

Ingram's case filed a summary judgment motion to which was appended a copy of a decision and entry ruling upon Mr. Ingram's motions. Mr. Ingram did not file a response contesting the summary judgment motion. As a result, the magistrate issued a magistrate's decision (attached as Appendix A) which contains detailed findings of fact and conclusions of law and which also includes a recommendation that we grant the motion for summary judgment.

{¶3} Mr. Ingram has not filed objections to the magistrate's decision. The case is now before the court for review.

{¶4} No error of law or fact is present on the face of the magistrate's decision. We, therefore, adopt the findings of fact and conclusions of law contained in the magistrate's decision. We grant summary judgment on behalf of the Franklin County Court of Common Pleas and deny the request for a writ of procedendo.

Writ of procedendo denied.

SADLER, P.J., and KLATT, J., concur.

APPENDIX A

IN THE COURT OF APPEALS OF Ohio

TENTH APPELLATE DISTRICT

State of Ohio ex rel. Daniel Ingram, Jr.,	:	
Relator,	:	
v.	:	No. 07AP-493
Court of Common Pleas [Judge Bender],	:	(REGULAR CALENDAR)
Respondent.	:	

MAGISTRATE'S DECISION

Rendered August 9, 2007

Daniel Ingram, Jr., pro se.

Ron O'Brien, Prosecuting Attorney, and R. Matthew Colon, for respondent.

IN PROCEDENDO
ON MOTION FOR SUMMARY JUDGMENT

{¶5} Relator, Daniel Ingram Jr., seeks a writ of procedendo ordering respondent, Judge Bender of the Franklin County Court of Common Pleas, to rule on various motions which relator has pending in the trial court.

Findings of Fact:

{¶6} 1. Relator is currently incarcerated.

{¶7} 2. According to his petition, relator filed a motion in the trial court requesting that Judge Bender correct an illegal sentence. At the time relator filed his petition in this court, relator indicated that Judge Bender had not yet ruled on his motion.

{¶8} 3. In July 2007, a motion for summary judgment was filed on behalf of Judge Bender. Attached to that motion is a copy of a decision and entry denying relator's motion to correct illegal sentence, overruling as moot relator's motions to proceed to judgment and to strike. That decision and entry is dated June 20, 2007.

{¶9} 4. Relator has not filed a response to the motion for summary judgment.

{¶10} 5. The motion is currently before the magistrate for review.

Conclusions of Law:

{¶11} The magistrate recommends that this court grant summary judgment in favor of respondent, Judge Bender.

{¶12} In order to be entitled to a writ of procedendo, a relator must establish a clear legal right to require that court to proceed, a clear legal duty on the part of the court to proceed, and the lack of an adequate remedy in the ordinary course of law. *State ex rel. Miley v. Parrott* (1996), 77 Ohio St.3d 64, 65. A writ of procedendo is appropriate when a court has either refused to render a judgment or has unnecessarily delayed proceeding to judgment. *Id.*

{¶13} A motion for summary judgment requires the moving party to set forth the legal and factual basis supporting the motion. To do so, the moving party must identify portions of the record which demonstrate the absence of a genuine issue of material fact. *Dresher v. Burt* (1996), 75 Ohio St.3d 280. Accordingly, any party moving for summary judgment must satisfy a three-prong inquiry showing: (1) that there is no

genuine issue as to any material facts; (2) that the parties are entitled to judgment as a matter of law; and (3) that reasonable minds can come to but one conclusion, which conclusion is adverse to the party against whom the motion for summary judgment is made. *Harless v. Willis Day Warehousing Co.* (1978), 54 Ohio St.2d 64.

{¶14} It is undisputed that a writ of procedendo will not issue to compel the performance of a duty which has already been performed. See *State ex rel. Walker v. Kilbane Koch*, 98 Ohio St.3d 295, 2003-Ohio-856. Because Judge Bender has issued a decision and entry denying relator's motions, the act which relator seeks to compel Judge Bender to perform has already been completed. As such, relator's petition for a writ of procedendo is now moot.

{¶15} Based on the foregoing, this magistrate concludes that this court should grant the motion of respondent Judge Bender and grant summary judgment in respondent's favor.

/s/Stephanie Bisca Brooks
STEPHANIE BISCA BROOKS
MAGISTRATE

NOTICE TO THE PARTIES

Civ.R. 53(D)(3)(a)(iii) provides that a party shall not assign as error on appeal the court's adoption of any factual finding or legal conclusion, whether or not specifically designated as a finding of fact or conclusion of law under Civ.R. 53(D)(3)(a)(ii), unless the party timely and specifically objects to that factual finding or legal conclusion as required by Civ.R. 53(D)(3)(b).