

[Cite as *Mitchell v. Haynes*, 2005-Ohio-5479.]

STATE OF OHIO, MAHONING COUNTY

IN THE COURT OF APPEALS

SEVENTH DISTRICT

WALLACE MITCHELL, Jr.,)

RELATOR,)

- VS -)

FLOYD HAYNES,)

AND)

HONORABLE JUDGE)
R. SCOTT KRICHBAUM,)
MAHONING COUNTY COMMON)
PLEAS COURT,)

RESPONDENTS.)

CASE NO. 03 MA 158

OPINION
AND
JOURNAL ENTRY

CHARACTER OF PROCEEDINGS:

Petition for Writ of Mandamus,

JUDGMENT:

Petition Dismissed.

APPEARANCES:

For Relator:

Wallace Mitchell, Jr., Pro-se
#51443-060
P.O. Box 7000
Florence, CO 81226-7000

For Respondents:

Attorney Paul J. Gains
Prosecuting Attorney
21 W. Boardman Street, 6th Floor
Youngstown, OH 44503

JUDGES:

Hon. Joseph J. Vukovich
Hon. Cheryl L. Waite
Hon. Mary DeGenaro

Dated: October 13, 2005

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PER CURIAM:

{¶1} On August 26, 2003, pro-se Petitioner filed a complaint in mandamus seeking an order to compel Respondent to proceed to trial in Common Pleas Case No. 99 CV 831, captioned *Mitchell v. Haynes*, to comply with this Court's August 30, 2001 judgment reversing the dismissal of the complaint and remanding for further proceedings. (Appeals Case No. 00 CA 117)

{¶2} On a periodic review of the status of pending original actions this Court noted by a journal entry filed on September 17, 2004 that the underlying action had been referred to a magistrate, that a pretrial hearing had taken place and that a settlement had been obtained. This matter was continued for thirty (30) days to afford the parties an opportunity to conclude the proceedings in the trial court.

{¶3} Subsequently, on December 15, 2004 there was filed a Magistrate's Decision noting one party defendant agreed to transfer one-third interest in two parcels of real estate to Wallace Mitchell, Jr. as well as pay him \$1,000 in monthly payments of \$50.

{¶4} The trial court docket further reveals that on January 6, 2005 the trial court adopted the Magistrate's Decision. Thereafter, the Magistrate entered a new decision providing the legal description of the subject parcels and further stating that if the proper instrument of conveyance was not prepared the judgment entry adopting the Magistrate's Decision could be recorded as the instrument of conveyance.

{¶5} On January 25, 2005 the trial court overruled objections to the December 15, 2004 Magistrate's Decision as untimely.

{¶6} The docket record reveals that Relator herein then filed an objection to the Magistrate's Decision of January 25, 2005 and a motion for relief from the trial court's judgment entered that same date as to the December 15, 2004 Magistrate's Decision.

{¶7} On April 6, 2005 the trial court entered an order overruling the motion for relief from judgment as well as overruling Relator's objections to the January 25, 2005, Magistrate's Decision as untimely.

{¶8} Relator timely appealed the April 6, 2005 judgment on May 2, 2005 under Appeals Case No. 05 MA 78. That matter remains pending for decision by this Court.

{¶9} The case history for underlying civil action Case Number 99 CV 831 in the Mahoning County Common Pleas Court evidences the fact that there have been further proceedings pursuant to the remand order issued by this Court in Appeals Case No. 00 CA 117. A writ of mandamus will not issue to compel an act which has already been performed. State ex rel. Jerningham v. Cuyahoga County Court of Common Pleas (1996), 74 Ohio St.3d 278, 1996-Ohio-117.

{¶10} Accordingly, this complaint in mandamus is dismissed.

{¶11} Costs taxed against Relator. Final order. Clerk to serve notice as provided by the civil rules.

Vukovich, J., concurs.

Waite, J., concurs.

DeGenaro, J., concurs.