

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State [of Ohio] ex rel.	:	
Kim L. Anderson,	:	
	:	
Relator,	:	No. 12AP-190
	:	
v.	:	(REGULAR CALENDAR)
	:	
Patrick Sheeran Franklin County Court of Common Pleas, Judge,	:	
	:	
Respondent.	:	

D E C I S I O N

Rendered on August 21, 2012

Kim L. Anderson, pro se.

*Ron O'Brien, Prosecuting Attorney, and Jeremy David Smith,
for respondent.*

IN MANDAMUS
ON MOTION FOR SUMMARY JUDGMENT

TYACK, J.

{¶ 1} Kim L. Anderson filed this lawsuit requesting a writ to compel Judge Patrick Sheeran of the Franklin County Court of Common Pleas to rule on a motion he had filed in that court. In accord with Loc.R. 12, the case was referred to a magistrate to conduct appropriate proceedings.

{¶ 2} Approximately one month after Anderson filed this action, Judge Sheeran ruled on Anderson's motion. As a result, counsel for Judge Sheeran filed a motion requesting summary judgment. Anderson, having received the ruling on his motion, filed no memorandum in response.

{¶ 3} The magistrate then issued a magistrate's decision, attached hereto, which includes a recommendation that we grant summary judgment for Judge Sheeran. Anderson has not filed objections to the magistrate's decision.

{¶ 4} Upon review of the magistrate's decision, we find no error of law or fact on its face. We therefore adopt the findings of fact and conclusions of law in the magistrate's decision and grant summary judgment for Judge Sheeran.

Summary judgment granted.

BRYANT and CONNOR, JJ., concur.

A P P E N D I X

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Patrick Sheeran Franklin County Court of Common Pleas, Judge,	:	
	:	
Respondent.	:	

M A G I S T R A T E ' S D E C I S I O N

Rendered on April 24, 2012

Kim L. Anderson, pro se.

*Ron O'Brien, Prosecuting Attorney, and Jeremy David Smith,
for respondent.*

**IN MANDAMUS
ON MOTION FOR SUMMARY JUDGMENT**

{¶ 5} Petitioner, Kim L. Anderson, has filed this original action requesting that this court issue a writ of mandamus ordering respondent The Honorable Patrick Sheeran, judge of the Franklin County Court of Common Pleas, to rule on a motion pending in petitioner's criminal case.

Findings of Fact:

{¶ 6} 1. On August 25, 2011, petitioner filed a motion to "Vacate Restitution Because there was no Restitution Hearing to determine the Actual Economical Losses of Victim's, Oak Street Mortgage, Homecoming Financial Network, Saxon Mortgage Company on record, from the [Foreclosure] Sale's, or Short Sale's, and Insurance paid to the Lender's for their Losses in the Property transactions in Defendant's case."

{¶ 7} 2. On March 2, 2012, petitioner filed this procedendo action asking this court to order respondent to rule on his August 25, 2011 motion.

{¶ 8} 3. On April 2, 2012, respondent filed a motion for summary judgment asserting that respondent had now ruled upon petitioner's motion.

{¶ 9} 4. Respondent attached the September 7, 2011 decision and entry dismissing petitioner's motion to vacate restitution.

{¶ 10} 5. Relator has not filed a memorandum opposing summary judgment.

{¶ 11} 6. Summary judgment hearing notices were sent to the parties and the matter is currently before the magistrate on respondent's motion.

Conclusions of Law:

{¶ 12} For the reasons that follow, it is this magistrate's decision that this court should grant respondent's motion for summary judgment.

{¶ 13} 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*, 77 Ohio St.3d 64, 65 (1996). A writ of procedendo is appropriate when a

court has either refused to render a judgment or has unnecessarily delayed proceeding to judgment. *Id.*

{¶ 14} As stated in the findings of fact, respondent has filed a copy of the decision and entry denying petitioner's motion to vacate restitution. At this time, respondent has performed the act which petitioner seeks to compel. *Procedendo* will not compel the performance of a duty that has already been performed. *State ex rel. Walker v. Kilbane Koch*, 98 Ohio St.3d 295, 2003-Ohio-856.

{¶ 15} Inasmuch as respondent has ruled on petitioner's motion, respondent has performed the act which petitioner seeks to compel and petitioner's request for a writ of *procedendo* is moot. As such, this court should grant respondent's motion for summary judgment.

/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).