

COURT OF APPEALS  
RICHLAND COUNTY, OHIO  
FIFTH APPELLATE DISTRICT

STATE OF OHIO, EX REL.	:	JUDGES:
SAMUEL L. BUOSCIO	:	Hon. W. Scott Gwin, P.J.
	:	Hon. William B. Hoffman, J.
	:	Hon. John W. Wise, J.
Relator	:	
	:	
-vs-	:	Case No. 2010-CA-20
	:	
JUDGE JAMES DEWEESE	:	
	:	<u>OPINION</u>
Respondent	:	

CHARACTER OF PROCEEDING: Petition for Writ of Mandamus

JUDGMENT: Dismissed

DATE OF JUDGMENT ENTRY: April 7, 2010

APPEARANCES:

For - Relator  
SAMUEL L. BUOSCIO, PRO SE  
670 Marion Williamsport Rd. East  
Marion, OH 43301-1812

For - Respondent  
KIRSTEN PSCHOLKA – GARTNER  
Assistant Richland County Prosecutor  
38 South Park, Second Floor  
Mansfield, Oh 44902

*Gwin, P.J.*

{¶1} Relator, Samuel L. Buiscio, has filed a Petition for Writ of Mandamus requesting Respondent, Judge James DeWeese, be ordered to rule on a motion filed by Relator on September 2, 2008. On March 11, 2010, Respondent DeWeese ruled on the September 2, 2008 motion. Relator has already initiated an appeal from this ruling which has been assigned Richland County Case Number 10CA35.

{¶2} Respondent has filed a motion to dismiss the instant Petition because his ruling upon the motion has made the Petition moot.

{¶3} To be entitled to the issuance of a writ of mandamus, the Relator must demonstrate: (1) a clear legal right to the relief prayed for; (2) a clear legal duty on the respondent's part to perform the act; and, (3) that there exists no plain and adequate remedy in the ordinary course of law. *State ex rel. Master v. Cleveland* (1996), 75 Ohio St.3d 23, 26-27, 661 N.E.2d 180; *State ex rel. Harris v. Rhodes* (1978), 5 Ohio St.2d 41, 324 N.E.2d 641, citing *State ex rel. National City Bank v. Bd of Education* (1977) 520 Ohio St.2d 81, 369 N.E.2d 1200.

{¶4} The Supreme Court held in *Madsen*, "Mandamus will not issue to compel an act that has already been performed." *State ex rel. Scruggs v. Sadler*, 102 Ohio St.3d 160, 2004-Ohio-2054, 807 N.E.2d 357, ¶ 5. *State ex rel. Madsen v. Jones* (2005), 106 Ohio St.3d 178, \*179, 833 N.E.2d 291, \*\*292.

{¶5} Because the relief sought has already been rendered by the trial court, Relator has no clear right to the relief prayed for, and the Respondent has no clear legal duty to perform an act which it has already performed. *State ex rel. Lewis v.*

*Boggins*, 2007 WL 4395630 (Ohio App. 5 Dist.). Therefore, we find the petition for writ of mandamus must be denied.

{¶6} For this reason, Respondent's Motion to Dismiss is granted.

{¶7} MOTION TO DISMISS GRANTED.

{¶8} WRIT DISMISSED.

{¶9} COSTS TO RELATOR.

{¶10} IT IS SO ORDERED.

By Gwin, P.J.,

Hoffman, J., and

Wise, J., concur

---

HON. W. SCOTT GWIN

---

HON. WILLIAM B. HOFFMAN

---

HON. JOHN W. WISE

