

SUPREME COURT OF OHIO

State ex rel. Roberts v. Hatheway

2021-Ohio-4097 (Ohio 2021) · No. 2021-0771 · Decided November 23, 2021

SUMMARY

The Supreme Court of Ohio affirmed dismissal of Mallon Roberts’s petition for writs of mandamus and procedendo seeking to compel a trial-court judge to rule on a jurisdictional motion. The court held that the claims were moot because the judge had already ruled on the motion, and that any alleged error could be addressed through a direct appeal because Roberts had an adequate remedy at law.

CASE DETAILS

COURT	Supreme Court of Ohio
WRITING FOR THE COURT	Per curiam; Maureen O'Connor, C.J.; Fischer, J. (not participating)
JURISDICTION	Ohio
DECIDED	November 23, 2021
DOCKET	2021-0771
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from the First District Court of Appeals' dismissal of a petition seeking writs of mandamus and procedendo to compel a trial-court judge to rule on a motion challenging subject-matter jurisdiction.
PRECEDENTIAL VALUE	published
PARTIES	Mallon Roberts v. Alison Hatheway, Judge

TOPICS

mootness appellate procedure civil procedure subject matter jurisdiction remedies

PRACTICE AREAS

civil procedure appellate procedure extraordinary writs

QUESTIONS PRESENTED

- Whether Roberts's claim for a writ of procedendo became moot after the trial court ruled on the motion he sought to have decided.
- Whether a writ of mandamus could issue to compel an act that the trial court had already performed.

3. Whether mandamus or procedendo was available to review the merits of the trial court's ruling when Roberts had an adequate remedy through direct appeal.

HOLDINGS

1. A procedendo claim becomes moot when the court performs the duty the petitioner seeks to compel; because Judge Hatheway ruled on Roberts's motion, dismissal of the procedendo claim was proper.
2. Mandamus will not issue to compel an act that has already been performed; because the trial court had ruled on Roberts's motion, mandamus could not lie.
3. Neither mandamus nor procedendo will issue when the petitioner has an adequate remedy in the ordinary course of law; Roberts could address any error in the trial court's ruling through a direct appeal.

KEY QUOTATIONS

“a “writ of mandamus will not issue to compel an act already performed.”” (¶ 6)

“neither a writ of procedendo nor a writ of mandamus will issue if an adequate remedy exists in the ordinary course of law” (¶ 7)

FACTUAL BACKGROUND

In June 2020, Roberts filed a motion challenging the subject-matter jurisdiction of the trial judge. In April 2021, he sought mandamus and procedendo to compel Judge Hatheway to rule on that motion. Eight days after the petition was filed, the judge issued an entry dismissing the motion on res judicata grounds.

PROCEDURAL HISTORY

Roberts filed a jurisdictional motion in the Hamilton County Court of Common Pleas. While his petition for mandamus and procedendo was pending in the First District Court of Appeals, Judge Hatheway issued an entry dismissing the motion on res judicata grounds. The court of appeals dismissed the procedendo claim as moot and concluded that mandamus was not the proper remedy. The Supreme Court of Ohio affirmed.

DISPOSITION

affirmed

CASES CITED

- State ex rel. Weiss v. Hoover, 84 Ohio St.3d 530, 532, 705 N.E.2d 1227 (1999)
- State ex rel. Morgan v. Fais, 146 Ohio St.3d 428, 2016-Ohio-1564, 57 N.E.3d 1140, ¶ 4
- State ex rel. Jerningham v. Cuyahoga Cty. Court of Common Pleas, 74 Ohio St.3d 278, 279, 658 N.E.2d 273 (1996)
- State ex rel. Reynolds v. Basinger, 99 Ohio St.3d 303, 2003-Ohio-3631, 791 N.E.2d 459, ¶ 8

OPINION

PER CURIAM.

[Until this opinion appears in the Ohio Official Reports advance sheets, it may be cited as State ex rel. Roberts v. Hatheway, Slip Opinion No. 2021-Ohio-4097.]

NOTICE

This slip opinion is subject to formal revision before it is published in an advance sheet of the Ohio Official Reports. Readers are requested to promptly notify the Reporter of Decisions, Supreme Court of Ohio, 65 South Front Street, Columbus, Ohio 43215, of any typographical or other formal errors in the opinion, in order that corrections may be made before the opinion is published.

