

**STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS**

**State of West Virginia ex rel.
John J. B., Petitioner**

vs.) No. 12-0720 (Putnam County 08-D-100)

**Honorable William M. Watkins, III, Judge of the
Family Court of Putnam County, Respondent**

FILED
July 5, 2012
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

MEMORANDUM DECISION

In the original proceeding now before this Court, the petitioner, John J. B., by counsel Mark W. Kelly, seeks a writ of mandamus against the respondent, William M. Watkins, Judge of the Family Court of Putnam County, to compel him to issue a decision on certain motions in the family court matter that have been pending since July 9, 2010. The Circuit Court of Putnam County previously issued a writ of mandamus compelling Respondent to conduct a hearing on the motions and issued two writs directing Respondent to rule on the motions. Upon consideration of the petition, we conclude that the writ of mandamus should be granted.

The Court has considered the petition for writ of mandamus and the record presented by the petitioner. The facts and legal arguments are adequately set forth therein and the Court has previously decided that oral argument is not necessary to the decision in this case. The facts in this case are not complex and the case does not present a novel or significant question of law. For these reasons, a memorandum decision is appropriate under Rule 21 of the Rules of Appellate Procedure.

On November 14, 2008, the Final Divorce Decree was entered by the Respondent, granting the parties to this action below a divorce and ruling on equitable distribution of their property. Thereafter, the parties did not agree on certain matters of the equitable distribution. On July 9, 2010, counsel for Petitioner filed a Response to Respondent's Second Motion to enter Qualified Domestic Relations Order, Counter Motion for Further Proceedings on Equitable Distribution, and Motion for Sanctions and Attorney's fees. These motions are the subject of this mandamus action.

When Respondent failed to conduct a hearing on the July 9, 2010 motions, counsel filed a mandamus action in circuit court and by order entered February 7, 2011, the circuit court directed Respondent to hold a hearing on the motions within thirty days of entry of that order. Respondent did not conduct the hearing until June 1, 2011. After waiting five months from the June 1, 2011 hearing for a ruling, counsel again petitioned the circuit court to issue a writ of mandamus directing Respondent to issue a ruling. The circuit court issued the mandamus and directed the Respondent to issue a decision within sixty days. When Respondent still failed to issue a ruling, counsel filed a Renewed Petition for Writ of Mandamus and the circuit court then directed Respondent to issue a ruling within fifteen days. Respondent did not issue a decision by entry of an order.

On June 12, 2012, counsel for petitioner filed a petition for writ of mandamus with this Court seeking to compel Respondent to issue a decision on the July 9, 2010 motions. On June 19, 2012, this Court issued a rule to show cause returnable June 28, 2012, unless sooner mooted by entry of a ruling on the motions as ordered by the Circuit Court in Putnam County Civil Action No. 11-C-303. The Deputy Clerk of this Court contacted the circuit clerk's office this morning and Respondent's case coordinator confirmed that Judge Watkins has still failed to issue a decision as no order has been entered.

Section 17 of Article III of the West Virginia Constitution provides that "justice shall be administered without sale, denial or delay." Furthermore, Canon 3B(8) of the West Virginia Code of Judicial Conduct provides that "[a] judge shall dispose of all judicial matters promptly, efficiently, and fairly." This Court has also pointed out that "judges have an affirmative duty to render timely decisions on matters properly submitted within a reasonable time following their submission." Syllabus point 1, in part, *State ex rel. Patterson v. Aldredge*, 173 W. Va. 446, 317 S.E.2d 805 (1984). The duty of judges to issue timely decisions is also clearly set forth in the West Virginia Trial Court Rules. Trial Court Rule 16.06 directs that in Domestic Relations Proceedings "[A]n order shall be entered on post-hearing motions within one month of submission." Pursuant to Trial Court Rule 16.13 it is the duty of the judges to effectuate expeditious movement and timely disposition of all cases assigned to them.

In this case, it has been four days shy of two years since the filing of the motions that are the subject of this action. The Circuit Court in Putnam County Civil Action No. 11-C-303 has twice previously directed the Respondent to enter a ruling. Respondent has shown no just cause for his failure to comply with orders of the court. In fact, he has failed to provide any response. It is abundantly clear that the petitioner is entitled to the relief requested in this matter.

In granting such relief it is important to note that this Court cannot compel Judge Watkins to rule in a particular manner. This Court held in Syllabus point 2 of *State ex rel. Patterson v. Aldredge, supra*:

“Mandamus will not lie to direct the manner in which a trial court should exercise its discretion with regard to an act either judicial or quasi-judicial, but a trial court, or other inferior tribunal, may be compelled to act in a case it unreasonably neglects or refuses to do so.” *State ex rel. Cackowska v. Knapp*, 147 W. Va. 699, 130 S.E.2d 204 (1963).

Accordingly, it is ADJUDGED and ORDERED that a writ of mandamus be issued directing the respondent, the William M. Watkins, III, to render a decision on the subject motions currently pending in the Family Court of Putnam County (Civil Action No 08-D-100) and enter the order within five days of the date of this Memorandum Decision. If the decision on the subject motions complying with the orders of the Circuit Court of Putnam County Civil Action No. 11-C-303 is not entered on or before July 10, 2012, the Respondent shall appear before this Court on the 7th day of August, 2012, at 10:00 a.m. for contempt proceedings for violation of the Court’s orders and show cause why he should not be held in contempt of Court.

The Clerk is directed to issue the mandate contemporaneously herewith.

Writ Granted.

ISSUED: July 5, 2012

CONCURRED IN BY:

Chief Justice Menis E. Ketchum

Justice Robin Jean Davis

Justice Brent D. Benjamin

Justice Margaret L. Workman

Justice Thomas E. McHugh