

12(M) of the Tenth District Court of Appeals. The magistrate issued a decision, which includes findings of fact and conclusions of law and is appended to this decision, recommending that this court grant respondent's motion for summary judgment.

{¶2} Relator filed objections to the magistrate's decision. In his objections, relator essentially restates the arguments he made to the magistrate. We agree with the magistrate's analysis and resolution of those arguments, however. Therefore, we overrule relator's objections.

{¶3} Having conducted an independent review of the record in this matter, we adopt the magistrate's decision as our own, including the findings of fact and conclusions of law contained in it. In accordance with that decision, we grant respondent's motion for summary judgment and deny the requested writ.

*Objections overruled,
motion for summary judgment granted,
writ of procedendo denied.*

BROWN and CONNOR, JJ., concur.

A P P E N D I X

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio ex rel. Corey Hazel,	:	
	:	
Relator,	:	
	:	
v.	:	No. 09AP-288
	:	
Honorable Judge John F. Bender,	:	(REGULAR CALENDAR)
Judge in Franklin County Court	:	
of Common Pleas,	:	
	:	
Respondent.	:	

MAGISTRATE'S DECISION

Rendered on September 14, 2009

Corey Hazel, pro se.

Ron O'Brien, Prosecuting Attorney, and Paul Thies, for respondent.

IN PROCEDENDO
ON MOTION FOR SUMMARY JUDGMENT

{¶4} In this original action, relator, Corey Hazel, an inmate of the Chillicothe Correctional Institution ("CCI"), requests a writ of procedendo ordering respondent, the Honorable John F. Bender ("respondent" or "Judge Bender"), a judge of the Franklin

County Court of Common Pleas ("common pleas court"), to enter judgment, including findings of fact and conclusions of law, with respect to relator's R.C. 2953.21 petition for post-conviction relief filed in the common pleas court on September 4, 2007.

Findings of Fact:

{¶5} 1. On March 23, 2009, relator filed this original action against respondent.

{¶6} 2. According to the complaint, on September 4, 2007, relator filed in the common pleas court an R.C. 2953.21 petition for post-conviction relief.

{¶7} 3. According to the complaint, on March 28, 2008, relator filed an amended petition for post-conviction relief.

{¶8} 4. According to the complaint, Judge Bender "only ruled on the Amended portion of the Post-Conviction filed on March 28, 2008, instead of the original Post-Conviction filed on September 4, 2007."

{¶9} 5. In his complaint, for the relief sought, relator requests that this court issue a writ of procedendo ordering Judge Bender "to issue findings of fact and conclusions of law with respects to the original Post-Conviction Petition * * * which would render a final Appealable Order."

{¶10} 6. On May 11, 2009, Judge Bender moved for summary judgment.

{¶11} 7. In support of his motion, Judge Bender submitted a certified copy of his August 27, 2008 decision and entry denying relator's March 28, 2008 petition for post-conviction relief. (The August 27, 2008 decision and entry also denies an April 9, 2008 motion to withdraw guilty pleas.)

{¶12} 8. In further support of his motion, Judge Bender also submitted a certified copy of this court's opinion in *State v. Hazel*, 10th Dist. No. 08AP-789, 2009-Ohio-880.

{¶13} In this court's opinion, the five assignments of error are set forth. The first assignment of error states:

[I.] The Trial Court Erred to the Prejudice of the Defendant when the Trial Court ruled only on the Amended Post Conviction Petition filed March 28, 2008, and disregarded Defendant's Original Post Conviction Petition that was filed September 4, 2007, Denying Defendant's Due Process of Law.

{¶14} In its opinion, this court states:

The first assignment of error asserts that the trial judge disregarded the first petition and considered only the second petition for post-conviction relief. This assertion is not supported by the record before us. The trial judge clearly indicated that he considered all the materials filed in the case. We have no reason to doubt this.

The first assignment of error is overruled.

{¶15} In the final paragraph of this court's opinion, this court states: "All five assignments of error having been overruled, the judgment of the Franklin County Court of Common Pleas is affirmed."

{¶16} 9. On May 12, 2009, this magistrate issued notice that Judge Bender's May 11, 2009 motion for summary judgment is set for submission to the magistrate on June 1, 2009.

{¶17} 10. On May 26, 2009, relator filed a memorandum contra.

{¶18} 11. In support of his memorandum contra, relator submits a document captioned "Affadavit [sic] of Sworn Statement" consisting of nine enumerated paragraphs. Paragraph eight of the document states:

That, Relator asserts that because the trial court failed to address the issues presented and render findings of facts and conclusions of law based upon Branches IV and V, grounds for relief * * * precluded Relator from raising this issue by way of appeal. Therefore, Relator has no adequate remedy in the ordinary course of law. * * *

{¶19} 12. In further support of his memorandum contra, relator submits a copy of his petition for post-conviction relief filed September 4, 2007.

Conclusions of Law:

{¶20} It is the magistrate's decision that this court grant respondent's motion for summary judgment.

{¶21} Summary judgment is appropriate when the movant demonstrates that: (1) there is no genuine issue of material fact; (2) the moving party is entitled to judgment as a matter of law; and (3) reasonable minds can come to but one conclusion, and that conclusion is adverse to the party against whom the motion for summary judgment is made, said party being entitled to have the evidence construed most strongly in his favor. *Turner v. Turner* (1993), 67 Ohio St.3d 337, 339-40; *Bostic v. Connor* (1988), 37 Ohio St.3d 144, 146; *Harless v. Willis Day Warehousing Co.* (1978), 54 Ohio St.2d 64, 66. The moving party bears the burden of proving no genuine issue of material fact exists. *Mitseff v. Wheeler* (1988), 38 Ohio St.3d 112, 115.

{¶22} Under R.C. 2953.21(C), findings of fact and conclusions of law are mandatory if the trial court dismisses a petition for post-conviction relief. *State ex rel.*

Konoff v. Moon, 79 Ohio St.3d 211, 212, 1997-Ohio-398. Mandamus will lie to compel a trial court to issue findings of fact and conclusions of law when it dismisses a petition for post-conviction relief. *Id.*

{¶23} However, neither a writ of procedendo nor a writ of mandamus will issue if an adequate remedy at law exists in the ordinary course of law. *State ex rel. Reynolds v. Basinger*, 99 Ohio St.3d 303, 2003-Ohio-3631.

{¶24} Here, relator had a remedy by way of his direct appeal of his post-conviction relief action to challenge the asserted failure to state findings of fact and conclusions of law. *Id.*

{¶25} Accordingly, for all the above reasons, it is the magistrate's decision that this court grant respondent's motion for summary.

/s/ Kenneth W. Macke
KENNETH W. MACKE
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).