

SUPREME COURT OF OHIO

State ex rel. Halder v. Fuerst

118 Ohio St. 3d 142 (Ohio 2008) · Decided April 30, 2008

SUMMARY

The Ohio Supreme Court affirmed the denial of a writ of mandamus seeking to compel a clerk of courts to serve notice of a judgment denying a motion for relief from judgment. The court held that service had already been completed by mailing notice to the party's last provided address and that the party had adequate remedies at law, including delayed appeal and a motion for relief from judgment.

CASE DETAILS

COURT	Supreme Court of Ohio
WRITING FOR THE COURT	Per Curiam; Moyer, C.J.; Pfeifer; Lundberg Stratton; O’Connor; O’Donnell; Lanzinger; Cupp
JURISDICTION	Ohio
DECIDED	April 30, 2008
DISPOSITION	affirmed
PROCEDURAL POSTURE	Haider sought a writ of mandamus in the Cuyahoga County Court of Appeals to compel the county clerk to serve notice of the denial of his motion for relief from judgment. The court of appeals granted the clerk's motion for summary judgment and denied the writ. Haider appealed to the Supreme Court of Ohio.
STANDARD OF REVIEW	The court reviewed whether Haider was entitled to the extraordinary remedy of mandamus and whether the court of appeals properly granted summary judgment. Mandamus was unavailable because the requested act had already been performed and, alternatively, because Haider had adequate remedies in the ordinary course of law.
PRECEDENTIAL VALUE	Published precedential opinion
PARTIES	Biswanath Haider v. Gerald E. Fuerst, Cuyahoga County Clerk of Courts

TOPICS

- appellate procedure
- civil procedure
- summary judgment
- remedies

PRACTICE AREAS

civil procedure

mandamus

appellate procedure

QUESTIONS PRESENTED

1. Whether mandamus could compel the clerk to serve notice of a judgment when the clerk had already mailed notice to the appellant's last address of record.
2. Whether the clerk was required to discover and update a pro se litigant's changed address without formal notification from the litigant.
3. Whether mandamus was available when the appellant had adequate remedies, including delayed appeal and a motion for relief from judgment, to challenge the claimed lack of notice.

HOLDINGS

1. Mandamus will not issue to compel an act that has already been performed. Because the clerk mailed the judgment to Haider's last address provided to the court, service was completed under the applicable civil rules.
2. A party bears the burden of formally notifying the court of a change of address; the clerk is not required to search the record to determine whether the party's address has changed. This obligation applies equally to pro se litigants.
3. Even if the clerk had not properly served notice, Haider was not entitled to mandamus because delayed appeal and a motion for relief from judgment provided adequate remedies in the ordinary course of law.

KEY QUOTATIONS

“Mandamus will not issue to compel an act that had already been performed.” (¶ 5)

“party bears the burden of formally notifying the court of a change of address; the clerk is not charged with the duty of perusing the record to ensure that a party’s mailing address has not changed.” (¶ 6)

“he is not entitled to the requested extraordinary relief in mandamus, because he has or had adequate remedies in the ordinary course of law by delayed appeal and motion for relief from judgment to raise such a claim.” (¶ 7)

FACTUAL BACKGROUND

The common pleas court denied Haider's motion for relief from judgment on November 29, 2006. The clerk mailed notice of the judgment to Haider's last address of record, although Haider had been incarcerated since June 2006 at a different address. Haider later received a certified copy of the judgment and requested that the clerk update his address.

PROCEDURAL HISTORY

The common pleas court denied Haider's motion for relief from judgment on November 29, 2006, and the clerk mailed notice to Haider's last address of record. Haider later received a certified copy of the judgment and then

sought mandamus in the court of appeals. The court of appeals granted summary judgment for the clerk and denied the writ; the Supreme Court of Ohio affirmed.

DISPOSITION

affirmed

CASES CITED

- State ex rel. Madsen v. Foley Jones, 106 Ohio St. 3d 178, 2005-Ohio-4381, 833 N.E.2d 291, ¶ 11
- State ex rel. Hughes v. Celeste, 67 Ohio St. 3d 429, 431, 619 N.E.2d 412 (1993)
- State ex rel. Smith v. Fuerst, 89 Ohio St. 3d 456, 457, 732 N.E.2d 983 (2000)
- Robb v. Smallwood, 165 Ohio App. 3d 385, 2005-Ohio-5863, 846 N.E.2d 878, ¶ 11
- Marshall v. Staudt, Stark App. No. 1998CA00177, 1999 WL 100373, *3 (Feb. 1, 1999)
- Nalbach v. Cacioppo, Trumbull App. No. 2001-T-0062, 2002 WL 32704, *6 (Jan. 11, 2002)
- State ex rel. Bortoli v. Dinkelacker, 105 Ohio St. 3d 133, 2005-Ohio-779, 823 N.E.2d 448, ¶ 3
- State ex rel. Ahmed v. Costine, 103 Ohio St. 3d 166, 2004-Ohio-4756, 814 N.E.2d 865, ¶ 5

OPINION

PER CURIAM.

