

SUPREME COURT OF GEORGIA

Chandler v. Davis, 269 Ga. 727

504 S.E.2d 440 (Ga. 1998) · No. S98A0961 · Decided September 14, 1998

SUMMARY

The Supreme Court of Georgia affirmed the trial court's denial of filing a pro se petition for mandamus, holding that mandamus is not an available remedy to challenge a denial of a motion to recuse. The Court reasoned that the petitioner could have pursued an interlocutory appeal or direct appeal from the denial, and thus the trial court properly denied filing under OCGA § 9-15-2(d) as the petition showed no justiciable issue.

OPINION

CARLEY, J.

504 S.E.2d 440 (1998) 269 Ga. 727 CHANDLER v. DAVIS et al. No. S98A0961. Supreme Court of Georgia. September 14, 1998. Wallace Chandler, Waycross, pro se. Gregory Tyson Talley, Robert Clay Powell, Coleman, Talley, Newbern, Kurrie, Preston & Holland, LLP, Valdosta, Mrs. Davis, Owner of McDonalds et al. CARLEY, Justice. Judge Steve Jackson dismissed Chandler's complaint against Davis for failure to state a claim, and the Court of Appeals reversed.

Thereafter, Chandler filed a motion to recuse Judge Jackson, which Judge Joseph Newton heard and denied. Chandler then attempted to file a pro se petition for mandamus, along with a form denominated as an "application to proceed without payment of fees." Chandler's petition stated that the issue was whether Judge Jackson should recuse himself. Pursuant to OCGA § 9-15-2(d), Judge Newton entered an order which denied filing of Chandler's petition because it "shows on its face a complete absence of any justiciable issue of law or fact such that it cannot be reasonably believed that any relief could be granted against any party named" therein.

It is from this order that Chandler appeals. Chandler's motion to recuse Judge Jackson already has been considered by Judge Newton and denied on the merits. Chandler could have sought an interlocutory appeal from the order denying his motion to recuse, and he still may pursue that issue in the context of a direct appeal from an adverse final judgment. *Jersawitz v. Riley*, 269 Ga. 546, 500 S.E.2d 579 (1998).

To obtain reversal of a judicial order, "pursuit of the available method of obtaining appellate review, rather than mandamus, is the proper remedy. [Cits.]" *VanAlstine v. Roach*, 265 Ga. 820, 821, 461 S.E.2d 539 (1995). Since mandamus is not an appropriate remedy in this case, the trial court properly denied filing under OCGA § 9-15-2(d). Judgment affirmed. All the Justices concur.

