

[Cite as *State ex rel. Bachman v. Heath*, 2010-Ohio-3859.]

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO, ex rel. RONALD
DALE BACHMAN

Relator

-vs-

HON. TARYN L. HEATH

Respondent

JUDGES:

Hon. John W. Wise, P. J.

Hon. Julie A. Edwards, J.

Hon. Patricia A. Delaney, J.

Case No. 2010 CA 00094

OPINION

CHARACTER OF PROCEEDING:

Complaint for Writ of Procedendo

JUDGMENT:

Dismissed

DATE OF JUDGMENT ENTRY:

August 16, 2010

APPEARANCES:

For Relator

For Respondent

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Wise, P. J.

{¶1} Relator Ronald Dale Bachman has filed a Complaint for Writ of Procedendo. Relator requests Respondent Judge Taryn Heath be ordered to rule on motions he filed with the trial court. Relator filed a motion for leave to file a delayed motion for new trial on January 29, 2008. Without having been granted leave to do so, Relator then filed a Motion for New Trial on March 24, 2008. On April 29, 2010 Respondent Heath ruled upon both motions. Respondent has filed a motion to dismiss the instant Petition because her rulings upon the motions have made the complaint moot.

{¶2} To be entitled to a writ of procedendo, “a relator must establish a clear legal right to require the court to proceed, a clear legal duty on the part of the court to proceed, and the lack of an adequate remedy in the ordinary course of law.” *State ex rel. Miley v. Parrott* (1996), 77 Ohio St.3d 64, 671 N.E.2d 24 at 65, citing *State ex rel. Sherrills v. Cuyahoga Cty. Court of Common Pleas* (1995), 72 Ohio St.3d 461, 462. The Supreme Court has noted, “The writ of procedendo is merely an order from a court of superior jurisdiction to one of inferior jurisdiction to proceed to judgment. It does not in any case attempt to control the inferior court as to what that judgment should be.” *State ex rel. Davey v. Owen* (1937), 133 Ohio St. 96, 106, 12 N.E.2d 144, 149.

{¶3} The Supreme Court has held procedendo will not issue where the requested relief has been obtained, “Neither procedendo nor mandamus will compel the performance of a duty that has already been performed.” *State ex rel. Kreps v. Christiansen* (2000), 88 Ohio St.3d 313, 318, 725 N.E.2d 663, 668.

{¶4} Because Respondent Heath has issued rulings on Relator's motions, the request for a writ of procedendo has become moot. For this reason, Respondent's Motion to Dismiss is granted.

{¶5} WRIT DISMISSED.

{¶6} COSTS TO RELATOR.

{¶7} IT IS SO ORDERED.

By: Wise, P. J.

Edwards, J., and

Delaney, J., concur.

JUDGES