SLIP OPINION NO. 2021-OHIO-4097

THE STATE EX REL. ROBERTS, APPELLANT, v. HATHEWAY,¹ JUDGE, APPELLEE.

[Until this opinion appears in the Ohio Official Reports advance sheets, it may be cited as State ex rel. Roberts v. Hatheway, Slip Opinion No. 2021-Ohio-4097.]

Mandamus—Procedendo—Petition for a writ of mandamus and/or procedendo seeking to compel a trial-court judge to rule on a motion was properly dismissed by the appellate court because the judge had already issued an entry dismissing the motion on res judicata grounds and petitioner had an adequate remedy at law through direct appeal of the motion’s dismissal—Court of appeals judgment affirmed.

(No. 2021-0771—Submitted October 5, 2021—Decided November 23, 2021.)

APPEAL from the Court of Appeals for Hamilton County, No. C-2100242.

1. Judge Alison Hatheway succeeded Judge Charles Kubicki Jr., who was originally named as the appellee. Pursuant to S.Ct.Prac.R. 4.06(B), Judge Hatheway is automatically substituted for former Judge Kubicki as a party to this action.

SUPREME COURT OF OHIO

Per Curiam.

{¶ 1} Appellant, Mallon Roberts, appeals the judgment of the First District Court of Appeals dismissing his petition for a writ of mandamus and/or a writ of procedendo ordering appellee, Hamilton County Court of Common Pleas Judge Alison Hatheway, to rule on his jurisdictional motion. We affirm.

{¶ 2} In June 2020, Roberts filed in the Hamilton County Court of Common Pleas a “Motion Challenging Subject Matter Jurisdiction of Trial Judge Pursuant to Sup.R. 4, Sup.R. 36, Hamilton County Local Rule 7(E), O.R.C. 2701.031.”

{¶ 3} In April 2021, Roberts filed a petition in the court of appeals seeking a writ of mandamus and/or a writ of procedendo to compel Judge Hatheway to rule on his motion. Eight days after Roberts filed his petition with the court of appeals, Judge Hatheway issued an entry dismissing Roberts’s motion on res judicata grounds.

{¶ 4} In May 2021, the court of appeals dismissed Roberts’s petition, determining that the procedendo claim was moot in light of Judge Hatheway’s entry and that a writ of mandamus was not the proper remedy to redress Roberts’s alleged injury. Roberts then filed this appeal.

{¶ 5} “A writ of procedendo is appropriate when a court has either refused to render a judgment or has unnecessarily delayed proceeding to judgment.” State ex rel. Weiss v. Hoover, 84 Ohio St.3d 530, 532, 705 N.E.2d 1227 (1999). An action in procedendo becomes moot when the court performs the duty requested. See State ex rel. Morgan v. Fais, 146 Ohio St.3d 428, 2016-Ohio-1564, 57 N.E.3d 1140, ¶ 4. Because the trial court has ruled on Roberts’s motion, the court of appeals properly dismissed the procedendo claim as moot.

{¶ 6} Roberts’s request for a writ of mandamus is controlled by similar logic. Even assuming that a writ of mandamus could provide relief beyond that afforded by a writ of procedendo, a “writ of mandamus will not issue to compel an act already performed.” State ex rel. Jerningham v. Cuyahoga Cty. Court of

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January Term, 2021

Common Pleas, 74 Ohio St.3d 278, 279, 658 N.E.2d 273 (1996). Because the trial court has performed the act requested by Roberts, mandamus cannot lie.

{¶ 7} To the extent Roberts attempts to use his petition to argue the merits of his underlying jurisdictional motion, he has an adequate remedy by way of appeal to address any alleged error in the trial court’s ruling on that motion. See State ex rel. Reynolds v. Basinger, 99 Ohio St.3d 303, 2003-Ohio-3631, 791 N.E.2d 459, ¶ 8 (“neither a writ of procedendo nor a writ of mandamus will issue if an adequate remedy exists in the ordinary course of law”).

{¶ 8} For the foregoing reasons, we affirm the judgment of the court of appeals.

Judgment affirmed.

O’CONNOR, C.J., and KENNEDY, DEWINE, DONNELLY, STEWART, and BRUNNER, JJ., concur.

FISCHER, J., not participating.

Mallon Roberts, pro se.

Joseph T. Deters, Hamilton County Prosecuting Attorney, and Paula E.
Adams, Assistant Prosecuting Attorney, for appellee.