

[Until this opinion appears in the Ohio Official Reports advance sheets, it may be cited as *Page v. Geauga Cty. Probate & Juvenile Court*, Slip Opinion No. 2023-Ohio-2491.]

NOTICE

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SLIP OPINION NO. 2023-OHIO-2491

PAGE v. GEAUGA COUNTY PROBATE AND JUVENILE COURT ET AL.

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Procedendo—Mandamus—Writs sought to compel respondents to proceed to a hearing on a pending motion—Mandamus claim dismissed for failure to comply with R.C. 2731.04—Procedendo claim dismissed for various reasons—Cause dismissed.

(No. 2023-0656—Submitted July 18, 2023—Decided July 20, 2023.)

IN PROCEDENDO and MANDAMUS.

Per Curiam.

{¶ 1} Relator, Kimberly Page, has filed a complaint seeking writs of procedendo and mandamus to compel respondents, the Geauga County Probate and Juvenile Court, Judge Timothy J. Grendell, Judge Debra L. Boros, and Richard Sherrick, to proceed to a hearing on an ex parte motion seeking temporary custody

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of minor children. The court, Judge Grendell, and Judge Boros have filed a motion to dismiss. We grant the motion to dismiss and sua sponte dismiss the claims against Sherrick.

{¶ 2} We dismiss the mandamus claim as to all respondents based on Page’s failure to caption her complaint “in the name of the state on the relation of the person applying” in compliance with R.C. 2731.04. *See Litigaide, Inc. v. Lakewood Police Dept. Custodian of Records*, 75 Ohio St.3d 508, 664 N.E.2d 521 (1996).

{¶ 3} To state a claim in procedendo, Page must allege facts showing that (1) she has a clear legal right to require respondents to proceed, (2) respondents have a clear legal duty to proceed, and (3) she lacks an adequate remedy in the ordinary course of the law. *See State ex rel. Weiss v. Hoover*, 84 Ohio St.3d 530, 531-532, 705 N.E.2d 1227 (1999). We dismiss the procedendo claim against the court because a court is not sui juris and may not be sued in its own right. *See State ex rel. Ames v. Portage Cty. Bd. of Commrs.*, 165 Ohio St.3d 292, 2021-Ohio-2374, 178 N.E.3d 492, ¶ 26. We dismiss the procedendo claim against Judge Grendell because, according to Page, the underlying custody action is not assigned to him. *See State ex rel. Johnson v. Jensen*, 140 Ohio St.3d 65, 2014-Ohio-3159, 14 N.E.3d 1039, ¶ 5. We dismiss the procedendo claim against Sherrick because he is not the judicial officer assigned to the underlying case. *See id.* Finally, we dismiss the procedendo claim against Judge Boros because the hearing Page requests has already been scheduled. We note, however, that the requested hearing apparently has been continued numerous times since November 2020, and we expect no further delays.

{¶ 4} For the foregoing reasons, we grant the motion to dismiss of respondents Geauga County Probate and Juvenile Court, Judge Grendell, and Judge Boros and we dismiss the case sua sponte as to respondent Sherrick.

Motion granted
and cause dismissed.

January Term, 2023

KENNEDY, C.J., and FISCHER, DEWINE, DONNELLY, STEWART, BRUNNER,
and DETERS, JJ., concur.

Susan J. Lax, RN, MS, L.L.C., and Susan J. Lax, for relator.

James R. Flaiz, Geauga County Prosecuting Attorney, and Sheila M. Salem,
Assistant Prosecuting Attorney, for respondents Geauga County Probate and
Juvenile Court, Judge Timothy J. Grendell, and Judge Debra L. Boros.

Michael Drain, for respondent Richard Sherrick.
