

COURT OF APPEALS  
DELAWARE COUNTY, OHIO  
FIFTH APPELLATE DISTRICT

THOMAS A. BERGANDINE	:	JUDGES:
	:	
Petitioner	:	Hon. Sheila G. Farmer, P.J.
-vs-	:	Hon. John W. Wise, J.
	:	Hon. Patricia A. Delaney, J.
	:	
HONORABLE EVERETT H. KRUEGER	:	
	:	CASE NO. 10CAD050037
Respondent	:	
	:	<u>OPINION</u>
	:	
CHARACTER OF PROCEEDING:		Petition for Writ of Procedendo
JUDGMENT:		PETITION DISMISSED
DATE OF JUDGMENT ENTRY:		August 19, 2010
APPEARANCES:		
For Petitioner:		For Respondent:
Thomas A. Bergandine, Pro Se		Carol Hamilton O'Brien
1737 W. William Street		Assistant Prosecuting Attorney
Delaware, OH 43015		140 North Sandusky St. 3 <sup>rd</sup> Floor
		Delaware, OH 43015

*Patricia A. Delaney, J.*

{¶1} Petitioner, Thomas A. Bergandine, filed a petition for writ of procedendo. Petitioner requests Respondent, Judge Everett H. Krueger, be ordered to rule on motions Petitioner filed in the trial court. On June 4, 2010 Judge Krueger ruled on all pending motions. Respondent has filed a motion to dismiss the instant petition because the rulings have made the petition 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*, 77 Ohio St.3d 64, 65, 671 N.E.2d 24, 1996-Ohio-350, citing *State ex rel. Sherrills v. Cuyahoga Cty. Court of Common Pleas*, 72 Ohio St.3d 461, 462, 650 N.E.2d 899, 1995-Ohio-26. The Ohio Supreme Court in *Miley* noted, “[p]rocedendo is an order from a court of superior jurisdiction to proceed to judgment: it does not attempt to control the inferior court as to what that judgment should be.” *Id.* at 67 (citations omitted).

{¶3} The Supreme Court has held procedendo will not issue where the requested relief has been obtained, “[n]either procedendo nor mandamus will compel the performance of a duty that has already been performed.” *State ex rel. Kreps v. Christiansen*, 88 Ohio St.3d 313, 318, 725 N.E.2d 663, 2000-Ohio-335.

{¶4} Because Judge Krueger has issued rulings on Petitioner’s motions, the request for procedendo has become moot. For this reason, Respondent’s motion to dismiss is granted.

{¶5} Petitioner’s request for writ of procedendo is dismissed.

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PETITION DISMISSED.

COSTS TO PETITIONER.

IT IS SO ORDERED.

By: Patricia A. Delaney, J.

Sheila G. Farmer, P.J. and

John W. Wise, J. concur

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HON. PATRICIA A. DELANEY

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HON. SHEILA G. FARMER

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HON. JOHN W. WISE

[Cite as *Bergandine v. Krueger*, 2010-Ohio-3958.]

COURT OF APPEALS  
DELAWARE COUNTY, OHIO  
FIFTH APPELLATE DISTRICT

THOMAS A. BERGANDINE

Petitioner

-vs-

HONORABLE EVERETT H. KRUEGER

Respondent

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CASE NO. 10CAD050037

JUDGMENT ENTRY

For the reasons stated in the Memorandum-Opinion on file, the Petition for Writ of Procedendo is hereby dismissed. Costs taxed to Petitioner.

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HON. PATRICIA A. DELANEY

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HON. SHEILA G. FARMER

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HON. JOHN W. WISE