not requested in the complaint seeking a writ of mandamus).

{¶13} For the foregoing reasons, respondent’s Motion to Dismiss is granted. It is the order of this court that relator’s Petition for Writ of Mandamus is dismissed.

TIMOTHY P. CANNON, P.J., DIANE V. GRENDALL, J., CYNTHIA WESTCOTT RICE, J., concur.