

[Cite as *Arnoff v. State*, 2020-Ohio-4175.]

STATE OF OHIO)
)ss:
COUNTY OF LORAIN)

BRUCE ARNOFF

Relator

V.

STATE OF OHIO

Respondent

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

C.A. No. 20CA011664

ORIGINAL ACTION IN
PROCEDENDO

Dated: August 24, 2020

PER CURIAM.

{¶1} Relator, Bruce Arnoff, has filed a document captioned “Writ of Procedendo” with the clerk for the Ninth District Court of Appeals. In his complaint, he alleges several concerns involving this Court’s handling of his other cases in this Court and how the clerk of court of appeals has handled various filings and orders. For the following reasons, we dismiss the complaint sua sponte.

{¶2} Sua sponte dismissal of a complaint, without notice, is appropriate only if the complaint is frivolous or the claimant obviously cannot prevail on the facts alleged in the complaint. See, e.g., *State ex rel. Duran v. Kelsey*, 106 Ohio St.3d 58, 2005-Ohio-3674, ¶ 7. Mr. Arnoff cannot prevail on the facts alleged in his complaint because he has not alleged an actionable claim for a writ of procedendo in this Court.

{¶3} “Procedendo is an order from a court of superior jurisdiction to proceed to judgment * * *.” *State ex rel. Miley v. Parrott*, 77 Ohio St.3d 64, 67, 1996-Ohio-350. “An inferior court’s refusal or failure to timely dispose of a pending action is the ill a writ of

procedendo is designed to remedy.” (Citations omitted) *Id.* at 65. Thus, the writ of procedendo is an order from a court of *superior jurisdiction* to one of *inferior jurisdiction* to proceed to judgment. *State ex rel. Sherrills v. Cuyahoga Cty. Court of Common Pleas*, 72 Ohio St.3d 461, 462, 1995-Ohio-26.

{¶4} Mr. Arnoff’s complaint, in part, seeks a writ of procedendo *from this Court*, directed *to this Court*, to enter orders in a manner that he would prefer. He has not asked this Court to enter any orders directed to a court of inferior jurisdiction, which, as noted above, is the purpose of a writ of procedendo. Mr. Arnoff’s complaint seeks relief that is beyond the authority of this Court to grant through the writ of procedendo. Because Mr. Arnoff obviously cannot prevail on the facts alleged in his complaint, *sua sponte* dismissal is appropriate.

{¶5} Mr. Arnoff’s complaint also seeks a writ of procedendo directed to the clerk of the court of appeals for Lorain County. His complaint alleges that he has not received copies of documents and he demands that this Court order the clerk to provide copies of various pleadings and orders to him at no cost. The Lorain County Clerk of Courts is not a court and, therefore, procedendo relief is not available. Because Mr. Arnoff obviously cannot prevail on the facts alleged in his complaint, *sua sponte* dismissal is appropriate.

{¶6} Mr. Arnoff obviously cannot prevail on the facts alleged in the complaint. Accordingly, *sua sponte* dismissal is appropriate. This case is dismissed.

{¶7} Costs are taxed to Mr. Arnoff.

{¶8} The clerk of courts is hereby directed to serve upon all parties not in default notice of this judgment and its date of entry upon the journal. *See Civ.R. 58.*

LYNNE S. CALLAHAN
FOR THE COURT

HENSAL, J.
SCHAFFER, J.
CONCUR.

APPEARANCES:

BRUCE ARNOFF, Pro se, Relator.