

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.

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.