

COURT OF APPEALS  
STARK COUNTY, OHIO  
FIFTH APPELLATE DISTRICT

STATE EX REL. CHAD A. OSTROWSKI	:	JUDGES:
	:	Patricia A. Delaney, P.J.
	:	William B. Hoffman, J.
	:	Julie A. Edwards, J.
Relator	:	
	:	Case No. 2012 CA 00121
-vs-	:	
	:	
	:	<u>OPINION</u>
HONORABLE DIXIE N. PARK	:	
Respondent	:	

CHARACTER OF PROCEEDING: Writ of Procedendo Complaint

JUDGMENT: Writ Issued

DATE OF JUDGMENT ENTRY: October 15, 2012

APPEARANCES:

For Relator

For Respondent

CRAIG T. CONLEY  
604 Huntington Plaza  
220 Market Avenue South  
Canton, Ohio 44702

JOHN D. FERRERO  
Prosecuting Attorney  
Stark County, Ohio

BY: ROSS RHODES  
Assistant Prosecuting attorney  
Chief of the Civil Division  
110 Central Plaza South, Suite 510  
Canton, Ohio 44702

*Edwards, J.*

{¶1} Relator, Chad Ostrowski, has filed a Complaint in Procedendo requesting this Court order the trial court to lift a stay in the underlying adoption petition. Respondent has filed a Motion to Dismiss.

{¶2} Relator filed a Petition for Adoption in the trial court which the trial court stayed pending the resolution of a motion for visitation in the Stark County Court of Common Pleas, Juvenile Division. Respondent argues a stay of the adoption proceedings is warranted based upon the Supreme Court's holding in *In re Adoption of Pushcar*, 110 Ohio St.3d 332, 2006-Ohio-4572. Relator in turn argues the Respondent's reliance on *Pushcar* is misplaced. For the following reasons, we agree with Relator and grant the requested Writ of Procedendo.

{¶3} "A 'writ of procedendo is appropriate when a court has either refused to render a judgment or has unnecessarily delayed proceeding to judgment.'" *State ex rel. CNG Fin. Corp. v. Nadel*, 111 Ohio St.3d 149, 2006-Ohio-5344, 855 N.E.2d 473, ¶ 20, quoting *Weiss*, 84 Ohio St.3d at 532, 705 N.E.2d 1227.

{¶4} "[T]he requirements for a writ of procedendo are met if a judge erroneously stays a proceeding." *State ex rel. Charvat v. Frye*, 114 Ohio St.3d 76, 2007-Ohio-2882, 868 N.E.2d 270, ¶ 15. Consequently, "a writ of procedendo will issue to require a court to proceed to final judgment if the court has erroneously stayed the proceeding." *State ex rel. Watkins v. Eighth Dist. Court of Appeals* (1998), 82 Ohio St.3d 532, 535, 696 N.E.2d 1079." *State ex rel. Sawicki v. Lucas Cty. Court of Common Pleas*, 126 Ohio St.3d 198, 200, 931 N.E.2d 1082, 1086 (2010).

{¶15} The Supreme Court in *Pushcar* held, “[W]hen an issue concerning the parenting of a minor child is pending in the juvenile court, a probate court must refrain from proceeding with the adoption of that child.” *Pushcar* at 334. In the instant case, the proceeding pending in the Juvenile Court is a Complaint for Visitation. According to the Complaint for Visitation, paternity has already been established. The subject of the case in *Pushcar* was the establishment of paternity and not merely visitation. The establishment of paternity is a necessary element of an adoption case which is why a stay was necessary in *Pushcar*. Here, the same adoption prerequisite does not exist.

{¶16} Subsequent to its holding in *Pushcar*, the Supreme Court noted that the term “parenting” as used in *Pushcar* was synonymous with “parentage.” *In re G.T.B.* 128 Ohio St.3d 502 (2011), at FN2. Parentage clearly refers to the establishment of paternity.

{¶17} We find, *Pushcar* stands for the proposition that a stay must be imposed only where parentage is at issue. Because parentage has been established in this case the trial court erred in imposing a stay.

{¶8} We grant the writ of procedendo and order the trial court to proceed with the adoption case forthwith.

By: Edwards, J.

Delaney, P.J. and

Hoffman, J. concur

---

---

---

JUDGES

JAE/ads0905

