

SUPREME COURT OF INDIANA

State of Indiana ex rel. Bruce Seal v. The Madison Superior Court
No. 3 and Dennis D. Carroll, as Special Judge

909 N.E.2d 994 (Ind. 2009) · No. No. 48S00-0907-OR-324 · Decided July 16, 2009

SUMMARY

The Indiana Supreme Court dismissed an original action seeking a writ of mandamus requiring a special judge to grant a change of judge and initiate selection of a new special judge. The court held that the relator had not timely objected to the special-judge selection procedure and had not shown that his motion for an automatic change of judge was timely under Trial Rule 76(C). The court concluded that mandamus was unavailable and dismissed the action without allowing rehearing or reconsideration.

CASE DETAILS

COURT	Supreme Court of Indiana
WRITING FOR THE COURT	Sullivan, Acting Chief Justice
JURISDICTION	Indiana
DECIDED	July 16, 2009
DOCKET	No. 48S00-0907-OR-324
DISPOSITION	dismissed
PROCEDURAL POSTURE	Original action seeking a writ of mandamus requiring the special judge to grant a motion for change of judge and initiate selection of a new special judge.
STANDARD OF REVIEW	Mandamus is an extraordinary equitable remedy viewed with disfavor. It will issue only when the relator has a clear and unquestioned right to relief and the respondent has failed to perform a clear, absolute, and imperative legal duty.
PRECEDENTIAL VALUE	Published Indiana Supreme Court order
PARTIES	State of Indiana ex rel. Bruce Seal, Relator v. The Madison Superior Court No. 3, Dennis D. Carroll, as Special Judge, Respondents

TOPICS

- writ of certiorari
- appellate procedure
- civil procedure
- family law procedure
- waiver

PRACTICE AREAS

civil procedure

appellate procedure

family law

QUESTIONS PRESENTED

1. Whether Seal was entitled to mandamus relief based on alleged irregularities in the selection of the special judge under Indiana Trial Rule 79.
2. Whether Seal's motion for an automatic change of judge was timely under Indiana Trial Rule 76(C).
3. Whether Seal established a clear and unquestioned right to relief warranting a writ of mandamus.

HOLDINGS

1. Seal waived any objection to the alleged irregularity because he did not promptly object or request an alternative selection procedure when the regular judge directed the clerk to select a special judge.
2. Seal did not establish that his unverified motion for change of judge was timely under any provision of Trial Rule 76(C), and therefore he had no demonstrated right to the requested automatic change of judge.
3. Mandamus relief was unavailable because Seal failed to show a clear and unquestioned right to relief or a failure by the respondents to perform a clear, absolute, and imperative duty imposed by law.

KEY QUOTATIONS

“A writ of mandamus will not issue unless the relator has a clear and unquestioned right to relief and the respondents have failed to perform a clear, absolute, and imperative duty imposed by law.” (909 N.E.2d at 995)

FACTUAL BACKGROUND

In a pending domestic-relations case, regular judge Thomas Newman, Jr. recused himself after Seal sought his removal and directed the Madison County Clerk to select a successor judge. The clerk selected Fredrick Spencer, who declined the appointment, and then selected Dennis D. Carroll as special judge. Seal acknowledged Carroll's appointment, filed an unverified motion for change of judge, and later sought a ruling after Carroll denied the motion.

PROCEDURAL HISTORY

In an underlying domestic-relations case, the regular judge recused and directed the county clerk to select a successor special judge. After the first selected judge declined the appointment, the clerk selected Judge Dennis D. Carroll. Seal filed a motion for change of judge, which Carroll denied. Seal then sought a writ of mandamus from the Indiana Supreme Court.

DISPOSITION

dismissed

CASES CITED

- State ex rel. Bruce Seal v. Madison Super. Ct. No. 3, No. 48S00-0901-OR-32, ___ N.E.2d ___ (Ind. Mar. 6, 2009) (order)
- State ex rel. Woodford v. Marion Super. Ct., 655 N.E.2d 63, 65 (Ind. 1995)
- Bivins v. State, 485 N.E.2d 89, 92 (Ind. 1985)
- Rodgers v. Rodgers, 503 N.E.2d 1255 (Ind. Ct. App. 1987)

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