

OPINIONS OF THE SUPREME COURT OF OHIO

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The State ex rel. Tillimon, d.b.a. TFC Property Management Company, Appellant, v. Weiher, Judge, Appellee.

[Cite as State ex rel. Tillimon v. Weiher (1992), Ohio St.3d .]

Mandamus to compel court to render a decision promptly and to render a specific ruling -- Supreme Court will not order a court to render its decisions promptly in a mandamus action -- Supreme Court will not direct a judge to exercise his discretion in a certain manner via mandamus. (No. 92-1835 -- Submitted November 10, 1992 -- Decided December 11, 1992.)

Appeal from the Court of Appeals for Lucas County, No. L-92-220.

Duane J. Tillimon, d.b.a. TFC Property Management Company, appellant, filed a complaint for a writ of mandamus against Judge Roger R. Weiher in the Court of Appeals for Lucas County. In the complaint, Tillimon seeks to require Judge Weiher and all acting, assigned, or sitting judges in the Toledo Municipal Court "to render decisions promptly in all Toledo Municipal Court cases, and particularly Case No. CVG-92-00682," and to order Judge Weiher to decide the underlying case for Tillimon.

According to the complaint, Tillimon filed a forcible entry and detainer action to evict two of his tenants. The case, No. CVG-92-00682, was assigned to Weiher. Weiher stayed the case pending the outcome of an appeal of several related cases.

The court of appeals, on a motion filed by Weiher, dismissed the complaint because Weiher had issued a decision on Tillimon's motion for summary judgment and had scheduled a trial of remaining issues for July 23, 1992. The court of appeals ruled that it could not, in a mandamus action, require a trial court to render a specific ruling on a summary judgment motion.

Since the court of appeals issued its decision, the underlying case has been continued and assigned to successive judges. Apparently, it is still pending.

The cause is now before this court upon an appeal as of

right.

Duane J. Tillimon, pro se.
Daniel R. Pilrose, Jr., for appellee.

Per Curiam. According to O'Brien v. University Community Tenants Union, Inc. (1975), 42 Ohio St.2d 242, 71 O.O.2d 223, 327 N.E.2d 753, syllabus:

"In order for a court to dismiss a complaint for failure to state a claim upon which relief can be granted * * *, it must appear beyond doubt from the complaint that the plaintiff can prove no set of facts entitling him to recovery. (Conley v. Gibson [1957], 355 U.S. 41 [78 S.Ct. 99, 2 L.Ed.2d 80], followed)."

We hold that Tillimon can prove no set of facts entitling him to relief and affirm the dismissal of the complaint.

First, Tillimon demands that we order Weiher and his successors to promptly decide all cases in Toledo Municipal Court, including the underlying case. We presume the regularity of trial court proceedings. Middleburg Hts. v. Brown (1986), 24 Ohio St.3d 66, 68, 24 OBR 215, 217, 493 N.E.2d 547, 549. Further, we will not issue a writ of mandamus to compel the observance of laws generally. State ex rel. Stanley v. Cook (1946), 146 Ohio St. 348, 32 O.O. 419, 66 N.E.2d 207, paragraph seven of the syllabus; State ex rel. Shafer v. Ohio Turnpike Comm. (1953), 159 Ohio St. 581, 589, 50 O.O. 465, 469, 113 N.E.2d 14, 19. Accordingly, we do not, in a general manner, order a court to render its decisions promptly in a mandamus action.

Second, Tillimon demands that we direct Weiher to decide the case in his favor. However, mandamus "* * * cannot control judicial discretion." R.C. 2731.03; State ex rel. DeVille Photography, Inc. v. McCarroll (1958), 167 Ohio St. 210, 4 O.O.2d 268, 147 N.E.2d 254. Consequently, we do not direct a judge to exercise his discretion in a certain manner via mandamus.

Therefore, we affirm the judgment of the court of appeals dismissing the complaint.

Judgment affirmed.

Moyer, C.J., Sweeney, Holmes, Douglas, Wright and H. Brown, JJ., concur.

Resnick, J., not participating.