Per Curiam. *143{¶ 1} This is an appeal from a judgment denying a writ of mandamus to compel a clerk of courts to serve notice of a trial court's denial of a motion for relief from judgment on the party filing the motion.

Because the clerk had already served notice of the judgment on the party and the party had an adequate remedy at law to raise his claim that he did not receive notice of the judgment, we affirm. {¶ 2} Appellant, Biswanath Haider, filed a motion for relief from judgment in Halder v. Miller, Cuyahoga C.P. No. CV-01-441308.

On November 29, 2006, the common pleas court denied the motion. The clerk of the common pleas court mailed notice of the judgment to Haider at the last address he had given the court — 1918 Coltman Road, Cleveland, Ohio. At that time, however, Haider was incarcerated in Mansfield Correctional Institution, where he had been since June 2006. Haider subsequently received a certified copy of the November 2006 common pleas court judgment denying his motion from the clerk in April 2007.

In that same month, Haider requested that the clerk's office update its records to reflect his prison address. {¶ 3} Haider then filed a complaint in the Court of Appeals for Cuyahoga County for a writ of mandamus to compel appellee, Cuyahoga County Clerk of Courts Gerald E. Fuerst, to serve him with the notice of the November 2006 judgment denying his motion for relief from judgment.

Fuerst filed a combined motion to dismiss and for summary judgment. The court of appeals granted the motion for summary judgment and denied the writ. {¶ 4} Haider claims that the court of appeals erred in denying the writ.

For the reasons that follow, Haider's claim lacks merit. {¶ 5} First, "[m]andamus will not issue to compel an act that had already been performed." *State ex rel. Madsen v. Foley Jones*, 106 Ohio St.3d 178, 2005-Ohio-4381, 833 N.E.2d 291, ¶ 11.

The clerk properly served Haider with a copy of the common pleas court's judgment denying Haider's motion for relief from judgment by mailing it to the last address that Haider had provided to the clerk. See *State ex rel. Hughes v. Celeste* (1993), 67 Ohio St.3d 429, 431, 619 N.E.2d 412 ("Civ.R. 58(B) directs the clerk of court to serve the parties with notice of a judgment, within three days of its entry upon the journal, in a manner prescribed by Civ.R.

5(B)"); Civ.R. 5(B) ("Service upon the attorney or party shall be made by * * * mailing it to the last known address of the person to be served * * *. Service by mail is complete upon mailing"). Because the clerk properly served Haider with the judgment pursuant to Civ.R. 58(B) and 5(B), a writ of mandamus will not issue to compel service, since it already has been completed.

See *State ex rel. Smith v. Fuerst* (2000), 89 Ohio St.3d 456, 457, 732 N.E.2d 983. {¶ 6} Second, a "party bears the burden of formally notifying the court of a change of address; the clerk is not charged with the duty of perusing the record to ensure that a party's mailing address has not changed." *Robb v. Smallwood*, *144165 Ohio App.3d 385, 2005-Ohio-5863, 846 N.E.2d 878, ¶ 11.

This obligation applies equally to pro se litigants like Haider. *Id.*; see also *Marshall v. Staudt* (Feb. 1, 1999), Stark App. No. 1998CA00177, 1999 WL 100373, *3. "Given that informing the trial court of a new address is relatively simple, it follows that the burden of satisfying this requirement cannot be shifted to the opposing party or the trial court." *Nalbach v. Cacioppo* (Jan.

11, 2002), Trumbull App. No. 2001-T-0062, 2002 WL 32704, *6. Haider failed to satisfy this burden here. Biswanath Haider, pro se. William D. Mason, Cuyahoga County Prosecuting Attorney, and Frederick W. Whatley, Assistant Prosecuting Attorney, for appellee. {¶ 7} Finally, even if the clerk had not properly served notice of the judgment on Haider, he is not entitled to the requested extraordinary relief in mandamus, because he has or had adequate remedies in the ordinary course of law by delayed appeal and motion for relief from judgment to raise such a claim.

State ex rel. Bortoli v. Dinkelacker, 105 Ohio St.3d 133, 2005-Ohio-779, 823 N.E.2d 448, ¶ 3; *State ex rel. Ahmed v. Costine*, 103 Ohio St.3d 166, 2004-Ohio-4756, 814 N.E.2d 865, ¶ 5. {¶ 8} Based on the foregoing, the court of appeals properly denied the writ.

Therefore, we affirm the judgment of the court of appeals. Judgment affirmed. Moyer, C.J., and Pfeifer, Lundberg Stratton, O'Connor, O'Donnell, Lanzinger, and Cupp, JJ., concur.

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