

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

[State ex rel.] David A. Morgan,	:	
Relator,	:	
v.	:	No. 14AP-910
Judge Fais, Court of Common Pleas Franklin County, Ohio,	:	(REGULAR CALENDAR)
Respondent.	:	
	:	

D E C I S I O N

Rendered on April 21, 2015

David A. Morgan, pro se.

*Ron O'Brien, Prosecuting Attorney, and Jeffrey C. Rogers,
for respondent.*

IN PROCEDENDO
ON OBJECTIONS TO THE MAGISTRATE'S DECISION

TYACK, J.

{¶ 1} David A. Morgan filed this action in procedendo seeking a writ to compel Judge David A. Fais to rule on Morgan's "Motion to Vacate Void Judgment, Conviction, and Sentence." In accord with Loc.R. 13(M) of the Tenth District Court of Appeals, the case was referred to a magistrate to conduct appropriate proceedings.

{¶ 2} Counsel for Judge Fais filed a motion to dismiss the case and provided a copy of the entry overruling Morgan's motion. The magistrate converted the motion to dismiss into a motion for summary judgment and scheduled a non-oral hearing date.

{¶ 3} Morgan filed a memorandum in response, but does not deny that Judge Fais ruled on his motion to vacate. As a result, the magistrate issued a magistrate's decision, appended hereto, which includes findings of fact and conclusions of law. The magistrate's decision includes a recommendation that we grant summary judgment and deny the request for a writ.

{¶ 4} Morgan has filed objections to the magistrate's decision in which he seems to confuse an original action in procedendo with a direct appeal of Judge Fais' ruling. A writ of procedendo only compels a judge to rule on a motion. It does not tell a judge how to rule. A writ of procedendo also will not compel a judge to rule a second time.

{¶ 5} Because Judge Fais has already ruled on Morgan's motion, we overrule the objections to our magistrate's decision. We adopt the findings of fact and conclusions of law contained in the magistrate's decision and deny the request for a writ of procedendo.

Objections overruled; writ of procedendo denied.

SADLER and LUPER SCHUSTER, JJ., concur.

APPENDIX

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

[State ex rel.] David A. Morgan,	:	
	:	
Relator,	:	
	:	
v.	:	No. 14AP-910
	:	
Judge Fais, Court of Common Pleas	:	(REGULAR CALENDAR)
Franklin County, Ohio,	:	
	:	
Respondent.	:	
	:	

MAGISTRATE'S DECISION

Rendered on January 16, 2015

David A. Morgan, pro se.

Ron O'Brien, Prosecuting Attorney, and Jeffrey C. Rogers,
for respondent.

**IN PROCEDENDO
ON RESPONDENT'S MOTION FOR SUMMARY JUDGMENT**

{¶ 6} In this original action, relator, David A. Morgan, an inmate of the Marion Correctional Institution ("MCI"), requests a writ of procedendo ordering respondent, the Honorable David W. Fais, a judge of the Franklin County Court of Common Pleas, to rule on a motion that relator filed in the common pleas court during April 2014 in case No. 86CR-398.

Findings of Fact:

{¶ 7} 1. On November 5, 2014, relator, an MCI inmate, filed this original action against respondent.

{¶ 8} 2. In his complaint, relator alleges that he filed in the common pleas court "a motion to Vacate Void judgment, conviction, and sentence." (Complaint, 1.) According to the complaint, respondent has failed to rule on his motion.

{¶ 9} 3. On November 25, 2014, respondent filed a motion to dismiss. In support, respondent submitted as an exhibit a copy of his entry filed in the common pleas court on November 18, 2014. The entry overrules a motion filed by relator on April 1, 2014 as well as an amended motion filed by relator on May 28, 2014.

{¶ 10} 4. On November 25, 2014, the magistrate issued an order converting respondent's motion to dismiss to one for summary judgment. The order sets the motion for submission to the magistrate on December 16, 2014.

{¶ 11} 5. On December 5, 2014, relator filed a memorandum in opposition. However, there is no dispute that respondent filed his entry on November 18, 2014 that overrules relator's motion filed April 1, 2014 as well as an amended motion filed May 28, 2014.

Conclusions of Law:

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

{¶ 13} 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*, 67 Ohio St.3d 337, 339-40 (1993); *Bostic v. Connor*, 37 Ohio St.3d 144, 146 (1988); *Harless v. Willis Day Warehousing Co.*, 54 Ohio St.2d 64, 66 (1978). The moving party bears the burden of proving no genuine issue of material fact exists. *Mitseff v. Wheeler*, 38 Ohio St.3d 112, 115 (1988).

{¶ 14} A writ of procedendo is merely an order from a court of superior jurisdiction to one of inferior jurisdiction to proceed to judgment. *State ex rel. Utley v. Abruzzo*, 17

Ohio St.3d 203, 204 (1985). A writ does not in any case attempt to control the inferior court as to what that judgment should be. *Id.* A writ of procedendo will not issue where an adequate remedy exists in the ordinary course of law. *Id.*

{¶ 15} Here, it is undisputed that respondent has ruled on relator's motion and, thus, relator has obtained the relief that he sought through his complaint filed in this action. Thus, this action is now moot and summary judgment in favor of respondent is appropriate.

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

/S/ MAGISTRATE
KENNETH W. MACKE

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).